

for debate on the next bill, I simply seek to ensure the Democrats' opposition to the bills is recorded in *Hansard*.

Third Reading

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (2.01 p.m.)—I move:

That these bills be now read a third time.

Question agreed to.

Bills read a third time.

BUSINESS

Consideration of Legislation

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (2.02 p.m.)—I move:

(1) That so much of the standing orders be suspended as would prevent the succeeding provisions of this resolution having effect.

(2) That the Marriage Amendment Bill 2004 may proceed without formalities and be now read a first time.

Question agreed to.

MARRIAGE AMENDMENT BILL 2004

First Reading

Bill received from the House of Representatives and read a first time.

Second Reading

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (2.03 p.m.)—I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The speech read as follows—

MARRIAGE AMENDMENT BILL 2004

It gives me much pleasure to introduce this Bill.

This Bill is necessary because there is significant community concern about the possible erosion of the institution of marriage.

The Parliament has the opportunity to act quickly to allay these concerns.

The Government has consistently reiterated the fundamental importance of the place of marriage in our society.

It is a central and fundamental institution.

It is vital to the stability of our society and provides the best environment for the raising of children.

The Government has decided to take steps to reinforce the basis of this fundamental institution.

Currently, the Marriage Act 1961 contains no definition of marriage.

It does contain a statement of the legal understanding of marriage in the words that some marriage celebrants must say in

solemnising a marriage that: 'Marriage, according to law in Australia, is the union of a man and a woman to the exclusion of all others, voluntarily entered into for life.'

The Government believes that this is the understanding of marriage held by the vast majority of Australians and they should form the formal definition of marriage in the Marriage Act.

This Bill will achieve that result.

A related concern held by many people is that there are now some countries that permit same-sex couples to marry.

The amendments to the Marriage Act contained in this Bill will make it absolutely clear that Australia will not recognise same-sex marriages entered into under the laws of another country, whatever country that may be.

As a result of the amendments contained in this Bill same-sex couples will understand that if they go overseas to marry, their marriage, even if valid in the country in which it was solemnised, will not be recognised as valid in Australia.

In summary, this Bill makes clear the Government's commitment to the institution of marriage.

It will provide certainty to all Australians about the meaning of marriage into the future.

Senator Greig—Mr Acting Deputy President, I rise on a point of order. I seek your guidance. Earlier this week I tabled a series of contingency notices. I understand I am now able to move one of those. If my understanding of that is correct, I would seek to do so.

The ACTING DEPUTY PRESIDENT—You are a little late, Senator Greig. The time for that has passed.

Senator LUDWIG (Queensland) (2.03 p.m.)—I rise to speak on the **Marriage Amendment Bill 2004**. Labor supports the Marriage Amendment Bill and will be voting for it today. Labor has said from the beginning of this debate that we will not support same-sex marriage. In a doorstep interview on 31 May this year, the Leader of the Opposition, Mark Latham, said:

... we have always said that we believe the Marriage Act is an institution for a man and a woman, and we've never proposed in the Labor Party to change that. So we will be supporting what really is the formalisation of it—they're writing from the common law now into the statute law that it's an institution for a man and a woman. That is something we support ...

He went on to say:

The Labor Party decision not to advocate for gay marriage is a position that was determined last year by our Labor caucus as part of a whole package of other reforms relating to same sex couples that we are taking to this election. This package was developed prior to the Howard Government's recent attempts to raise the issue of gay marriage in the parliament.

We all know that the Howard government continues to try to make same-sex marriage a central issue in its re-election strategy. In fact, debate on the issue has gone back and forth and there are now before the parliament two bills that deal with marriage. Last week the Prime Minister announced that he intended to bring back into the Senate the government's second marriage bill, and

we are now at the second reading stage of that. This bill deals only with the definition of marriage and a prohibition on recognising same-sex marriages made overseas. It does not deal with adoption. The bill accords with the current common law definition of marriage in Australia as being between a man and a woman, and it is consistent with the social and religious history of this institution. This second bill, without the adoption clause, was the result of Labor rejecting the provisions of the previous bill which sought to allow the Commonwealth to interfere with adoption issues usually handled by the states. Importantly, and irrespective of the votes today, the Labor Party will ensure that the first bill continues to be examined by the Senate committee. Many thousands of submissions have been received and the detailed submissions need to be considered, as I understand it, by the committee. It is clear that this issue has attracted a great deal of community interest, although much of it is conflicting.

The committee is due to report in October. Labor expects that the recommendations of the Senate committee report will be on a range of issues affecting the gay and lesbian community and will be useful as part of our reform plans if we are in government after the next election. Labor acknowledges that some members of the gay and lesbian community would like the right to marry, but it also acknowledges that the institution of marriage is held dearly by many other Australians who are strongly against any change. Consider also the fact that marriage has not been a major focus over past years. The influential NSW Gay and Lesbian Rights Lobby Group said in a press release on 28 August 2003:

The GLRL has never opposed marriage. But we have been very clear about what we can achieve strategically as well as what rights are of the most immediate practical benefit to our community.

They went on to say in this press release:

When we have surveyed gay men and lesbians about how they want the GLRL to spend its time, they have told us loud and clear that what matters most is to be free of discrimination in everyday life, in relationships and with the families we form.

These are exactly the matters Labor have prioritised. In the recent media and community debate about the Howard government's plans to change the Marriage Act there has been no focus on these other reforms which have been pursued by the gay and lesbian community for many years and will benefit all members of the community, not just those who would like to be able to marry. In fact, it is quite ironic to the Labor Party that parties to both the right and the left of us are criticising our position. We are not reacting to calls from any particular group in the community; we are listening to, and talking with, many Australians with many differing views and we have formulated a solid, long-term response and a plan for action when a Labor

government is elected. Those who want same-sex marriage think we are too conservative, and those who oppose decent treatment of gays and lesbians think we are too progressive. It is a pretty sure sign, in my view, that we have in fact got a balanced, sensible and fair plan of action.

Let me recap on Labor's major commitments. The recent focus solely on same-sex marriage, as covered by this bill, has largely ignored the extensive commitments Labor has made to ensure that loving and caring relationships within the same-sex community are acknowledged and respected. Labor is committed to pushing ahead with the reforms it prioritised in consultation with representatives of the gay and lesbian community well before this Howard government bill was even raised. Only Labor will immediately introduce antidiscrimination laws based on sexuality and introduce protection from harassment and vilification. Only a federal Labor government will deliver to same-sex couples equivalent status to heterosexual de facto couples, following an audit of all Commonwealth legislation similar to exercises already conducted by many state and territory governments. The purpose of the audit is to identify where, among the thousands of pieces of Commonwealth legislation, discrimination against same-sex couples exists. Labor will then amend legislation to remove discrimination against same-sex couples in all areas such as taxation, social security, superannuation and immigration. The one exception is the Marriage Act.

When these commitments by Labor were first announced last year they were hailed as the most progressive package of reforms a major party had adopted on same-sex issues in decades. Labor have long campaigned for equal rights to superannuation benefits for same-sex couples. For many years Labor have put forward private members' bills which the government has never adopted. Last year Labor moved amendments to a number of superannuation bills that would have given same-sex couples those superannuation rights, but they were opposed by the Liberal government. At the end of our long campaign the government finally introduced its interdependency amendments giving superannuation rights where an interdependent relationship exists, which includes same-sex couples. Of course Labor were pleased that the government finally supported this campaign. Some doubts have been raised by the gay community suggesting that the interdependency arrangements may not adequately cover all same-sex couples. So when Labor are in power we will revisit the area to ensure that the rights of same-sex couples to superannuation are properly protected. But superannuation is just one of many areas where same-sex couples suffer discrimination and where Labor are committed to making a real difference. The reform commitments by the Labor Party on same-sex issues are a plan ready for implementation.

I foreshadow that Labor will not support amendments and motions in this place that will simply be rejected by the government in the other place and go nowhere. The minor parties can put forward any package they see fit to. They are free to do so, and it might advantage them in their constituencies, but in our view it is simply grandstanding. They know, and the gay and lesbian community should know, that these are futile attempts that will not become law. The amendments will not be accepted by the government and will never become law under a Howard government.

The Labor Party is the only party with a thorough, well thought out policy that it can actually deliver by implementing the plan in government. The minor parties cannot do that; only Labor can do that. Look at the record of previous Labor governments in terms of discrimination laws. Focus on the reforms that have been delivered by Labor state governments around the country. Labor clearly has runs on the board and intends to pursue these reforms in government. We will not support amendments and motions in this place that will simply be rejected by the government in the other place. We do not think they will go anywhere in this instance.

It is true that marriage is today being tied to its social and religious history. For some people this is critically important. Others object to it. But it does not change the current law and will not remove rights from, or deliver benefits to, anyone. In contrast, Labor's reform package is about serious and far-reaching change for the gay and lesbian community. We will fight for our package and continue to advocate its benefits. These will be delivered by a newly elected Labor government.

Senator GREIG (Western Australia) (2.13 p.m.)—Imagine if I were to stand in this chamber and boldly announce that Jewish people were shameful, vile, immoral terrorists, or if I were to claim that interracial relationships—those between Aborigines and white people—were unnatural, inherently unstable, highly promiscuous and harmful to children, or if I were to go even further and argue that children raised by interracial parents suffered from shame or guilt or that people involved in interracial relationships were mentally ill with a psychiatric disorder. I do not believe those things. I would not say them. I know them to be untrue. I would condemn anybody who said such appalling and shocking things.

However, last Wednesday here in the Great Hall of Parliament House I witnessed a huge gathering of mostly fundamentalist Christians and other assorted far right wing and antigay groups make those exact claims against gay and lesbian people and their children. It would be utterly unthinkable that the parliament's Presiding Officers would grant the use of the Great Hall to, say, the League of Rights so that it could hold a

public forum entitled 'Traditional Gentile Values' and use that forum to reinforce fear and loathing of Jewish people. Yet our Presiding Officers allowed the use of the Great Hall by antigay groups to reinforce fear and loathing of homosexual people. Why?

To answer that question we need to understand the context in which this debate is taking place and to understand that the so-called debate over traditional marriage is nothing of the sort. That is a smokescreen. The underlying issues here are the place of gay and lesbian people in society, their rights and responsibilities and whether or not they and their children are accorded full citizenship or defined as 'less than' citizens and regulated as second-class citizens.

This is a clash between sex, politics and religion. It is being pushed by religious zealots and deeply conservative MPs. It is not a debate being driven by the lesbian and gay community itself. However, now that that community is under attack, it must respond. I am conscious as I give this speech that I am not talking to those in this chamber or even those who might be listening elsewhere; I am speaking to researchers, students and scholars in the future—perhaps 10, 20 or 30 years down the track—who will be looking at the *Hansard* debates over this in bewilderment, trying to understand how such an awful law could have happened.

Looking back on same-sex marriage ban from the future will be like looking back on debates around the introduction of the White Australia Policy. As it happens, 'marriage' has never been clearly defined in our legislation as specifically heterosexual. However, it is very clear that the common law has evolved into an opposite-sex-partner understanding of the institution. Internationally over the last few years other jurisdictions have come to accept same-sex marriage as being equally valid. Such places include Denmark, the Netherlands, Canada and several US states. In this context, it was inevitable that same-sex couples from Australia would lawfully marry overseas and then seek to have that marriage validated here in Australia. The government has known of that prospect for more than a year, but it has waited until the eve of a pending election to embark on and announce this antigay policy response and to use the issue as an election wedge to target a minority, unsettle Labor and corral conservative voters. Gay marriage has sailed into this election much like the *Tampa* did in 2001.

There are at least two test cases before the Australian courts seeking a declaration of a same-sex marriage conducted overseas and, contrary to the dishonest claims of antigay groups, that is not a political action by the mythical and militant gay lobby to undermine the very foundations of society but an action by two very unassuming couples who engaged the courts out of their own volition. I have not met either couple. One of these couples includes a Canadian national, a person

whose marriage is lawful in Canada but about to become unlawful in Australia—a ridiculous situation. It is probably the case that the courts would be unlikely to find in favour of same-sex marriage. I think the conservative fears of a positive outcome by so-called activist judges are unfounded. However, we Democrats believe it is important and helpful for the courts to be allowed to make a determination on this, and it is a key reason why we argued for a Senate inquiry to investigate the broader issues around the [Marriage Amendment Bill 2004](#) and to not report until 7 October this year, thus allowing the courts further time to consider the matter.

The Prime Minister has been suggesting that if the courts decide in favour of gay marriage nothing can be done about it, and antigay groups have been claiming that the courts must be stopped from redefining marriage or society will collapse. This is nonsense. Even if the courts do decide in favour of same-sex marriages, parliament still has the right to legislate against that and, indeed, would do so, given the current policy position of both major parties. There is no need for rush and haste. The Australian citizens who have their cases before the legal system deserve their day in court. Natural justice should have been allowed to take place. Rushing to extinguish legal avenues is despicable. Does the Prime Minister believe that no question of human rights should be left to the courts?

It has been ironic for me to have seen this debate unfold. As I said earlier, in my 16 years of gay and lesbian rights activism and advocacy, marriage has been way down the agenda. It has never been a priority in the lesbian and gay community. Many indeed see it as a bankrupt and failing heterosexual institution based on patriarchal principles. Others feel that seeking gay marriage is heterosexual mimicry and want no part in it. But there are, of course, many long-term, same-sex couples who really do want to get married and, despite the general apathy in the gay and lesbian community around Australia, none of them have said that the option of civil marriage should be denied to same-sex couples. While they may not want it for themselves, they agree it should not be denied to those who want it. Not wanting to get married is one thing; suddenly being told that you cannot is quite another, especially when some of the arguments used for that are that lesbian and gay people are shameful, vile moral terrorists with unnatural relationships who are harmful to children, mentally ill and spread disease. This is most especially the case when there has not been one single, solitary, sensible or provable argument against same-sex marriage. It is all a smokescreen to disguise underlying homophobia.

Same-sex marriage opponents argue that traditional marriage is a Christian institution and that Australia is founded on Judeo-Christian values. Apart from the fact

that Hindus, Muslims, Rastafarians and all other manner of non-Christian sects also embrace marriage, the fact is that parliament is a secular institution and that marriage is a civil contract and not a religious one. Same-sex marriage opponents say that marriage is a fundamental institution of civilisation and must not be redefined. But, as researchers and historians continue to point out, marriage is an evolving paradigm. Conservative social commentator Andrew Sullivan writes:

... for the first millennium after Christ, Christianity didn't even recognise marriage as a sacrament, it was regarded as a purely secular matter of property ownership. Marriage also once meant the ownership of women by men, it was once permanent, and no divorce was possible, it was once restricted to couples of the same race, the notion that it has never changed is simply untrue.

Besides, if marriage is the unshakable and rock solid institution that conservative MPs and religious leaders would have us believe, could they explain why 40 per cent of marriages end in separation and divorce and why more and more people are choosing not to marry? In truth, marriage is not a rock solid institution. In Australia it is growing weaker and less important to many people with each passing decade. Far from further weakening the institution, the inclusion of gay and lesbian couples brings added strength. Conservatives should embrace the fact that a new group of citizens want to be included in an institution that clearly needs reinforcing.

Opponents of gay marriage argue that the proposal is a threat to general society and that the traditional marriage needs to be protected. What exactly is this threat? As Andrew Sullivan said:

Are some people trying to break up other people's marriages? Are people proposing to abolish civil marriage? Are divorce laws going to be loosened further? The answer is that a small group of citizens, far from wanting to threaten marriage, actually want to participate in it.

Same-sex marriage opponents argue that marriage is about having kids and raising a family and that marriage is the best environment in which to do that. This is all well and good but it does not explain why gay and lesbian couples raising children should be denied marriage. If marriage is the best way in which to raise children, why would we as a parliament want to disadvantage children in same-sex families by refusing their parents the right to marry? But marriage is not about having children. Infertile couples are allowed to marry. Elderly couples are allowed to marry. Couples who do marry but decide not to have children are not then made to divorce. Being married and having children are not axiomatic. This cannot be used as a valid argument to deny same-sex couples the option of civil marriage. Many same-sex couples have children; many heterosexual couples do not.

Opponents of same-sex marriage have also argued that marriage is a sacred commitment based on love,

trust and togetherness and a symbolic demonstration to friends and family and to society as a whole that this couple is socially, legally and financially intertwined. Leaving aside the fact that sacredness and sanctity are religious ideals and that marriage is a civil contract and not a religious one, gay marriage opponents have still not been able to say why same-sex couples do not have or share the same values. Gay and lesbian relationships are also based on love, trust and togetherness and many of them too yearn for a symbolic demonstration and the practical advantages of being married. They too want to share their commitment with their friends and family, most especially if they are raising children or plan to do so. It is both wrong and deeply offensive for anti-gay campaigners to argue that love and commitment between a lesbian or gay couple is less than, different from or incomparable to the love of two people of the opposite sex. This is really where we get to the crux of the issue; this is the core of the debate which is mostly hidden and rarely spoken about. There is an ideological push behind this from very conservative MPs and some religious communities to ensure that same-sex relationships are relegated to second-class and never equate to marriage. It is just an extension of the sexuality apartheid I have spoken of before. Denying marriage to same-sex couples is about entrenching heterosexual supremacy.

For the religious Right, marriage is seen as the last bastion of conservative values. Over the last 20 years we have seen most discrimination, but not all, against gay and lesbian people removed from all state laws, whether they are about age of consent, antidiscrimination law or partnership recognition. The states have done much of what they can to bring about equality for gay and lesbian citizens. At every turn this has been fiercely resisted by right-wing church groups, conservative MPs and antigay organisations, but they have failed. With the focus now on Commonwealth laws in Canberra, this moral panic amongst the religious Right has found an icon issue in marriage. Thus, the scene has been set for a cultural showdown. This ideological push by the religious Right merged with the Howard government's keen desire for an election wedge issue, and an opportunity to pander to popular prejudices sees this bill before us today. Regrettably, the ALP has agreed to support it rather than show leadership and defend the humanity of gay and lesbian people.

Labor has tried to sell its conscience by claiming that the gay and lesbian community is more concerned about other pressing issues of discrimination, such as superannuation, taxation, social security and property issues. But this defence fails to recognise that civil marriage is the swiftest and least complicated way to achieve all of those outcomes. Nor does it explain or justify the shadow Attorney-General's endorsement of an antigay rally held here in parliament last week or her panicked backflip in the Senate committee process,

which has now been neutered by her inexplicable decision to rush the legislation rather than consider it. The many gay and lesbian people who fought so hard to get up an inquiry into these deeply personal issues that affect their daily lives have been deeply betrayed. There is a great need if we are going to extinguish access to civil marriage for same-sex couples for there to be an alternative scheme for same-sex partnerships. We have seen in the states a variety of mechanisms introduced, whether it is de facto recognition in Western Australia, New South Wales and Victoria or registered partnerships in Tasmania. We have nothing at a Commonwealth level and, as a consequence, every area of Commonwealth law that deals with relationships discriminates against gay and lesbian people, whether it is social security, veterans' affairs, immigration, taxation—you name it, discrimination exists.

I found it galling when the Prime Minister spoke to the rally at parliament last Wednesday and argued that he had no particular animosity towards gay and lesbian people and did not support discrimination. He nominated the workplace and industrial relations as an area where he would not tolerate discrimination. I wish I could have called out with a megaphone to say, 'In that case, what are you going to do about it?' There is a raft of existing discrimination under industrial relations law against gay and lesbian people, not the least of which is the denial of bereavement leave to the same-sex partner of someone who has died. I wrote to the Leader of the Opposition, Mr Latham, in January this year following repeated frustrations in this place, where I pleaded with the Labor Party to allow time in the Senate to bring on debate and discussion of the Democrats' [Sexuality and Gender Identity Discrimination Bill 2003](#), a bill which in one form or another has been on the *Notice Paper* for almost a decade. That bill would introduce national antidiscrimination laws, partnership recognition and antivivification protections. These are things Labor claims to desperately believe in and want, and it dangles them as a carrot before the electorate as we approach the coming election. It cannot and will not commit to those things here in the chamber. Despite writing to Mr Latham after the then shadow Attorney-General, Mr McClelland, announced Labor's three key policy points in this area and urging that those things be debated in the Senate, I did not have the courtesy of a reply from Mr Latham.

If empowered, the Democrats would bring about those three things. It is worth noting that as a nation we are one of very few Western countries without any national antidiscrimination laws on the grounds of sexuality or gender identity and one of very few Western countries with no partnership laws for same-sex couples. Senator Ludwig, in his contribution, argued that Labor would not support the Democrat amendments on these bills because they would be rejected in the lower house. If that is Labor's policy approach then it needs

to explain why it was happy to pass the Kyoto protocol bill—a private member's bill for the environment—knowing that it would be quashed in the other place. Why, too, did it support and pass in this chamber an end to mandatory sentencing laws—a bill dealing with Indigenous concerns—knowing it would be quashed in the other place? I submit that Labor is prepared to take a principled stand on Indigenous issues and the environment but not on issues relating to the lesbian and gay community.

We Democrats support civil marriage being an option for same-sex couples. We recognise the humanity of those relationships, most especially for those who are raising children, and we continue to remind people that many lesbian and gay people have children or plan to. I have heard the argument over and over again that marriage is about children and that marriage is the best environment within which to raise children. Great! Let us, at the very least, allow same-sex couples raising children to get married for the benefit of those children.

A booklet was distributed by the traditional marriage forum—or whichever name they were going by. It is a lovely brochure with smiling faces. It contains 21 reasons why marriage is a good thing. While I find most of the alleged research at best questionable, I found nothing in that booklet which argued that same-sex marriage was a bad thing. It argued that those people who were married were happier, lived longer, provided the best environment for children and produced less crime in their communities. That is all very wonderful but the flip side of that is that same-sex relationships—those people who may be raising children—are specifically being discriminated against in our community by those very people who trumpet marriage. At the same time they are saying, 'We will impose on you and your family a lesser environment and greater opportunities for ill health and for your children to become law breakers.' That is their argument, not mine. It is completely nonsensical to argue that marriage is a really fantastic and great thing. I have no particular argument with that but I have yet to see the argument as to why same-sex couples in long-term committed relationships should not be allowed into the institution. It is simply segregation.

The other thing we can point to is that every single doomsayer prediction, every criticism of same-sex marriage that is thrown up by the religious Right and other conservatives, can be proved wrong simply by looking to Canada, the US, Denmark and those countries where same-sex marriages have been allowed for a year or more. The sky has not fallen in in those places. Traditional marriage has not been undermined. There has been no negative impact on society. I was delighted to see that the most recent poll in Canada showed that a clear majority of Canadians who were

initially opposed to same-sex marriage now support it. That only happened because leadership was shown by their political parties. The political parties argued, in the face of controversy, to support same-sex marriages. Now that those marriages have been seen as being viable, workable, legitimate and acceptable, they have a place. That, for most gay and lesbian people, is the issue—it is about inclusion. (*Time expired*)

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (2.33 p.m.)—It is ironic that each side of the debate will be heard one after the other. It would be no surprise to anyone in this parliament or anyone who is listening that the National Party believe there is no stronger union and no stronger bond than that between a man and a woman in marriage. We support that wholeheartedly.

I would like to mention the 1,200 people who turned up to support marriage. They did not turn up to vilify gays. They turned up, at a great cost—many came from right around Australia on very short notice—to support marriage because they believe very firmly in it. The organisers of the National Marriage Forum should be congratulated. The forum attracted about 1,200 people to Parliament House last week to defend the definition of 'marriage' as being between a man and a woman. The forum provided the public pressure that forced the Labor Party to address this bill. Unfortunately it did not do the same for the Democrats and the Greens. Nicola Roxon stood up in front of those 1,200 people and committed the Labor Party to marriage. One wonders whether we would be debating this today if those 1,200 people had not turned up and cornered the Labor Party.

The Democrats and the Greens seem intent on removing marriage as an important thread of the Australian social fabric. Most Australians recognise that marriage is a sacred union, the most basic building block of society and the foundation of a family. It is a union in which children can be created and brought up in a loving, secure environment. This has been clearly illustrated during the recent Senate Legal and Constitutional Legislation Committee inquiry into this legislation, which, according to the website, received around 12,000 submissions—a record for this kind of committee—overwhelmingly supporting the government's position.

It is not the government's right or role to interfere in the bond of marriage. However, it is our responsibility and duty to ensure the institution of marriage is not ambushed by minority groups keen to create their own definitions of it. I am disappointed that the Labor Party did not support this bill immediately when it was introduced into the Senate. They cited the lame, hoary excuse that they had not put it through the required 'process'. I ask: how much process do you need to define what is right and what is wrong?

The government showed good faith in making changes to the original legislation submitted to the parliament, removing the clause which the opposition claimed was their concern—the clause regarding gay adoption of foreign children—and still there was no support forthcoming for the Senate to protect the sanctity of marriage as being between a man and a woman. Let me make it clear that the government did not want to make any compromise on gay adoptions at all. It was not our preferred position but we did it to get this vital piece of legislation through. It is our view that same-sex relationships cannot be equated with marriage. That is what the majority of Australians believe and that is what this legislation enunciates.

The coalition government was forced to legislate the beliefs of the majority to protect this sacred institution against the personal agendas of the minority after the possibility was raised that same-sex marriages entered into overseas could be recognised as holding marriage status in Australia. As it stands, the Marriage Act 1961 contains no definition of marriage but includes a statement on the legal understanding of a marriage. So it was not a wedge issue. It was perpetrated by a decision taking place overseas. In fact a group of people on this side of parliament signed a letter asking the Prime Minister to address this issue. I am quite proud to say I was one of the signatories. The amendments contained in this bill will make it absolutely clear that Australia will not recognise same-sex marriage solemnised in other countries. Same-sex couples will understand that if they go overseas to marry it will not be recognised here.

Marriage between a man and a woman to the exclusion of all others voluntarily entered into for life is what my party are proud to stand up for and proud to declare as part of our beliefs. It is a union designed to provide a loving environment in which to create and nurture children. Children have the right to be born into a family with a mother and a father. As members of society we have responsibilities to do whatever we can to ensure that children are created in a stable, loving and secure relationship. Our society has a responsibility to protect the institution of marriage. In order to protect our children, marriage undoubtedly provides the best environment for raising those children. Society must shelter kids in a secure environment and allow them to develop their own views and belief systems. Children should never be held up as trophies in an attempt to justify or enhance a lifestyle choice. Australian families are not the place for social experiments. Adults who participate in homosexual behaviour make that choice. That is their choice. As I said, I do not condone it; I do not condemn it. They make the choice for themselves but have no right to include children in that choice. A union, regardless of how loving, that is biologically incapable of procreation is not a marriage.

In this respect the union must be between a man and a woman.

Some senators in this chamber will cite love as being above all things—that if two people love each other, regardless of gender, no-one or no government has the right to stand between them. The same senators quote divorce rates and the incidence of domestic violence and abuse as reasons why love should be the only criteria in any definition of marriage. But this is unrealistic. If love is the only criteria then all forms of unions could be defined as marriage. Consenting adult homosexuals would be the thin edge of the wedge. This is not what Australians believe; this is not what The Nationals believe; this is not what I believe. Marriage is about love—I have had 40 years of it—but it is also about commitment, about creation and about providing the right environment for nurturing children.

Through this legislation, the government are reconfirming society's commitment to marriage, its commitment to families and its commitment to our children and grandchildren. We are recognising that marriage is a public good, not just a private benefit. However, we must remain vigilant. The commitment from all parties must be that there is no alternative to marriage. This is not a subterfuge, and Australians want to know the details of any plans afoot to bring in something else to get around it. A newspaper article in Wednesday's *Australian* confirms that the Labor caucus have now agreed, through an amendment to their policy, to examine 'options to achieve more consistent national treatment of all de facto relationships'. The article goes on to say that this will open the door for gay unions to be registered officially if Labor wins government. This amendment was moved by Mark Latham. What are the details of this change of policy? The silent majority want to know and Australian voters want to know. As the alternative leader of this nation, Mark Latham has a responsibility to come forward and explain what this means.

The warning is out that Labor have a plan to subvert marriage. If this is to be Labor's policy, they should enunciate it to the Australian people here today so that people can judge them on that basis. Labor have got to come clean on that amendment. Are they considering similar legislation to New Zealand's Labour government, which has introduced a Civil Unions Bill to enable the application of legal rights identical to those of marriage to same-sex relationships? On 24 June, the New Zealand parliament voted 66 to 50 for the Civil Unions Bill to pass its first reading. New Zealand's legal recognition of relationships bill was passed by 77 to 42 votes on 29 June. It will change around 1,000 clauses in over 125 acts to treat all relationships the same as marriage. Both New Zealand bills have been referred to the Justice and Electoral Select Committee for public submissions, which closed on 6 August.

New Zealand's Labour Prime Minister, Helen Clark, says the new legislation will take out any discrimination, so the Marriage Act will not have any practical effect. This will produce a counterfeit marriage, with identical rights but none of the responsibilities of a real marriage.

We have got to know what Labor are now advocating—the creation of civil unions and the levelling of marriage that will further damage society and the next generation? Any argument that a civil union serves heterosexual couples by providing a non-religious alternative to marriage simply does not wash. The Marriage Act is itself civil and secular in nature. A civil union is simply a marriage by another name, the only difference being that it is open to the gay and lesbian community. I will oppose that, and I will oppose any move to introduce that into parliament. The challenge today for the Labor Party is to come clean on their plan to introduce civil unions. If they are going to do it, they should say so. If they are not, they should say they are not. As we front up to an election the people deserve to know what that amendment is, what it means and how it will be carried out in legislation. I am proud to stand in this chamber today as the leader of The Nationals in the Senate and support the bill, to thank the Labor Party for their belated support of it and to say to those senators on the crossbenches who continue not to support it: you are not acting in the interest of the majority of Australians.

Senator NETTLE (New South Wales) (2.45 p.m.)—When I hear these issues debated in the Senate chamber, and hear some of the arguments put forward—and we have just heard many of them—I feel like I have gone through a time warp and am back in the Dark Ages. The **Marriage Amendment Bill 2004** legislates official discrimination against a section of our community because of their sexuality or their gender identity. It seeks to define marriage as:

... the union of a man and a woman to the exclusion of all others, voluntarily entered into for life.

The Australian Greens will be moving an amendment to the bill to define marriage as:

... the union of two persons, regardless of their sexuality or gender identity, voluntarily entered into for life.

That way, marriage will be open to all people regardless of their sexuality or gender identity. Whether they be lesbian, gay, transgender, bisexual or intersex, this option will be open to them if they choose to take it. The bill we saw before this one came into the parliament, the Marriage Legislation Amendment Bill 2004, sought to ban not only same-sex marriage but also overseas adoptions by same-sex couples. It was sent off to a Senate committee for inquiry, but instead of waiting for the committee to report, or even for the submissions to be made public, the government—and the opposition in giv-

ing their support—decided that if same sex marriages were not banned this week then the world, or marriage, as they knew it would cease to exist. The government and the Greens agree that this is a simple piece of legislation. It simply discriminates against same-sex couples. The Prime Minister said last week:

You don't need a Senate inquiry on ... that. It's not a complicated issue.

It is not a complicated issue to discriminate against a section of the community. The government seems to have been able to convince the opposition because, having previously agreed to an inquiry into this legislation to allow for public debate, the ALP now is not even going to wait until those submissions are made public before it supports the government's move to ban same-sex marriages. The government announced its intention to re-introduce this bill to ban same-sex marriages at a forum organised in Parliament House by Christian fundamentalists, and the opposition chose this same forum to reaffirm its intention to support the bill. The Howard government has successfully wedged the opposition on this issue of fundamental human rights. Now the ALP is tying itself in knots trying to justify its position. The federal member for Sydney recently addressed a rally in support of same-sex marriages and said:

Labor didn't vote for this legislation. We allowed it to pass the House of Representatives so it could go to a Senate inquiry ...

What a set of weasel words we have there. The bill passed through the House of Representatives with the support of the Labor Party and, because the government has the support of the Labor Party to make it urgent and to guillotine debate, we are debating this legislation right now. The shadow Attorney-General is quoted in the *Sydney Morning Herald* as stating:

... Labor had "no intention now, after the inquiry finishes or after the election of advocating for gay marriage".

That is pretty clear, and it is clearly discriminatory. Labor had the option of opposing the bill and standing up with the Greens and others for the rights of all citizens to marry if they chose, but instead they are playing these ridiculous word games. Equal rights for same-sex couples is not a radical proposition. Countries like Canada and the Netherlands and the state of Massachusetts have legislated to recognise the right of same-sex couples to marry. A recent decision by that radical left wing institution the British House of Lords recognised the right of same-sex couples to be treated as married. Lord Nicholls described the situation this way:

A homosexual couple, as much as a heterosexual couple, share each other's life and make their home together ... There is no rational or fair ground for distinguishing the one couple from the other in this context ...

On this issue the Howard government is even more conservative than the United States Congress. George Bush could not get the support of the United States parliament for a ban on gay marriages in the United States. But here today in Australia the opposition has fallen over itself to gag debate and help the Howard government put in place more conservative and discriminatory legislation than exists in the United States. Across the world, nations are enshrining the rights of same-sex couples in legislation. Yet Australia is desperately swimming against this tide. It is difficult to estimate just how many same-sex couples live in Australia. We know it is well in excess of the tens, and likely to be in excess of the hundreds, of thousands.

This legislation does not offend just those couples who cannot marry. It offends every Australian who holds dear the values of equality, human rights and decency. I recently met with a young father of Portuguese descent, and he told me of the outrage his entire extended family felt because of the discrimination he faces as a gay father. The Howard government's homophobic attitude insults everyone who does not fit neatly into its picture of white, middle-class, picket fenced suburbia. To vote for this legislation is to vote against equality, decency and the need to celebrate and embrace diversity. The Greens recognise the wide range of opinions on the validity of marriage as an institution. We recognise that there are many couples who do not feel any need to enter into this traditional union. But that is a separate issue. Regardless of the debate over whether marriage is relevant or appropriate, it is every couple's right to access it if they choose.

Greens offices across the country have been inundated with thousands of emails, letters and phone calls from people who are angry about this issue, particularly from people who are angry about the opposition letting down the lesbian, gay, bisexual, transgender and intersex community on these issues. I will read some of the emails we have received. We received one from a mother in New South Wales who wrote:

As the mother of a gay son, I am finally doing something that I should have done a long, long time ago. That is to speak up on behalf of my son and his partner and all gay people regarding their basic human rights and their human dignity ... To everyone who wants to deny gay people their basic human rights and dignity—to these people I offer this challenge. Have the compassion and the humanity to sit quietly for a while and search your own heart and soul to see how you would feel if you, yes you, had been unfortunate (or perhaps fortunate) enough to be born as one of those 'different' people and try to truly understand how it would feel to have to face the obstacles that society will undoubtedly impose upon you ... Why deny the status of legal and accepted marriage relationship to gay and lesbian couples who are just as worthy of this same happiness as heterosexuals? Their love for each other is real, just as real as the love between a heterosexual couple and some of them may feel the need for a marriage union, as do many heterosexual couples.

I received another email, from a gay man in New South Wales, that said:

Why should any[one] choose to support gay marriage? I am gay and I don't think I will if allowed choose to marry but I will fight to support my friends who have lived for over 30 years together hoping to see the day when they are recognised for who they are.

Each and every one of us deserves the same rights and freedoms to love our loves the way we choose and the right to expect tolerance and respect from others.

Another email, from a couple in South Australia, said:

We are a same-sex couple and have been in a relationship since January 1995 (yes nearly 10 years). On the 24th of February 1996 we had a commitment ceremony in front of all our friends, I wore the white fairytale wedding dress that I had always dreamt of, and after we celebrated with our friends with a dinner and honey moon. Sounds relatively common doesn't it? But apparently our situation seems to embroil some politicians to the point of making a public point that we as a couple do not deserve the respect and right to celebrate and confirm our relationship in the eyes of the law. We cannot understand why, as tax paying citizens, who [have] always [taken] our right to vote VERY seriously, we are being treated like second rate citizens. We contribute a great amount to our society through employment, and I volunteer not only in the Gay and Lesbian community but also in the great community by running our local playgroup, chairperson on a kindy governing council, and now a member of the local school governing council.

So why don't we have the same rights? Isn't it about time we got out of the ignorance of what the minority, (yes believe it or not), believe is the abomination of same sex couples and how we are going to ruin the core of our society!! Don't you feel that if we were going to do that we would [have] done it a long time ago!!

Our point today is to let you see very briefly that we are just a regular family, bringing up children hoping for the best, renovating our home, and sharing our lives with those close to us. We live in a democratic society where equality is fought for virulently, we wish that you think about your situation and think what it would be like to be told that your relationship (as much as you believed in it and worked at it) doesn't count. You must tick the single box on any government paperwork, you can assume that your partner will not be automatically the person called if you have no next of kin assigned at a hospital, family will not accept your commitment ceremony papers because "the law does not agree".

We live in a society that takes the laws of the country VERY seriously, and when something has been accepted by the government of the day we are more prone to allowing that to enter our conscience and often adapt and accept.

These are quotes from people who have had to endure eight years of this government trying to undermine the rights of lesbian, gay, bisexual, transgender and intersex people.

The Greens have amendments to this legislation that will ensure that same-sex marriages that have been entered into in another country will be recognised in Australia. We also have another amendment to ensure that marriages that have been entered into under Aus-

tralian law where one partner has undergone gender reassignment surgery will still be recognised under Australian law.

Last year the Prime Minister weighed in to the same-sex marriage debate when he made the ridiculous claim that gay marriage threatened the survival of the species. In July 2000, after the Federal Court ruled in favour of allowing lesbian couples to access IVF treatment, the government announced that it would amend sex discrimination laws to overturn that ruling. In 2002 the Family Court recognised the validity of the marriage of a person who was born female but then underwent gender reassignment surgery. Not content with letting the court do its job, the federal government appealed that decision. That appeal was thrown out of the courts. Earlier this year four separate government ministers, including the Deputy Prime Minister and the Prime Minister himself, felt the need to publicly condemn *Play School's* recent depiction of Brenda and her two mothers going off for the day on an activity.

This ban on same-sex marriages is part of a long list of gay bashing by this government. This bill is legislated discrimination. It legislates for the creation of second-class citizens with second-class relationships and fewer rights than heterosexual couples. One constituent who wrote to me said:

[These changes] will only provide tremendous encouragement to the minority of Australians with homophobic attitudes who will feel a little more justified next time they decide to discriminate against someone who they think looks like a poofter.

This Prime Minister has presided over some of the most repressive and regressive legislation and acts of this century. The Prime Minister through his actions has shown disregard for the core values of our society—equality and humanity. And the opposition is content to stand idly by while the government courts the reactionary Right with this type of legislation. Any opposition that does that is not worthy of calling itself an opposition at all.

Yet some members of the Labor Party are trying desperately to deny their party's own lack of action and cling to a semblance of credibility with the lesbian, gay, bisexual, transgender and intersex community. One Labor member last week letterboxed a leaflet about this legislation. The leaflet said:

Sometime in the not too distant future people will look back on this desperate attempt at wedge politics and treat it with the contempt it deserves ...

That is absolutely right. People will look back at the way that every member of the Labor Party—in this place and the other place—has been part of legislating discrimination against a section of our community, and they will treat the actions of every member of the opposition and the government with contempt. So much for Mr Latham's claims that gay and lesbian people are

now part of Labor's 'circle of mateship'. This is a blatantly discriminatory, unnecessary and homophobic act on the part of a government that is desperate to shore up the votes of the moral conservatives in the run-up to an historically tight election. It saddens and appals me that the opposition has been complicit in this.

The Greens will not stand by and just let this happen. We recognise that freedom of sexuality and gender identity are fundamental human rights. We believe that the acceptance and celebration of diversity, including sexuality and gender diversity, is essential for genuine social justice and equality. I am extraordinarily proud to represent a party that will not roll over on these core values and that has been loud and vocal in continuing to speak out for communities such as the lesbian, gay, bisexual, transgender and intersex community that we represent. We will reject the bigotry, prejudice, division and homophobia that are driving this legislation. We, unlike the opposition and the government, will have no part in it. We will always stand up for human rights and we will always stand up for an end to this bigotry, division, homophobia and prejudice.

Senator BARNETT (Tasmania) (3.00 p.m.)— Firstly, I want to acknowledge those in the gallery today who are here to support the **Marriage Amendment Bill 2004**. I acknowledge those who last week were among the 1,000-plus who attended the forum on why marriage matters. I acknowledge the hundreds and thousands of Australians who support the government on this bill. But in light of the time constraints we are in and the agreement with the other parties, I seek leave to incorporate my speech in *Hansard*.

Leave granted.

The speech read as follows—

I rise to welcome the Labor Party's back flip on the Marriage Bill 2004, but I also want to highlight Labor's rubbery and duplicitous attitude towards the institution of marriage, that so characterises the approach the new Labor Party has towards the policy process in this Parliament.

This political party has lost its soul, largely because the Latham version of the Australian Labor Party, judging by his recent actions, would sell its soul in the twinkling of an eye to grab hold of power. This party is cynically manipulating the political process and cynically treating Australians with contempt.

I respect the Democrats and the Greens for their opposition to marriage being solely between a man and a woman, because they have been consistent.

But for Labor, oh no. This party is trendy one day and conservative the next, depending on the audience. Its leader will sup with the Greens one day and sup with the foresters the next, and tell both sides what they want to hear. This is Labor's juke box of ideas, which involves dialling up a position and running with it until it has served its useful purpose.

They treat the Australian people like fools, but I know the Australian people are smarter than that, and they are seeing right through this veneer.

The Labor Party's manipulative acrobatics on the Marriage Bill is an insult to all Australians and specifically the one thousand people who travelled to Canberra a week ago to attend the marriage forum organised by the National Marriage Coalition.

I pay great tribute to these people who are totally dedicated to the ideals of Christian living, where marriage is honoured as a loving and mutually respecting relationship between a man and a woman. Where children in this institution are protected and nurtured to grow and prosper in a safe and balanced environment.

These are the people I respect. In particular I acknowledge Jim Wallace of the Australian Christian Lobby, Warwick and Alison Marsh of the Fatherhood Foundation and Bill Muehlenberg of the Australian Family Association. They were the organisers and prime movers who helped to make the forum such an overwhelming success. As the forum's parliamentary convenor I nearly booked the Theatrette which holds 250-odd people. So, having over 1000 in the Great Hall was fantastic in such a short time frame. I also acknowledge the forum speakers including in particular Professor Patrick Parkinson of the University of Sydney, the Rev Dr Margaret Court, Professor Tom Altobelli, Mary Louise Fowler of the Australian Family Association, columnist Angela Shanahan, Bill Muehlenberg of the National Marriage Coalition, Dr David Van Gend, Babette Francis of the Endeavour Forum, Major General "Digger" James, and the Hon Richard Gee of the NSW Council of Churches.

Those who attended travelled long distances from every State and Territory of Australia in many cases because they cared. They were concerned that if the current workable definition of marriage was watered down the great value of marriage to our society, our families and particularly our children, and their children would be irreversibly diminished.

Prime Minister John Howard spoke at the forum because he cared. He knows that the character of a nation is expressed through the values it shares.

In his speech Mr Howard said – "I have a very simple view about the issue that is currently before the Federal Parliament, and that is to insert affirmatively into the Marriage Act the definition of marriage that we have always commonly understood in our society. It expresses the fundamental Judeo-Christian view, and that is that marriage is a life long union between a man and a woman to the exclusion of all others".

This is the big difference between John Howard and Mark Latham. The Opposition Leader will poach or plagiarise any idea or ideal and snatch it for himself, until it becomes expendable.

John Howard has demonstrated courage in the face of opposition and ridicule, being prepared to stand firm, saying he won't sacrifice or diminish important Australian values for the sake of fashion, to fit with trends in some overseas countries, or to satisfy the carrion cry of vocal minority groups.

John Howard's actions as Prime Minister are predictable, certain and reasonable, creating a sure path forward for the Australian community. Labor's back flip on marriage shows that the Latham Labor Party is predictable only where populism resides.

The great virtue of John Howard's Prime Ministership is that what you see is what you get. With Mark Latham, what you see is anything you want it to be.

With John Howard you don't get smoke and mirrors, prevarication or confusion. You see, it is a shame we need to have this debate at all to make a stand on something so simple as marriage. There should be no confusion about its definition, and indeed no need for a Senate inquiry.

John Howard has demonstrated commitment when it may be a populist stand among some people for this Government to open up marriage to common law or parliamentary redefinition, but I am proud to say the leader of this Government is not so fickle.

With John Howard you do not get equivocation or procrastination on such basic fundamentals as marriage.

I believe that marriage is a bedrock institution worthy of protection, and I will do all that I can and in my power and persuasion to ensure that that institution is protected, especially from the Labor Party's duplicity. The institution of marriage has endured for thousands of years and across countries, cultures and religions. It is a social institution which benefits family members and society, and it does provide for stability in society. It also provides a solidly-built roof under which children are nurtured, protected and raised. It specifically benefits the children and is designed to ensure their welfare is maximised.

I believe that the Labor Party in June this year tried to covertly kill off the Marriage Bill. On the one hand they said that they supported marriage; but on the other hand they also said they supported overseas adoptions by same-sex couples. Frankly, in my view, that is illogical, irrational and inconsistent.

The Labor Party referred the Marriage Bill to a committee for some 14 weeks, hoping not to be forced into making a decision until after the election.

They said 'we support marriage' but when the Howard Government introduced the marriage only bill Labor refused to support it. Yes they refused!

An article in The Australian on August 10 said

"Labor had promised that it would not vote for the bill until a Senate report into the issue had been handed down."

Gay activist Rodney Croome accused Labor of reneging on its promise to wait for the Senate report. Mr Croome and I agree on that fact at least. Labor has done a back flip.

I believe in the view of the vast majority of Australians that children, including adopted children, should have the opportunity, all things being equal, to be raised by a mother and a father. Labor opposes this proposition.

Labor is happy to allow same sex adoptions and the Labor shadow Attorney General Nicola Roxon said exactly this early in the week. If they support our Marriage Bill but oppose the Government's same sex adoptions bans, why the need for an inquiry?

As our Deputy Prime Minister John Anderson said on August 10 — "The continued division and duplicity within the ALP over the preservation of marriage shows yet again that they are incapable of governing Australia."

In this debate it is instructive to detail what Mark Latham has had to say publicly in recent years about, Christianity, relig-

ion and how these views sit with Labor's back flip on the Marriage Bill.

MARK LATHAM AND RELIGION

"As an agnostic I have strong reservations about organised religion. It strikes me as too doctrinaire and, when it comes from the pulpit, too authoritarian."

- The Third Way: Why the Left lacks common sense on poverty. Australian Financial Review. February 7, 2000.

2. Asked about his religious faith, he said: "I'm best described as an agnostic. I think there is a world beyond, a spiritual world...but it hasn't presented itself...I can't say it's this religion or that religion. just haven't had that personal connection."

- Sydney Morning Herald. April 19, 2004

3. "The only reason I can see for opposing the bill is religious fundamentalism We have the news overnight of the Archbishop of Sydney standing down because of serious child sexual abuse allegations made against him. We have the horrific situation in the United States where the Catholic Church has been ripped to the ground by the allegations, and proven instances, of child molestation.

"People are living in fear in what is happening to young, innocent children in the hands of the Catholic Church. Yet the hierarchy adopts a pious, sanctimonious status where they want to lecture others about family and moral issues. This demonstrates the problem with religious fundamentalism. .

- Research Involving Embryos and Prohibition of Human Cloning Bill 2002: Second Reading. August 21, 2002.

4. "The Catholic Church is...losing popular faith and public support. The Catholic Education Commission in particular is an example of a flawed and authoritarian hierarchy...

- States Grants (Primary and Secondary Education Assistance) Bill 2000: Second Reading. September 5, 2000.

5. is the Lyons Forum a group of religious zealots? Is it a group of fundamentalists with a Bible in the top drawer and a Hustler magazine and a box of tissues in their bottom drawer? My answer to my constituents who are posing those questions is that they are all of the above. They are narrow; they are social engineers; they are zealots; they are fundamentalists..."

- Income Tax Rates Amendment (Family Tax Initiative) Bill 1996. Cognate Bill: Family (Tax Initiative) Bill 1996: Second Reading. September 19, 1996.

6. 'Abrechtsen is another filthy hypocrite. Who is she to lecture people on civility? She is someone who hates feminism, describing other women as 'totalitarian' and 'self-obsessed' just because they support paid maternity leave.

- Grievance Debate: Politics: New Correctness. August 26, 2002

In conclusion, let me say that one of the reasons for the Labor backflip on marriage is the almost record number of submissions to the Senate inquiry. Some estimates put the number over 10,000, some are over 12,000. This is an incredible response in such a short time, with an overwhelming number supporting the Government's initiative. Latham's Labor could see the writing on the wall, and, combined with the 1000 plus attendance at the marriage forum in Parliament House, knew they had to do a back flip.

I believe the silent but overwhelming majority of Australians support the view that marriage should be between a man and a woman and that same sex couples should not adopt children.

I am proud to have played a part in researching and writing a letter to the Prime Minister in March and signed by 30 Coalition backbench colleagues, recommending that the Marriage Act be amended. This bill we are passing today is the culmination of a lot of effort and support from across Australia. Today if we are successful in passing this Bill, and I expect it to be, it will be a watershed event.

In fact on this historic occasion I believe the vast majority of Australians will be saying thankyou, and what a relief. Why did we need to go through this debate in the first place?

On a personal note I have been overwhelmed with support and encouragement, and I want to thank all those Australians who have stood up to be counted and expressed their views. God bless them, and God bless Australia.

Before concluding I want to express the utmost concern regarding Labor's announcement on August 4, where shadow Attorney General Nicola Roxon at the Marriage Forum said:

...we are committed to introducing religious and racial anti-tilification laws..."

I say to the Labor Party, please provide the details. Put them into the public arena so that they can be assessed and analysed. Labor also has policies for same sex couples and adoptions. The community wants to see the details, lest my suspicions be confirmed that behind this veil of support for the institution of marriage, a Latham Government would have an agenda to appease the Left wing of the party, and ultimately undermine the new marriage laws being passed today.

Senator HARRADINE (Tasmania) (3.01 p.m.)—I will be brief as my position on the **Marriage Amendment Bill 2004** is relatively well known and I do not want to take up the limited time available going over arguments that have been well canvassed. This legislation is quite important. The system of marriage between a man and a woman is one that has been relied on for thousands of years across the world and across all cultures. It has been tried and tested over time and found to be the best arrangement available. Moving away from this shared community standard would mean that marriage would become just one option in a list of relationship options. It would in fact lose its meaning.

The legislation we are currently considering is a simple piece of legislation. It is about reflecting the community understanding of marriage, which is that marriage is between a man and a woman. It is in some respects a simple matter of clarifying a definition in legislation so that it reflects a common understanding. But there has been a lot of complex debate surrounding that simple aim.

I acknowledge there are Australian citizens who do not want to marry a person of the opposite sex. Rather than saying marriage is not for them, they have argued for the definition of marriage to be broadened to allow them to marry someone of the same sex. More than that, there are claims that not changing the definition to allow same-sex marriage discriminates against gay people. But, with respect, this is a very simplistic ar-

gument. There are of course a range of conditions put on the definition of marriage and these help to maintain the fundamental nature of marriage. These include the conditions that the people marrying must not be already married, that they are old enough to marry, that they not be of the same sex and that there are only two people in a marriage.

Marriage is in effect open to all people, without discrimination, but under a range of conditions. Those who do not accept those conditions because it does not suit them for one reason or another need not enter into marriage. The difficulty with agreeing to change the basic conditions surrounding marriage is that a range of groups might want to alter the surrounding rules to suit them. This would lead to a point where marriage would no longer be recognisable. I am not sure how we could, without accusations of discrimination, distinguish between the demands of one group and another. It therefore seems more reasonable to me to keep marriage as it is and confirm that situation in legislation.

If we were to start changing the common understanding of marriage, you could expect to have representations made from people supporting the legal recognition of various relationships such as polygamy, polyandry, which is one woman and many men, and polyamory, which is a group marriage of varying numbers. The possibility of group marriages is not so far-fetched. Two years ago the Law Commission of Canada produced a report on adult relationships which stated, 'In principle, the Law Commission sees no reason to limit registration [of relationships] to two people.' A quick search of the Internet revealed at least two active polyamory groups in Australia.

There is value in the current system of marriage. At a very practical level, it provides a very stable environment in which to raise children. It seems to me most important that children have a mother and a father. To allow homosexual marriages is to deliberately deny children a father or a mother. I know that there are exceptions to the stability of marriage—that marriages sometimes fail, we all know that; that children are sometimes not treated well; and that children can be brought up well by one parent. But I consider that having children grow up with a mother and a father is a social ideal, and that is accepted generally in the community. I know myself how difficult it can be to bring children up as a single parent. It was not a situation I wanted to be in—certainly not; my wife died—and it certainly was not ideal. I, like many parents, did the best I could. I was not all that crash hot. I am sure that, after two years of my single parenting, the kids were very happy when I married a widow and were delighted when, once again, they were in a family with a mother and a father.

I am not saying that children cannot be brought up well by relatives or guardians rather than by a mother

and a father. Sometimes that has to be the situation, for one reason or another. But I do see that as a substitute arrangement, and, acknowledging the best efforts and intentions of people in this situation, it is not the ideal. These are some of the reasons I support the acknowledgment and strengthening in legislation of the general community understanding of marriage—that it is between a man and a woman. Obviously there are many ways to strengthen marriage, and I will continue to lobby for that assistance. We have not got there yet. I believe governments do not adequately recognise the work that is done by families. I support this bill as one part of that overall structure of support for marriage and the family. I will leave my comments there to let other honourable senators contribute to this important debate.

Senator JACINTA COLLINS (Victoria) (3.10 p.m.)—I rise to briefly comment on the **Marriage Amendment Bill 2004** as well because I think it is important to deal with a number of issues on the record. Firstly, let me say that I support this bill because of some of the things that Senator Harradine has just said—that there is value in the current system of marriage, that we are affirming and strengthening the common law understanding of marriage—and because it is essentially consistent with the view that I have expressed now for almost a good decade to those people raising concerns with me over homosexual relationships. I was quite pleased last year when I was able to note in the Vatican statement in relation to homosexual unions two critical points, because they are the points that I have been highlighting for a decade. Some of these issues were lost in the controversy around, and the interpretations placed on, this document, but I would like to refer to a couple of them. One is the teaching that says:

Nonetheless, according to the teaching of the Church, men and women with homosexual tendencies “must be accepted with respect, compassion and sensitivity. Every sign of unjust discrimination in their regard should be avoided”.(7)

Nothing is more clear. There is no firmer base for the Labor Party's position on what we should be doing about discrimination as affecting homosexuals. But the other element in this position highlights some of the controversy and the complications that we have been dealing with today. I will refer to that now. It comes from the conclusion in this document. It says:

11. The Church teaches that respect for homosexual persons cannot lead in any way to approval of homosexual behaviour or to legal recognition of homosexual unions. The common good requires that laws recognize, promote and protect marriage as the basis of the family, the primary unit of society. Legal recognition of homosexual unions or placing them on the same level as marriage would mean not only the approval of deviant behaviour, with the consequence of making it a model in present-day society, but would also obscure basic values which belong to the common inheritance of humanity.

I would like to reflect on that statement for a moment because it relates to a discussion that I had with my staff last year on the interpretation of the word 'deviant'. I am trained theoretically as a statistician. To me, deviant means other than the norm. Unfortunately the interpretation I heard last year was that there was this enormous insult to homosexual people because they were being cast as deviants. I do not believe that that was the intent of this statement. I think the statement says that the norm for our society should be marriage as we understand it and that we need to apply care to how we deal with the issues over what is just and unjust discrimination to ensure that it does not undermine how we reinforce our norm for organising our community. That is what I think the meaning of this is.

As I think I implied in my opening statement, it essentially reflects the position that I have been putting to my constituents now for a good decade—that is, that I think it is reasonable that unjust discrimination against homosexuals should be removed but that I have care or concern to ensure that is not done in a way which undermines important institutions in our community. Senator Harradine gave one good example of how you need to apply care when you are thinking through these issues. Senator Greig referred to the problems associated with homosexuals who have married overseas. I am aware of many, many people who have married overseas in polygamous relationships. There is no debate here in Australia, no debate at all, that at the same time we should be dealing with polygamy. So I would just offer that one caution when we are talking about how we fiddle with the institution of marriage. I think Senator Harradine's example there is a good one.

At the same time, looking at how we regard the homosexual community, and thinking about my reflection on that word 'deviant', I think on one very rare occasion I need to agree with Andrew Bolt that the homosexual community also needs to take care about how it allows perceptions to be cast. I know that some people probably take too seriously—some would counter-argue far too seriously—events such as the gay Mardi Gras. But, if the homosexual community wants to portray itself in ways other than how homophobes assume it to be, we need some care and attention.

That was highlighted in Melbourne recently with what some of the gay literature was doing in relation to one of Melbourne's high schools and the suggestion that perhaps it was encouraging paedophilia. Care and attention needs to be applied on both sides when we are talking about accusations over whether people are homophobic, or whether they just have common, good-sense differences in policy or perspective.

We need to reflect on the fact that we have, I think, got to a stage where there is a fairly solid community consensus on how we should deal with discrimination. That is reflected in what has happened in many states.

We should take stock, for instance, in South Australia. When legislation was progressed there, the organisation, Families First, that has been pilloried in South Australia over the last week did not oppose removing discrimination. Some would say it was a strategic manoeuvre that they sought to ensure that the removal of discrimination was applied across other types of relationships as well. But if it reflects a community view that for Families First to be regarded as credible they could not come out and say, 'No, it's okay to continue to discriminate,' then we need to accept that, across a broad community now, we have a general consensus that there are issues of discrimination that need to be dealt with. This is why the Labor Party made this our priority issue. There is good community consensus on this issue, and we can make some progress consistent, as I highlighted, even with statements from the Vatican.

But we risk losing some of that community consensus with events such as those that have occurred in the last week. So I wanted to share with the chamber my response to the forum that was organised last week. I received a brochure in my office advertising the forum. I had heard nothing else about it. Despite the fact that I am aware of other senior Labor Party people attending and presenting to organisations such as the Australian Family Association, there was not one reference to any Labor participation in this forum. Despite the fact that afterwards, in the glossy brochure circulated, all the organisations paraded that they were non partisan, someone like me—with my record and my standing in this parliament—felt alienated from that event from the outset.

My word of caution to those organisations is: dare not let that continue. If you allow the thought of political debate that has occurred in the last week to continue, you will damage your own cause. If you allow Senator Barnett to incorporate the type of speech he has today, you are politicising these events in a way which will wreak damage for you in the future. That is my warning. My other warning, though, is that unfortunately—and certainly I feel this very strongly—these organisations are allowing the Howard government to deflect the very serious issue that Senator Harradine alluded to.

In today's *Financial Review*, a small Christian school principal indicated that it would be good if Labor funding more on a needs basis for non-government schools would assist his school, but that they are about social engineering, and that might be a problem. You tell me to which person can be more strongly attributed that label of social engineer than the Prime Minister of Australia, who allows experimentation on human embryos. That is what I call social engineering of the worst order. I remind those groups very strongly: do not have your attention deflected from issues such as

that and issues such as how much real, genuine support families in Australia are receiving.

To remind people, I would like to conclude my comments by incorporating elements—I have culled this contribution—of a speech Wayne Swan made in Utah. He reflected that the very ideology of some of our conservatives today is what is introducing the market economy into our social sphere. It is that market economy perspective that is damaging our human relations. So don't stand there and cast the Labor Party as having done a backflip—which we have not. Don't set up procedural pretences to try to claim that that has been the case. We have consistently said we would support marriage as it presently stands and an affirmation of that.

Procedural manipulations and attempts to cast a backflip which never occurred are an outrage and damage the social policy issues that are at stake here. We have been quite consistent in our position. I ask anyone challenging that: what did they think Labor was going to do if the government had accepted our amendment in the House of Representatives to split the bill? If you had accepted that when it was first presented, this bill would have been through months ago. But no. You were into procedural manipulation and maintaining pretences. The sooner that stops, the better for Australian families. I seek leave to incorporate the speech in *Hansard*.

Leave granted.

The document read as follows—

Families under pressure

We all know strong families build strong communities. We all know families are the backbone of a society. We all know they are the only place for teaching and nurturing the values that underwrite and bind our communities.

We all know they determine standards of acceptable behaviour within a community, and we all know it is the family that sets the benchmark for community interests, aspirations and sense of belonging.

The family, we all know, gives us our place, our identity. The family potentially holds the answers to many of our most debilitating social challenges. So why is it under so much pressure? Why is it being devalued as an option?

In Australia, we are experiencing the widening of the gap between rich and poor in both an economic and geographic sense, and we are witnessing the struggles and exhaustion in the greatest marathon of all – the raising of a family.

Life is faster, harder, more technical, more demanding of time than ever before and with all the will in the world, some families can't clear the hurdles put before them.

They struggle financially, they struggle time-management wise, they struggle with the every day stress of modern life, and they struggle with guilt.

They need both partners to work, but they want to put in time with their children, or maybe with their aging parents. They aren't given enough time to be a parent, a worker and a good involved citizen. The changes of recent years have stretched

families to the limit in terms of coping with longer working hours and with the rising costs of raising children.

Everyone has heard the old saying, so popular in times of conservative governments, that "the rich get richer and the poor get poorer". The sad truth is that there is now a new clause on that sentence: "and the middle gets squeezed".

Government complicity

In Australia, the current government has actively contributed to this increase in pressure being placed on families.

For example, cuts to childcare funding meant that parents' gap fees have risen by \$20-\$30 per week for each child. In fact, childcare fees have jumped by 56% since 1991, but government benefits have only climbed 29% over the same period, with that gulf opening up since the conservative government cut childcare in 1996.

As if trying for double-or-nothing on pressuring middle income families, the Howard Government introduced the European value-added tax system in Australia – only 30 years past its use-by date in Europe.

In Australia now, the goods and services tax, or GST, means that effectively every time a family has a child, they go up into a new tax bracket. But that's not all. When the GST was introduced, the Howard Government knew it needed to offer income tax cuts to try and compensate people for its impact. Half of them went to the top 20% of income earners. So the rich got richer; the poor got poorer; and as usual, the middle were squeezed.

Workplace pressures

A further obvious area of pressure comes from the workplace. Over time, the workplace has come to encroach more and more on family life. An Australian study found that 68% of fathers felt they had too little involvement with their children. In 1999, Australian Bureau of Statistics figures showed that, with dual-income couples, when both members work full-time, 70% of mothers stated that they always or often felt rushed, compared to 56% of fathers and 52% of women with no dependent children.

Family values

In the face of these pressures, the political debate has had to respond. And this is where we come to the vexed political issue of family values. Of course there are many theories today about how the family came to be in this precarious position, and how to get it back on its feet.

At one end of the political spectrum there is a preoccupation with issues such as divorce rates and single parenthood and the decline of the nuclear family. At the other end there is a concern for atypical families and their rights. One thing we all agree on is that the pressures on families are a problem.

Social Conservatives want to reverse the change via a cultural movement to re-establish family values and traditions. An important part of this, they argue is to dismantle the welfare state which serves to give families an excuse not to support each other. Some believe the dominance of individual rights over the community is a major cause of the family's plight and sense that a values and morals movement could put things right again.

Those of a less conservative bent see the change to the family as a component of broader social issues like the changing economy, gender equality and so on - in other words, things

that people would not want to reverse or that cannot be reversed.

In Australia however, the evidence in shows that what we see as the traditional family is alive and well. Despite the rise in divorce rates, by age 15, 77% of children live with both parents and 91% of one-year olds live with both parents.

None-the-less, in considering the current debate on the role of the family it's easy to hark back to the days of white picket fences, back to the 50s, when families were real families, and say "we should go back there." We can't go back.

But if there is a "values" debate worth having, it's this one: In years gone by, the family represented a shelter from the outside world. It was a place of daily renewal and regeneration. A place of readiness from which to emerge to do daily joust in the market or civic arena. Morals were reinforced and formed in the family. Family values were wholesome, reverent, promoted order. And they were *different to the values in the marketplace*.

Steadily, the rules of the market economy have encroached on family life. In the market people learned self-interest. They learned individualism, competitiveness and aggression. They learned to focus all on growth at all costs. In the economy there are different sorts of responsibilities, it's *laissez-faire*.....no obligations, no limits, just rights....sound familiar?

How often do we hear people say that the trouble with kids today is that they have no values? The thing is, they do. But more often than not, they have the values of the market economy. Little wonder that it takes just a few short years for a toddler to unlearn the innocent first rule of play and social interaction: how to share!

Too often, the very conservatives who talk about family values have radical economic policies which only push the market further into family lives. Families should be able to expect both a fair share of the economic good times *and* a good family life. Government policy should be directed at achieving these twin goals. We shouldn't be washing our hands of the problem, and we certainly shouldn't be in there up to our elbows making it worse.

It takes a very committed government in these difficult times to really make a difference for average families. Conservatives in the past made a strong play on family values on the basis that they were the ones attempting to hold back change and preserve the position of families. The problem now is that change is upon us. It has clearly outflanked average families. What is needed now is not a strategy to preserve the status quo, because that status quo – as I have shown – is one of ever-mounting pressure on families.

Too often today, the only thing conservatives can preserve is privilege. Australia's conservative Prime Minister John Howard has proved excellent at looking after the better-off. Where he is failing is in sticking up for average families. The problem with our current Prime Minister is that despite all his rhetoric to the contrary, he puts market values ahead of family values. What we need is a government prepared to join battle on the side of average families – to give them the tools and the support they need to confront change – to put them first rather than last.

Birth rate

The reason is that the problem is no longer one just facing families. It is a problem confronting entire nations.

The pre-eminent issue threatening our families is their declining number. Like many other nations – we face the problem of an aging population driven by declining birthrate. We know that the challenges of paying for health care; aged care; and pensions will only get bigger as our baby boomers grow older. In a short period of time we will have gone from baby boom to baby bust.

Australia's birthrate is now 1.75 down from 1.84 less than a decade ago. Today, there is one Australian of retirement age for about every five Australians of working age. Assuming current levels of net migration continue in the future, in the year 2021, there will be one for about every 3 ½. And by 2051, the ratio will be one for every 2 ½. Why? Because many couples are deciding not to have children, and it is a perfectly legitimate choice.

However, it is the task of policymakers to ensure that it is also a conscious choice – that people are not discouraged from having children by bad policies.

Sadly, for too many Australians the choice to have children weighs heavily. They look at the economy, their careers, and the future for children of our society – a good education, a decent job, a home. When they do their sums they are quite rationally delaying or deciding against having children.

We must tackle the birthrate problem if we are to safeguard our future and central to the problem of the birthrate is the economic plight of ordinary working families. Immigration helps a bit, but in terms of lowering the average age of the population, you can't get much better than a new child aged 0!

Family policy, properly understood, is not about forcing women to have more children, or keeping them in the home, or any other such antiquated rubbish. It is simply about things that you would want to do anyway -- make it easier for families to have and care for children. The growing intolerance in our society towards families – so often expressed as the complaint, *why should my taxes pay for someone else's children?* – comes from a failure to recognise that families perform a social good. Families produce the workers of tomorrow who will support us in our old age. They are also nurturing children who will provide our society with innovation, creativity and hope for the future.

Work and family

How do we provide encouragement for those families who want to have children but are not? How do we ensure that the current paradoxical situation whereby families who can afford children are not having them, and families who cannot are - is addressed?

First, we have to accept the reality of economic life. We have to accept that in most families both parents need to work. So we need to help those families balance work and family life.

The OECD has been closely following the relationship between work and family policy and birthrate. It has found that family size is lowest in countries where women's labour force participation is lowest. The OECD sensibly observes that such correlations do not prove that increasing female labour force participation rates will inevitably increase fertility rates. But they do suggest "child rearing and paid work are complementary rather than alternative activities," and that policy should be made on that basis.

Let me give you an example of what I mean - and I think this one is equally as relevant in your country. I spoke earlier of

how the conservative Australian Government has punished families through its childcare and taxation policies. But a further policy agenda has arguably done as much – if not more – damage. Since 1996, the Howard Government has favoured a policy of radical workplace deregulation.

It has weakened the industrial awards that protected wages and conditions in the workplace, and has very effectively worked to lessen the influence of industrial unions in Australian workplaces, and weakened the Australian industrial relations commission, which was traditionally the "umpire" that worked to promote industrial harmony and workplace fairness. As a result many workers in Australia have now traded off hard won conditions, like job security, for meagre wage increases. The practical result of this has been to lessen job security, and to release a boom in casual as opposed to permanent work.

An Australian Demographer, Peter McDonald agrees that this radical economic agenda in Australia has seen:

- Family-friendly industrial relations reversed in the interests of efficiency;
- The hiring of people who will not be disturbed by the demands of family responsibility;
- Job insecurity which arises from individual contracts;
-
- Calls for further cuts to family services and lowering taxes

Labor's work and family agenda

Responsibilities *are* important; but when the decline of families is in direct proportion to the economic pressure placed on it by government decisions, one has to ask whether they are the real issue. In our country we have a government that is more concerned with the fluctuation of prices on the sharemarket than those at the local supermarket. Its ministers take their cue from those sitting around the boardroom tables rather than those peeling potatoes at kitchen tables. And in his haste to reduce the size of Government our Prime Minister has increased the vulnerability of families to the harsh forces of the market.

Early assistance

My Labor Party has not only turned its mind to family matters, it will bring the resources of government to bear, to ensure the foundations of families are strong.

In our country, people always talk about the Snowy Mountains Hydro-Electric Scheme. Projects like the Snowy Mountains dammed mighty rivers; drilled through mountains and gave the nation an asset for generations to come.

Our modern Snowy Mountains challenge is of a 'human' rather than a 'bricks and mortar' kind. It is about making families stronger by giving them more time together and providing them with the support they need. I see our modern Snowy Mountains Scheme as a complete redrawing of the map when it comes to services for families and children's services including childcare.

We currently have a patchwork quilt of services – childcare, maternal and child health, family support and early education – that is fragmented and inaccessible. Where once the infrastructure challenge facing us was to move mountains, we now must move minds. We need a root and branch reappraisal of services for children and families and we have to make sure young families get all the services they need to be good families. That means changing the way Governments

(and remember like you we have three tiers of it) plans and funds child and family services.

There will be those who argue that the logistics are too difficult. That you can't hope to create a service system where a child and their family get the right mix of medical, practical and emotional support when they need, where they need and how they need it. I think you can. And I think we must begin the task. Because we are sitting on 40 years of research on child development that says unequivocally – every dollar invested today can save many more down the track. Research that suggests if you get the platform of child and family services right you have less adults who cannot read, less spending time in prison and less without work.

My vision of a new child and family service platform starts with a comprehensive national program of early assistance backed by a Government commitment to monitor and strive to improve the wellbeing of families and their children.

Childcare

Childcare is the single biggest issue most parents cite when it comes to the task of balancing work and family. It is essential to the modern balance between work and family life, and to providing opportunities for children's development.

Labor's commitment to the reworking of services for families and children will have a strong focus child care, particularly to ensure it is once again affordable and available to the many families who need it. While enabling parents to work and study will always be a central purpose of childcare, it can also promote children's growth in healthy environments. We must face the reality that couples are having children later in life and this is producing more single child families. Childcare provides this growing number of children with a chance to socialise that once would have been provided by a brother or sister.

Labor will invest in childcare – in the name of not only higher living standards for struggling families; but also a better educational start for children.

Industrial relations

There are 2.8 million working parents with kids in Australia. If we could give each one of them just one more hour a week with their kids, that would be an extra 150 million hours a year invested in happier kids; stronger families; better values. What a great investment in the future of our nation.

We want to steal back the millions of hours together that have been taken from families in the last few years. We want to give people the real choices to earn a living, but also to have time with the people who they live for.

Welfare reform

In my view, lasting welfare reform comes from three things:

- provision of an adequate safety net – so no one falls through the cracks;
- the investment in opportunities - so people have the skills that employers want, and
- the provision of incentives – making work pay.

Our current Government believes you motivate the wealthy by giving them more, but when it comes to poor families, the motivational technique is to give them less and to hand out punishment. While they make sport of demonising people with labels like 'job snobs,' there is a persistent refusal to address the appalling poverty traps that see unemployed families keep just 10 cents of each extra dollar they earn.

All the rhetoric from the Liberal Party about restoring family values means nothing if it is not matched by policy effort that gives families the support they need to be self sufficient and successful. Therefore welfare reform must place as much emphasis on responsibilities as it does on obligations. Government has a clear responsibility to ensure it does its part in helping families back to work, particularly where it's economic decisions and policy may have put them out of work in the first place.

Conclusion

The message I have been trying to give today is this:

The foundation of family prosperity – putting family values before market values – has been ignored in our political debate for too long -- caught in a debate for and against different moral propositions.

This debate is important, but it should not be allowed to be a substitute for Government action to support and strengthen families – action that reflects basic and uncontested values and demonstrates that families are a priority.

When the family debate is exclusively about moral propositions, political conservatives who don't want to spend money on education; healthcare; families; and communities – are let off the hook.

No progressive party like the Labor Party can stand by and allow this to go on. We need to take up the battle – for the elevation of family values above market values because an investment in our families is an investment in the future of our nation.

What is a nation after all? It is a lot of things – the industries, the geography. But most importantly it's a place where people live, and people in the end come back to one thing – family.

Senator CHERRY (Queensland) (3.21 p.m.)—I seek leave to incorporate my speech in *Hansard*.

Leave granted.

The speech read as follows—

The Marriage Amendment Bill is a most unfortunate piece of legislation. It is an attempt by the Howard Government to denigrate the status of a significant part of the Australian population by implying that, in some sense, gay Australians, and the relationships they form, are worthy of lesser recognition than heterosexual relationships.

I think we need to separate out two issues in dealing with this bill. The first is we must set aside religious convictions. Australia does not have a State religion, indeed section 116 of the Constitution expressly forbids a State religion. Thus, we should not be talking about a 'religious' view, whether it be a Christian or Islamic view, of what marriage is.

Rather, in dealing with the Marriage Act, the question for this parliament should be about legal and social aspects, not the morality of what we are discussing. I think many people in this debate have forgotten that.

Religions should be free to recognise marriage within their own communities consistent with their beliefs. The State, however, has a wider responsibility for the proper regulation of the legal, financial and social aspects of personal relationships right across the community.

I can't move on without noting the shameless politicking associated with this bill. Let me make it clear —there has

been no concerted lobby from the gay community for marriage rights. The legislation is not in response to some urgent legal or social issue —rather it is a rather pathetic attempt by John Howard to emulate the political tactics of his good friend President George W Bush and try to 'wedge' his political opponents on a 'moral' issue.

Labor of course has panicked, with Shadow Attorney General Nicola Roxon throwing any sense of human dignity and freedom out the window by backing this discriminatory and unnecessary law.

The gay community has not asked for gay marriage in Australia. It was not on their very reasonable list of social and legal recognition that they were chasing.

As a gay community leader said at a community forum I attended recently, "Why should we ask to parody a patriarchal heterosexual institution being increasingly rejected by many heterosexual couples?"

But, what offends the gay community, notwithstanding the 'non debate' about gay marriage in Australia right up until Prime Minister Howard started it, is the Prime Ministers' implicit assertion in bringing forward this legislation in saying that they are unworthy of marriage or recognition of their relationships. And that, rightly, makes them, angry.

I should acknowledge those Government MPs who argued in the party room against this legislation, arguing that it was unfair, discriminatory and out of date. Warren Entsch from my own state, Trish Worth and Chris Pyne from Adelaide, Petro Georgiou from Melbourne, Judi Moylan and Mal Washer from Perth, and Peter King and from Sydney on speaking out against this legislation in the party room according to press reports.

I agree with Trish Worth's view in a letter to her constituents in Adelaide that the bill is "completely unnecessary and could be seen to marginalise a section of the community for no sensible reason."

Of course, that didn't stop her and her colleagues voting for it in the House.

Ms Worth and her colleagues argued unsuccessfully to their party room that the world has moved on, that social acceptance of gay relationships is widespread, and that it is time for the Government to catch up. Unfortunately, too many Government and Opposition MPs seem to have their minds still stuck in the social system of the 1950s.

But, I'll make an attempt at least at trying to educate them. One of the world's great bastions of conservative thought, quoted regularly by the Treasurer and other Ministers, is "The Economist" magazines found in the waiting rooms of many ministers.

I wonder if those minister saw the cover story on February 26 this year which was entitled "The case for gay marriage". The editorial argued:

"The case for allowing gays to marry begins with equality, pure and simple. Why should one set of loving, consenting adults be denied a right that other such adults have and which, of exercised, will do no damage to anyone else? Not just because they have always lacked that right in the past, but until the late 1960s, in some American states, it was illegal for black adults to marry white ones, but precious few would defend that ban now on the grounds that it was 'traditional'. Another argument is rooted in semantics: marriage is

the union of a man and a woman, and so cannot be extended to same-sex couples. They may live together and love one another but cannot on this argument be "married." But that is to dodge the real question—why not—and to obscure the real nature of marriage, which is a binding commitment, at once legal, social and personal, between two people to take on special obligations to one another. If homosexuals what to make such marital commitments to one another, and to society, then why should they be prevented from doing so while other adults, equivalent in all other ways, are allowed to do so?"

It is a pity that such clear and compelling arguments are lost on the Howard Government and the Bush Administration in their efforts to round up votes among fundamentalist Christians.

Last month, Nobel Laureate and former Anglican Archbishop of Johannesburg Desmond Tutu contributed an article for a new book published by Amnesty International entitled "Sex, Love and Homophobia" arguing that apartheid and homophobia are both crimes against humanity.

He wrote:

"Opposing apartheid was a matter of justice. Opposing discrimination against women is a matter of justice. Opposing discrimination on the basis of sexual orientation is a matter of justice.

"It is also a matter of love. Every human being is precious. We are all, all of us, part of God's family. We all must be allowed to love each other with honour."

"Yet all over the world, lesbian, gay, bisexual and transgender people are persecuted. We treat them as pariahs and push them outside our communities. We make them doubt that they too are children of God—and this must be nearly the ultimate blasphemy. We blame them for what they are.

"Churches say that the expression of love in a heterosexual, monogamous relationship includes the physical, the touching, embracing, kissing and the genital act—the totality of our love makes each of us grow to become increasingly god-like and compassionate. If this is so for the heterosexual, what earthly reason have we to say that it is not the case for the homosexual?"

American Episcopalian Bishop John Shelby Spong, in an open letter to evangelist Jerry Falwell in 2000 argued that loving relationships should always be recognised regardless of sexual orientation. Bishop Spong argued that:

"My study has convinced me that homosexuality is a given part of the broad spectrum of humanity, so I, as Christian, could never equate it with sin as glibly as you (Falwell) do.... There is certainly some homosexual behaviour which is sinful. But maybe you haven't noticed that there is also some heterosexual behaviour that is sinful. ...I regard any sexual activity that is promiscuous or predatory, forced or uninvited to be evil and sinful....

"But I also regard sexual activity which expresses love, which is lived out in a monogamous commitment, which is part of a relationship of trust and dedication, which does not violate one's word given to another personal and which issues in life, to be blessed by its own fruits and theirs to be ultimately holy. I believe that the benefits and sanctity of marriage must be extended by both church and society to faithful homosexual partnerships and the sooner the better.

Not to do so is to continue the pattern of a killing prejudice based upon uninformed ignorance."

I'll leave as I said at the outset the theology to the theologians, but I do want to argue that our society will be the beneficiary of any act, any law, that seeks to encourage more Australians to commit to each other.

My generation of Australians and the next one coming through is loath to commit to anything, particularly to each other. Between 1986 and 2001, the percentage of Australians aged between 15 and 35 living alone rose from 6.5% to 9.2%. The total percentage of households with a one person rose from 22% to 24.6% between 1993 and 2001.

As a nation, we are becoming less and less able to commit to each other, becoming more and more selfish and self absorbed. This is not healthy for our society. The National Marriage Coalition dropped a glossy document into my office this week entitled "21 Reasons why Marriage Matters". I read it very carefully. And, while some of the reasons were a little poorly articulated, I agreed with its overall tenor that Australians are, for the most part, happy, healthier and economically and socially better off in long term, committed relationships than outside them.

But, if that is true for heterosexual couples, it is also true, as Bishops Tutu and Spong argue, for homosexual couples as well.

As a Senator, I believe our society is healthier if we encourage people to make long term commitments to each other.

Four months ago, I marched down the aisle myself and made my marriage vows in the Uniting Church. I didn't undertake it lightly. I believe that my marriage has and will continue to enrich my life.

I don't want to deny that right to stand in front of the community and make a public commitment to the person you love to any Australian person.

The proposition in this bill is objectionable in the extreme that stable, loving relationships should be demeaned by a Federal Act of Parliament.

The proposition that my relationship, being a heterosexual one is worthy of legal recognition but the longer term relationship of my colleague Senator Greig is not is objectionable.

As I said at the beginning, we need to separate issues of theology and law in this debate. I would be opposed to a law which forced the churches to solemnise gay marriages where this was contrary to their teaching. My personal faith tells me that Christianity should recognise long term monogamous loving relationship regardless of sexuality, but that is a matter for the churches to decide not me.

But while I oppose the State imposing on the churches its view of marriage, I also oppose the churches imposing on the State their view of marriage. The legal aspects of marriage—the care of children, the sharing of property, the aspects of health, welfare, superannuation, the issues to do with separation—these are matters for the State to regulate, and we are failing to do so in respect of gay couples.

Let's finally recognise that there are gay marriages in our country. There are gay people with children, with joint mortgages, sharing their lives, loving one another to the exclusion of all others. This law will not change that.

Let's give them the legal recognition they need to ensure that they can live their lives, and properly manage their affairs. Let's give them the community recognition that they can declare their love to be a beautiful thing. Let's give them the social recognition that commitment to another person is a positive thing in a society where commitment appears to be a dying concept.

.As Reverend Doctor Dorothea McRae McMahon said to the Uniting Church assembly last year:

“As a lesbian, I am not in moral decay. I am in one faithful relationship that brings me life and hope and that my family supports and which enriched my life as a Christian. I'll be 70 in a few months. I'm not on sexual adventure. Its about love, its about the freedom for people like me to love another person body, heart and soul as you – heterosexuals – are permitted to do.”

I hope that one day this Parliament will give to Dr McCrae-McMahon and the hundreds of thousands of other gay Australians the recognition as full Australians that they so richly deserve.

Regretfully, in this politically charged pre-election debate, the Labor, Liberal and National Parties will be denying them that just recognition here today, even to the extent of denying time for a proper debate of this discriminatory bill.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (3.21 p.m.)—In my view, the **Marriage Amendment Bill 2004** degrades marriage and is anti family. It encourages and reinforces a decline in moral standards and decency that will strike at the heart of our society if we do not stand against it. It will obviously pass today, but that will not be the end of the battle. There have been plenty of immoral laws passed in the past. That does not mean you just say, ‘Well, we lost that one,’ and give up; you continue to fight until the immorality that it represents is overturned. The Democrats will continue to do that.

This bill will prevent people from being able to marry. It will prevent people from being able to marry the person they love, and for the romantics here amongst us marriage is first and foremost an expression of love. Perhaps the lawyers amongst us would remind us that marriage is first and foremost a civil contract—a piece of paper that you sign and a contract into which you enter. That civil contract is what is reflected in the law, and what we are actually debating here today is an amendment to the civil law. It is not a debate about religion, and any attempt to legislate in respect of a religion would almost certainly be unconstitutional and would not be acceptable. If a particular religion wants to set up a particular set of criteria for people who choose to follow that religion, whether it is to do with marriage or various other codes of behaviour, that is one thing. But to seek to apply those religious criteria to the entire community and to prevent some people being able to marry at all is totally unacceptable and totally discriminatory.

A law is a lot more than just a legal document, in the same way as a marriage is a lot more than just a civil

contract. It is for that reason that, whilst it has been good that the debate from various sides to date has been measured, it has also been narrow in a lot of respects because it has looked at definitions of marriage and the nature of marriage as an institution. I want to ensure that also reflected in this debate is the impacts that this could have on some people—the impacts of our validation of certain views by passing a law that reflects them, as this does.

This bill is part of a range of matters currently before a Senate committee that is looking at not just the narrow legal components but a lot of those consequential matters. The committee received a lot of interest from the community and received a range of views. The committee was not able to hear the public's views on it; it was not able to consider the range of matters. The public and those perspectives were silenced and the Senate has decided to make a decision on the bill anyway, without taking those views into account. That is a shame, because it may have led to a more informed decision, if nothing else. People may have had a broader understanding of what it is that they are actually doing here.

It is extremely inappropriate, in a parliamentary sense and in terms of the undermining of democracy, to put a bill on for debate when it is before a committee. We have said to the public, ‘The Senate believes this is sufficiently important, we will have an inquiry and we will let you put your views. We will explore the substance of those views. We will have public hearings and then they will be on the public record. We will at least have a richer outlining of the issues and we can hopefully have a more informed debate when we finally get to it in the Senate.’ There has been none of that. What has been decided today, apart from anything else, is a spit in the face to that entire process and another spit in the face to democracy, which we are getting used to from this government. I do not know how many more times they are going to spit in the face of democracy, but I do not think it ever gets enjoyable or acceptable.

Causing extra outrage is the fact that the Labor Party has consented to subverting that absolutely critical part of the Senate process, which we often laud as one of the great pluses of the Senate and one of the most valuable components of the entire Senate committee process because of the opportunity to engage the public. Labor has not only acquiesced by ignoring that; it has sent an extra message that this is not just a simple procedural vote but a matter of urgency—it is a matter of priority above everything else and it must be passed today and with a curtailment of debate, even amongst senators, let alone the public. That is bad in itself but the message it sends is far worse.

For that reason, I will read a little bit from a few of the emails I have received. I am sure all of us have had

many emails on this issue from all sides of the debate. Because those people have been in effect silenced it is appropriate to at least read a few of them, without mentioning names. One person wrote:

As far as marriage goes, it should be a simple human right to marry the person you love. It is that simple. To claim that allowing gay marriage in some way diminishes heterosexual marriages is to claim that a gay relationship is not as important or loving or valid as a heterosexual relationship. This is simple homophobia. How can a few gay people committing themselves to each other for life hurt this society? Surely it would have the opposite effect.

How can extra people wanting to commit themselves through marriage somehow hurt marriage? Another couple, from whose email Senator Nettle also read, so I will only touch on it, make the point that they have been in a relationship for nearly 10 years and have a couple of children. They are in that respect, as in many others, just a regular family bringing up their children and, as they say:

...hoping for the best, trying our best, renovating our home, sharing our lives with those close to us. We live in a democratic society where equality is fought for virulently.

These people end by saying that, despite everything that is happening—obviously they oppose this legislation—they are married in the eyes of their friends, themselves and the universe, and they are just waiting for the law to catch up—and that is great. Clearly they are married in their own minds and obviously would love one day to be able to be married in the eyes of the law but they are not going to let others' prejudices prevent them from feeling strong in their love for each other. Another email is from a woman—a 43-year-old mother of eight children—who is a resident of the ACT. One of those children is a lesbian. She says she, her husband and all family members are very proud of their daughter. She goes on to say that, when her daughter first talked about being a lesbian:

... as a mother my reaction was an immediate fear for my child as I knew her sexuality would make life harder for her and that she could be the victim of discrimination.

She speaks of how proud she was when she sat with her daughter in the ACT Legislative Assembly as the local government here in Canberra overturned the discriminating phrase in the ACT Adoption Act that precluded adoption by same-sex couples. I am pleased that the Democrats, through our local member, Roslyn Dundas, were part of ensuring that happened. She speaks of how that was important not just in a legal sense. In one sense it was affecting a very small number of people, but it was a clear signal to her daughter that society was changing and that she should not be judged solely on the basis of her sexual orientation. I will not read all of the email, but she talks of her distress that straight after that we get the federal government coming in, not with the dog whistle but with the megaphone and the loudspeaker, once again reinforc-

ing 'those perceptions and encouraging those perceptions of discrimination'. She talks about her greater awareness, gained from her daughter, of the impact on other young people. I spoke before of the couple who are quite comfortable with themselves. Their view is that if others in the community have a problem with our relationship, that is their problem.

The more people who feel like that the better, but we have to acknowledge that not everybody—particularly not every young person—is so self-assured and so comfortable. It is a simple fact—even a statistical fact—that young gay people are at a much higher risk of suicide—about a six-fold increased risk of suicide—than others. Around one in three suicide attempts by younger people relate to sexuality issues. That is wider than just sexuality in relation to being a gay or lesbian; that is about sexuality issues in general. We all know that sexuality issues not only are personal, by definition, but also are in many ways ones that a lot of people, because of the social environment that we are in, have difficulty working through, particularly when they are young. That six-fold increased risk of suicide among young people if they are a gay man or a lesbian is a statistical fact.

As to the other side of the debate, I am certainly not accusing those people who support this bill of encouraging, condoning or not caring about suicide. I am talking about the fact that the impact of these sorts of measures, let alone giving them priority and urgency, involves a lot more than just a little change to the law, because it reinforces signals and it gives legitimacy to the sorts of statements that were made by people last week in the Great Hall of our Parliament House. Some of them said that gay people were moral terrorists, they had vile passions, they were a sign of the moral decay of our society and they were undermining our society. If you feel strong about yourself, then you are likely to respond to that by saying, 'Go get stuffed. I don't care. That is your problem.' And it is their problem if they believe that. But if you are not strong in yourself, that sort of thing can be unbelievably damaging at an individual level.

I still cannot get over my fury at walking into that meeting in the centre of our Parliament House, in the Great Hall, where our Presiding Officers would not permit an address by a world leader like the Dalai Lama because they did not want to upset or offend the Chinese communist dictatorship. Yet any persons—public visitors, and we all know we get many visitors from the public coming to Parliament House, as they should and as we would want them to—could walk into the upstairs area, as I did, and hear that sort of stuff being applauded in the middle of our Parliament House. That is permitted by our Presiding Officers but a few people that stay outside and hold signs expressing their disgust are breaking the rules by protesting!

I should say, because I take on board what others have said, that it is not fair for me and others to have vilified all of those people that attended that forum by saying that they are all guilty of this sort of hate speech, and I retract any impression of that. To be balanced, I have to say that some of the other speeches there—and I witnessed only about 30 minutes in all; that is all it took; god knows what else was said—among some of the other bits I saw were lovely. I remember in particular an elderly couple, who had been married about 40 years, just talking about their love for each other after 40 years of marriage and how wonderful it was. Nobody could complain about that. As Senator Boswell said, the people attending that forum were supporting marriage. I support marriage, and I am married. It would be a bit of a problem if I did not support marriage, seeing that I am married. But what do I say to a constituent that meets with me and says, ‘I want to get married too but it is illegal for me to do so’—which has happened to me. Do I just say, ‘That’s a pity. That’s just because of who you are, because of your “vile passions” or something?’

We should not forget that in our lifetime Aboriginal people had to get permission to marry—that interracial marriages were seen as wrong on the basis of race. Now people, quite rightly, would be absolutely disgusted. But that is what we are saying here. We are saying that, just because of who you are, if you are a certain way it is bad luck—you cannot get married—and supposedly that is not discriminatory. I wish people would think through what they are actually saying. The fact that it is something only a certain number of people in the community can have access to and others cannot, purely because of how they were born and who they are, devalues my marriage. That is why this offends me so much. This legislation is disgusting. To say that it defends marriage when it degrades it so much is something I find extraordinarily upsetting.

Earlier I used a quote from Edmund Burke—one which has been used many times by many people—that the only thing necessary for the triumph of evil is for good people to do nothing. That is why it is so disappointing, when there are many people in this chamber who I know recognise how terrible this legislation is and how destructive it is to our basic humanity and decency, that they are going to let it go through. Another quote—one from Martin Luther King which was at the bottom of emails I, and probably a lot of other people, got from one woman—is another reminder that in debating the law we are not just talking about semicolons and sentences on bits of paper and about decisions for judges to make in their courts; we are talking about things that can go not just to the heart of our society but also to the human heart. As King said, ‘The law may not change the heart but it can restrain the heartless.’

That is a reminder of the much broader and in many ways much more powerful impact of our role as a parliament. It is not just about changing the law; we play a role in legitimising certain values and certain views. The law can restrain the heartless but, sadly, the reverse applies here. The law we are now passing will validate the heartless, the bigoted and the hate filled. I do not accuse everybody who supports this bill of being bigoted or hate filled but I do say that, by allowing the bill to pass, they are validating those messages and those statements, including some that were made—with permission and to applause—in the very centre of our Parliament House just last week. Not only does this law not restrain the heartless; it applauds, validates and encourages them.

I really do not think people recognise how severe the impact of their actions can be. I talked before about the much greater rate of suicide among younger gay people. I am not going to try to lay the blame for that on this bill but I remind people that, for those who have self-doubt or difficulty with who they are or their role in society or in life—all of the sorts of things that are swimming around in some of the dark areas the mind can go to—letting some of this stuff have any validity can be not only hurtful but also fatal. So, as I said at the start, this bill does not only degrade marriage and is not only antifamily; it is antihuman and is, in my view, a validation of a decline in moral standards and decency. (*Time expired*)

Senator MARSHALL (Victoria) (3.41 p.m.)—I seek leave to have my speech on the **Marriage Amendment Bill 2004** incorporated in *Hansard*.

Leave granted.

The speech read as follows—

I rise to address the Marriage Amendment Bill 2004.

In doing so, can I say how ashamed I am of this Government and the Prime Minister. This is a most regressive piece of legislation. It is fuelled by the politics of hate and division and the possibility of laying down a political wedge in the community at large.

And it is a sad indictment on a government that really has no agenda and no vision for this country and our people.

How could the provisions of the bill before us be of any significant importance to the Australian community at this point in time or need to be dealt with in the hasty manner in which they are? There is no reason for it other than an impending election campaign and the possibility of exploiting fear, prejudice and hate throughout the community.

Here is an issue that demonstrates the backward-looking, outdated, old-fashioned, mean, nasty and totally out-of-touch nature of the current Prime Minister and his attorney general, Mr Ruddock.

Here is an issue and a bill that these men say is necessary because there is significant community concern about the possible erosion of the institution of marriage. Well, what a joke, Mr President! That is a load of rubbish.

Who are these people and what exactly are their concerns? What century are they living in? Or where are they living?

And what exactly is it about marriage that is under such threat today from the gay and lesbian community? There isn't anything.

This isn't an issue about gay marriage at all. This is an issue about exploiting prejudice and hate. It is about division and segregation. It is about discrimination and it is about the Prime Minister's unhealthy obsession with everything President George W. Bush.

That is what this is about. Why, after eight years in Government have Mr Howard and Mr Ruddock chosen now, just prior to an election to bring about this change to the Marriage Act?

Why hasn't the Government acted during the past 8 years if this was such an important and necessary issue to act on?

It is a cynical approach by the Government. There can be no doubt.

If there was not to be an election this year and the possibility to use this issue to divide the community at large on the basis of prejudices held by people, would it be coming to the Senate right now?

The answer would have to be no.

This bill is politically motivated. Just like the proposed changes to the US constitution banning gay marriage, this is a politically motivated stunt.

If only the issues weren't so sensitive, one would have to laugh at the politics of the Government on this issue. President George W. Bush mentions that there might be a need to act in the US on gay marriage, two minutes later, Prime Minister John W. Howard sees an opportunity to exploit the very same issue and brings it here to Australia.

It is laughable. This is a Prime Minister obsessed with the US President and all of his policies. Does Mr Howard seriously think he can keep up with the neo-Conservatives? Well, it seems as though he is willing to do all that it takes to at least give it a go.

It is a disgrace that our Prime Minister has chosen to attack some of the most already-discriminated against members of our community for his own political and electoral purposes. Again, I have to say how ashamed I am of this Government and this Prime Minister.

Now, Mr President, let me turn to the bill itself.

This bill seeks to define marriage as the union of a man and a woman, entered into for life, to the exclusion of all others. Fine.

But this insertion is not the motivation behind the bill. The motivation is to discriminate against gay and lesbian Australians.

As my colleague, the Member for Batman, Mr Ferguson said in the other place, and I will quote him, "the Prime Minister was at long last driven by the will of the community to fix the blatant discrimination inherent in our superannuation laws. He was driven to concede that gays and lesbians should have the right to nominate the beneficiary of their own hard-earned and accumulated superannuation. I commend him for finally relenting on this issue, albeit a relenting that was long overdue. But I also suggest that having made the concession, the Prime Minister was so petty and small-minded that he

could not make that reform without soothing his own moral conservatism. The Prime Minister could not make a progressive reform for our gay and lesbian Australians without giving them a commensurate kick in the guts," end quote.

That is exactly right and that is exactly what we have before us today.

I cannot understand how in this, the 21st century and in the very same year that we have removed discrimination against same-sex couples in terms of superannuation, why the Government would seek to impose another layer of discrimination against same sex couples. It really beggars belief.

This Government just simply cannot accept that the world has changed—that Australia has changed—and with it has the idea of what constitutes a family.

Australian families in the 21st century come in all shapes, sizes and forms. This should be embraced and supported, not shunned and systematically averted.

It is high time that the national parliament recognised this and afforded all Australians, regardless of individuals' sexual preferences the rights and opportunities that all other Australians have.

Why should a union between two loving and committed people be denied simply on the grounds that they are of the same sex? There is clearly something wrong with a society that turns a blind eye and rejects a union on those grounds alone.

At a time when marriage rates are on the steep decline, wouldn't you think that we would be looking at ways to increase the number of committed, loving and caring unions/relationships/marriages (call them what you will) in our community?

As the Member for Sydney said in her contribution to this debate, as a society we are stronger when we look for ways to celebrate and increase the sum total of love: not wall it in, deny it or ignore it because it does not read like a Mills and Boon novel.

Labor will be supporting this bill but it isn't for the discriminatory reasons that the Government has introduced it.

Labor believes in removing discrimination against same-sex couples and gay and lesbian Australians. Labor is committed to introducing protection from harassment and vilification on the grounds of sexuality.

Following the next federal election, Labor in Government will undertake an audit of all federal legislation with the view to removing ALL discrimination against same-sex couples—this will involve making changes to many aspects of the law, including in taxation, veterans' affairs, social security, superannuation, and more.

Labor wants to ensure that we deliver same-sex couples full equality with that experienced by all other Australian de facto couples.

Mr President, given everything going on in this country and around the world at this point in time, how on earth could the Government justify wasting the time of the Parliament on this unnecessary diversion?

As the Member for Sydney argued, and I quote from her contribution to the House of Representatives debate again, "does anyone believe that it is a coincidence that this legislation came about at the same time as the member for Makin

was making the front page of every newspaper with new revelations about the trip to Paris she took with her then boyfriend? This is an ugly little trick designed to rebuild the government's family values credentials after that fiasco," end quote.

Well, Mr President, what a way to display those credentials—by demonising an already-marginalised group in our community. It is simply disgraceful.

Mr President, in concluding my short contribution to this debate, I would like to make a point that has already been made and is well understood in the Australian community:

Australians in same-sex relationships lead normal lives and want and deserve to be treated like all other Australians. Same-sex couples, or gay, lesbian, bisexual, transsexual and transgendered Australians are not asking for special treatment—quite the opposite, they are asking for no special treatment. These people want to live their lives as valued citizens of Australia and to be criticised against the very same criteria as all other Australians.

As the Member for Batman said in the other place, "sooner rather than later we as a community and as legislators must cut down the straw men and afford rights and responsibilities to all partnerships, not just straight partnerships as the Prime Minister would define them. In that regard, the work of the Tasmanian and ACT parliaments must be commended, but other parliaments, including our own national parliament, must start to think about biting the bullet and removing discrimination in all its forms against gay and lesbian Australians".

I couldn't agree more.

Just finally, I think I owe it to explain to the Senate, in quite frank terms why it is that I will be voting to pass this bill, with my colleagues, even though, as I have outlined, I do not support its intent.

Quite simply, I will be voting to refuse John Howard the opportunity to play his nasty politics of division in the lead up to the next election and throughout the election campaign. I do not want to see the Australian community divided by this issue because of John Howard. We know too well the Prime Minister's politics of divide and conquer and I will not allow it to take hold with this issue at this stage of an electoral cycle. I will vote to pass this bill to get it off the agenda and I do so looking forward to the day, in what I hope is the not too distant future when a Government with a heart finally gets to lift this shameful and ridiculous discrimination.

Senator FORSHAW (New South Wales) (3.42 p.m.)—I rise to support the **Marriage Amendment Bill 2004**. I do not intend to speak at length. Although a number of senators have sought to incorporate their speeches in view of the time constraints, many of us would probably have preferred an opportunity to make our remarks directly. I have listened intently to the speeches that have been made this afternoon on this legislation. In particular, I listened to the very passionate and obviously genuine speech made by Senator Bartlett a moment ago. He obviously holds those views strongly. But, equally, overwhelmingly many people in this community do not agree with the assertions that have been made by Senator Bartlett and by many others who have opposed this legislation. I have to say

that I think it is completely wrong—I would like to use stronger words but I will not—to argue that this bill somehow degrades marriage. That is just a nonsensical proposition in logic. A bill that seeks to make abundantly clear in law the definition, the meaning, of marriage for eons cannot of itself degrade marriage. That is a preposterous proposition.

I will come back in a moment to the issue of discrimination, but enshrining in the Marriage Act a definition of 'marriage' which represents what it has always been understood to mean—whether it be in the common law, in canon law or in recognition of the entire social history of humankind—cannot be said, in my view, as is the argument being advanced, either to degrade the very institution that the definition will clarify or to be discriminatory.

As I said, I support the passage of this bill. I do have some concerns about some of the motivations that have accompanied it from the government, particularly given that this is a government that in respect of other legislation has argued that it is not really necessary to clarify the law. We heard that argument in respect of the free trade agreement. I do not think it hurts to clarify the Marriage Act by putting a definition of 'marriage' into that act. It may be unnecessary, but I do not think it detracts in any way from good public policy and good legislation to ensure that a piece of legislation reflects what it should, and we are particularly conscious of the fact that there is a debate going on world wide in respect of the institution of marriage. I understand that only in the last 24 hours courts in the United States have overruled attempts in the state of California to give legal effect to gay marriages. It is clearly an issue of currency.

I support the passage of the bill because I believe and I have always believed that marriage, whether it be in the legal sense, religious sense or social sense, is the union of one man and one woman entered into voluntarily for life to the exclusion of all others. That is what the definition in the legislation that is before us says. We know it does not always work. It is not always for life and, although we hope it is always voluntary, it is not necessarily always to the exclusion of all others. But we are here defining the meaning of 'marriage'. That is what it has always been understood to mean and I do not think it needs to be any different.

It is clearly the view of an overwhelming proportion of the population, and it is not an unreasonable view. It is not some degraded view and it is not some disrespectful view to people who are married or people who are not married; it is the view of ordinary Australian people out there of what marriage is: the union of one man and one woman entered into voluntarily for life to the exclusion of all others. This is not the tyranny of the majority imposing its views on the minority. Attempts to argue that it is are, in my view, not just un-

founded but I think in some cases are deliberately distorted for a purpose which is not genuine.

There are two issues involved in the debate with respect to the legislation in this chamber. There are a lot of issues involved in the debate in the community, but we are here dealing with this debate in respect of this legislation. The first issue is: what is the meaning of 'marriage' and what should be the legal definition of 'marriage'? The second issue is: does the definition to be enshrined in this legislation discriminate against other forms of relationships—same-sex couples in particular but other forms of relationships as well? I have already said what I believe to be the definition and meaning of 'marriage' and it is that contained in the legislation. As I said, it is derived from almost the beginning of humankind. In my view it essentially derives from a social concept, it is encompassed within many religions and it is enshrined in the common law but founded in the very nature of the human race itself—that is, the division of the sexes. Whilst society changes and advances—and unfortunately regresses too often, I suppose—whilst science makes new discoveries and solves mysteries, whilst technology enables the human race to do things never previously contemplated and whilst society and the law allow people to engage in relationships and other activities that may have once been regarded as unlawful, it does not follow as a matter of logic, nor does it follow as a matter of necessity, that fundamental definitions or meanings must change. To argue that the definition of 'marriage' should be expanded to include other forms of relationships, particularly same-sex relationships, is to destroy the definition of 'marriage'. It does not broaden it; it destroys it.

The other argument against this bill is that it discriminates and vilifies—that it denies fundamental human rights. I have heard that said by speakers earlier in the debate this afternoon. I have to disagree. To me there is no logic in a proposition which says that you should apply a definition of 'marriage' that is unique in the sense that it applies to heterosexual relationships to a relationship which is not the same. The gay community proudly celebrates its diversity. That is what it claims to celebrate and it is entitled to do that at law. It claims the right to celebrate—using a term that has been used here today—its 'gender identity'. It sees it as a gender identity that is different from that of the heterosexual community.

If you want to celebrate diversity, if you want to enshrine the right to that diversity, if you want to enshrine recognition of the right to have a relationship which is not heterosexual, you cannot then logically argue that you will do that by importing into your own relationship the definition of something which it is not—by importing, in effect, the opposite. As I said, it is a simple matter of logic. I have never understood why the

gay community says, 'We need to celebrate the diversity of the gay community,' by taking unto their relationships the definition of that which they are not. If a gay couple can argue that they are discriminated against because they are not allowed at law to marry then people in a whole range of other human relationships could also argue the same case—again, it is a matter of simple logic. There are many relationships in the community that are not heterosexual but are not gay—family relationships, for example. Are we to see the definition of 'marriage' further changed because some people believe that they have been discriminated against by their particular relationship not being defined as a marriage?

In my view, exclusivity does not automatically translate into discrimination. Certainly under this legislation marriage will be, by definition, an exclusive relationship. It will be exclusive to heterosexual couples: one man and one woman entering into that union voluntarily for life. It does not follow as a matter of logic or as a matter of human rights that something which is exclusive in the community must therefore discriminate against others. Gays can claim that there are areas in which they have been discriminated against, and we know that. Historically there has been much discrimination against homosexuals. We all know about, and many can remember, the days of the Second World War when homosexuals were murdered by the Nazi regime and by other regimes—and that still happens—simply because of their sexual preference. Civilised society does not support that and we have attempted to remove those extreme forms as well as all other forms of discrimination. There are some still to be addressed. Issues that relate to divestiture of property and rights to superannuation entitlements are areas that clearly still need to be addressed, and they are being addressed.

I might also point out that there are some areas married people tell me about where they believe they are discriminated against. For instance, married couples on the pension may well argue that as a married couple they receive a lower pension entitlement than is received by two single people living together in the same accommodation. It is a fact. So the real issue is not about the definition of 'marriage'; rather, it is about removing discrimination. It is about the need for tolerance and acceptance. I do not believe you achieve tolerance and acceptance by changing the fundamental definition of 'marriage'. You do not achieve recognition of the diversity of humankind by seeking to import into the description of one relationship that which applies to another. Indeed, I think you would ultimately lose that status the gay community seeks to celebrate. I support the bill and I urge a lot more tolerance in the debate. In some respects there certainly has been intolerance in this debate. People who argue, from whichever side, that the views in support of this bill are de-

graded in my view do not have much substance to their point of view.

Senator MOORE (Queensland) (3.57 p.m.)—In my comments this afternoon I want to concentrate on the process surrounding the debate on this piece of legislation. I have been deeply saddened and worried by the process surrounding the introduction of this legislation. In some of the letters and emails—most of them amazingly similar—that have been received in my office over the last few weeks in strong support of the definition of ‘marriage’, there has been a common theme, and that is protecting the sanctity of marriage. There seems to be a real concern or fear that any acceptance or understanding of a union beyond that of a man and woman will automatically devalue or threaten current marriages. I personally cannot accept the proposition that any external factor should or would threaten a relationship that has been freely given and is the result of genuine respect. That is my concept of marriage. The expectation that this legislation affecting others—as the people who have written these particular letters to me clearly identify—relates only to those who are different or not blessed with their own sense of belief and will impact on the sanctity, legitimacy and value of a personal commitment makes no sense to me. Rather, this view reflects the distressing atmosphere of exclusion driven by fear and sometimes, in 2004, an almost amazing ignorance.

The zeal of people and groups in promoting the belief in what they call traditional marriage has in some cases crossed into real vilification and personal attack. I have been deeply sickened by comments and public forums allegedly based on the reasonable effort to raise awareness or promote certain beliefs, often using the word ‘family’. As a community we genuinely value the concept of family, and when arguments are made or literature is distributed which focuses on love, trust and special relationships with children many people are attracted, feel an automatic warmth and are drawn to accepting the credentials and goodwill of those promoting the ideas and values.

Sadly, during the debate on the legislation there has been some confusion and even some deliberate attempts to demonise gay and lesbian people and to create an atmosphere and an environment where somehow it is acceptable to judge, exclude and hurt people whose relationships do not fit the definition of ‘marriage’ that these people believe in. Perhaps I should not have been surprised, because personal relationships, particularly with the addition of religious beliefs, cause strong feelings and reveal deep convictions and experience. However, that anyone, even in our own Parliament House, would make outrageous statements about homosexual people still manages to shock me.

When we have been able as a community to accept change through previous sex discrimination, racial vilification and affirmative action legislation why can we still seem to accept blatant attacks on gay and lesbian people? Recently, through the commemoration of 20 years of sex discrimination legislation, we were able to take time to think back over the achievement of change—and the years since, protecting those changes in our community. Now there seems to be, in many ways, a general acceptance of the principles of equity. Although there were always some people or organisations that disagreed with any change—and they will probably always remain unconvinced—the dire predictions about the impact of equity legislation in the eighties have just not been fulfilled.

In debates which were held during the eighties significant concerns were expressed publicly about the impact on families and the traditional roles of men and women. Some of us in this chamber were part of those debates. However, the decades have proved that the community has come to accept the principles that individuals can have the choice and the freedom to make their own decisions in their workplaces, in their homes and in their lives. It seems that the world did not end but somehow the people of the world got greater responsibility and greater choice. The people who, during the 1980s, raised their voices in fear about equity seem to be in the game again now. I am concerned that the level and tone of the debate could become—and maybe has become—more vicious, focused and dangerous. I do not want to be part of that fear. I firmly believe that the community has the right to openly debate issues about values, religious beliefs and life. I do not believe that any issue or value, including marriage, gives any group or individual the right to attack or exclude a person based on sexual preference.

I am concerned that this debate on marriage is only one element of a wider debate that will not be concluded when this piece of legislation is concluded. Those people who wrote the letters and the emails based on fear will continue to agitate for change and will still be afraid. The total lack of respect for people called ‘others’ or ‘them’ will not disappear; rather, the fight will continue. In this process I believe that the members and senators in this parliament have a really special responsibility.

The Australian Labor Party are committed to review all the legislation and to identify and remove discrimination against gay and lesbian people. We will work to uphold our belief that Australians are entitled to respect, dignity and the ability to participate in our society and to receive the protection of the law, regardless of sexuality or gender identity. This will not happen automatically, as the same people who have been agitating against legislation will be there, and the fear and the hate will have to be faced down.

Any organisation which considers that it is appropriate to verbally attack and intimidate young Australians

who are gay does not represent the principles of respect and family that I and my family value. Any organisation which publicises that all gay people are sick, have an illness or are child abusers, or any group that descends in their publications to vicious labelling and personal abuse, does not argue for any family based community that I believe in. I hope that, as the level of awareness grows in our community, we will respond to the simplicity and the tactics of fear evidenced in arguments focused on gay people.

While this debate is important and very formal I am personally overwhelmed by the experience of some of the people who have been damaged by these attacks and by the wider acceptance of the legitimacy of that process. Why is it considered okay to demonise some people? Where is the outrage and the anger when it occurs? It seems to be far too easy to create fear and to convince good people that somehow their rights and the things that are important to them are threatened or damaged by the acceptance of change.

Where is the threat? How can the acceptance of genuine equity be harmful or impact on individual beliefs or the freedom to make choices? There is no legislation proposed to force anyone to give up personal beliefs or to enforce behaviour. I hope that in the ongoing debate—and there will be an ongoing debate—our community is strong enough to accept that any argument based on fear must be immediately questioned. I hope that the people who have been so threatened by proposals to legislate for equal rights in the past will be able to openly consider the experience and the expectations of all members of our community. I hope that future debates on legislative change will be less affected by hate and fear and instead be informed by a genuine concern for inclusion and increased awareness. I know that the acknowledgment of the rights of some does not automatically mean harm or threat to others.

Senator BROWN (Tasmania) (4.06 p.m.)—Along with my colleague Senator Nettle I oppose this marriage discrimination bill, the [Marriage Amendment Bill 2004](#). One of the things that is not talked about in this parliament very much is love. But love is the highest human value and it is in the heart of everybody. It is everybody's right to express it. Any sensible liberal society, besides practising acceptance, will promote love. This legislation is about hate. In any liberal society it is important that we try to minimise this negative human expression—this antithesis to love—corral it where we can and in any way possible remove it. Today the government of this country and the alternative government, the Labor Party, are promoting hate, the most negative of human values, over love, the most positive and wonderful of human values.

It comes from the Prime Minister, although it has been endorsed by the Leader of the Opposition, that there should be some special prerogative for people

who love each other. If they want to have that love recognised by society then they must be of the opposite sex; if they are not of the opposite sex then the hate of difference that is in society should be expressed in legislation. In a plural society we might not wonder that such an extraordinary thing might express itself, even through representatives in a many-numbered place like this. But when it is not just the majority of but the leaders of both the big parties who are putting hate in front of love in the expression of legislation then one does indeed worry for one's country, not just for the parliamentary system.

The Prime Minister, in his extraordinary way, has said:

I don't seek in any way to discriminate against them.

He was meaning, and he says in a following sentence, homosexual people. It is a classic prodromal statement to the following discrimination: 'I have friends, but,' or, 'I don't want to hurt them, but,' or, 'You have to be cruel to be kind, so.' To the Prime Minister's words 'I don't seek in any way to discriminate against them' add 'but I am going to anyway.' From the debate triggered by George W. Bush, the extreme right-wing fundamentalist currently empowered in the United States, John Howard has said, 'I will follow suit and discriminate against Australians.' This is the man who said he would be Prime Minister for all of us. But he has in the past held off. When Pauline Hanson came into this place and introduced racism into the debate of this great parliament, the Prime Minister said nothing for five months. We know the story; I will not repeat it. It is about small-mindedness, narrow-mindedness and vilification—by innuendo or even failure to speak up—of boat people, Indigenous people and people who may have different points of view.

Today the Prime Minister takes that a step further. He says:

I support marriage because I believe it provides stability in relationships, because it is a public expression of commitment ...

No, he does not. He only supports that if you size up to his assessment of what is okay. If you do not, he does not support marriage providing stability and being a public expression of commitment. If you happen to be a same-sex couple, he not only does not support it but is going to legislate so you cannot have it. He wants you to be unstable, he wants you not to be committed and he does not want you to go public with it. It is all the old repression: 'set them aside, make them in some way different'. Will we next have a Prime Minister saying, 'Put a patch, a triangle, on their coat'? That is where the politics of hate can take you. The words of the Prime Minister are very subtle. He says:

... I think the overwhelming majority of the Australian people support this change.

I think the overwhelming majority of Australian people have always taken for granted what we propose and would share the view that it should be put beyond argument so far as the law of this country is concerned. 'They', he said, speaking for this fictional overwhelming majority, 'don't see it as discriminatory.' That is the next problem when you have a leader who is narrow-minded, who is divisive, who hates people of a certain category, but who says, 'Most of the rest of the people do, so I can justify that.'

Senator Coonan—Mr Acting Deputy President Chapman, I rise on a point of order. I know that the constraints of time are putting people under great pressure this afternoon, but I would ask Senator Brown to withdraw the imputation that the Prime Minister hates certain people.

The ACTING DEPUTY PRESIDENT (Senator Chapman)—I would deem that as an unparliamentary expression, Senator Brown, and I ask you to withdraw.

Senator BROWN—No, I will not, because that is the truth. That is what is being expressed here today. This is hate legislation.

The ACTING DEPUTY PRESIDENT—Senator Brown, I ask you to comply with the ruling of the chair.

Senator BROWN—I will not because I am stating the situation as I see it. I have been cogently developing this argument. This is not a Prime Minister who loves everybody regardless—

The ACTING DEPUTY PRESIDENT—Senator Brown, I have asked you to withdraw.

Senator BROWN—Yes, you have.

The ACTING DEPUTY PRESIDENT—Are you going to withdraw?

Senator BROWN—No, I will not withdraw.

The ACTING DEPUTY PRESIDENT—In that case, Senator Brown, I have no option but to name you and would ask you, in that context, to either apologise or give an explanation for your refusal to withdraw.

Senator BROWN—I will take the second course. I have been explaining that you cannot be on one or the other side of a divide with discriminatory legislation like this. The people who are on the receiving end of this discriminatory legislation will find it hateful. It impacts on them. It is not a loving message coming from the Prime Minister; it is the opposite. I have said that this is legislation of hate. I have said that this is a message of hate coming from the Prime Minister. It came from George W. Bush initially. It is not going to be changed by me saying, 'Well, I shouldn't make that statement.' The Prime Minister brought the legislation in. I did not. The Prime Minister is discriminating. I am not. Discrimination is hate in this circumstance and it is not unparliamentary for me to say so. It is quite

proper for other people to argue that that is not the case. The Prime Minister can do that for himself. He has argued that this is not discriminatory. I say it is. When you discriminate against people, they feel they are being hated. If the Prime Minister feels that that is not the case then let him argue it. But that was what happened in the past with discriminatory laws against people of other races. They were based on hate and fear. This legislation has those same components but it is aimed in a different direction.

The Prime Minister could well have left this legislation off the agenda. He brought it forward to put it in the face of the Australian people on the eve of an election. Sadly, the opposition have felt that the Australian people would not be mature enough to see it for what it is and dismiss it. That is their decision, but the motivator here is the Prime Minister. I am not going to do other than call a spade a spade and say it as I see it. The Prime Minister can speak for himself; I can do likewise.

Senator Coonan—I think it is a matter of great regret, given the time, the hour and the day on which the Senate is sitting, that we have to have this kind of debate. It is clearly not appropriate to be reflecting on another member, particularly the Prime Minister in the sense of saying that the Prime Minister hates. Senator Brown has given an explanation as to why he has not withdrawn.

The ACTING DEPUTY PRESIDENT—Minister, you have to simply move the motion or determine that you are not going to move the motion. You cannot speak to the motion.

Senator Coonan—I cannot speak to the motion? At least, I have to move it first, obviously. In those circumstances, I do not propose to move a motion that Senator Brown be removed.

The PRESIDENT—Senator Brown, I invite you to continue your speech on the second reading.

Senator BROWN—Thank you. In that wise move by Senator Coonan, she said that we ought not reflect on other people in this parliament. If only the Prime Minister would set the example. What a reflection on same-sex couples this awful, nasty legislation is. What a reflection it is that they should be shut out, that they should be discriminated against—that the law should be not for people who love each other but for couples who are of same-sex; that the law should be for people who are heterosexual but not for couples who are of same-sex.

There was an SBS Newspan on this matter quite recently. Rather than this overwhelming majority the Prime Minister talks about, it showed that, with a majority of 44 to 38, people were opposed to same-sex marriages in Australia—but that was with the leader of the country advocating that point of view. I have been

around long enough to see the enlightening of times. These are the sorts of figures we used to see with regard to same-sex people not even being allowed to live together only 20 years ago. Now it is 90 per cent to 10 per cent or 80 per cent to 20 per cent. It will be the same with same-sex marriages a little further down the line. If we had leadership of quality in this country—if we had a Prime Minister and a Leader of the Opposition in this country who were prepared to lead on important community values—those figures would turn around and we would see people feeling comfortable with instead of fearful of difference and variety.

Finally, because I know there will be debate in committee and since we have been guillotined by the big parties, I ask: how can they do this to the young people of Australia who are just finding their sexuality—these numberless young people, quietly finding their own sexuality and feeling that they may be left out? This is a message from both the parties to thousands of wonderful young people who happen to be homosexual—gay or lesbian—that they are different and that they are substandard.

What a message from the Prime Minister of the day to those lovely young Australians! How dare he? How dare the Leader of the Opposition follow suit? How dare members say that to young people in that position when we should be saying: 'Be proud of yourselves. Celebrate yourselves.' This society celebrates difference. Shouldn't that be the message from this parliament? Isn't this the great Australia that celebrates difference—nature's own difference? Of course it is and of course that day will come. But here again on black Friday it is not to be. The big parties have fallen under the thrall of negativity.

The legislation will get through and will do untold harm to many people who will suffer the waves of discrimination coming from Capital Hill to wherever they are in Australia. More enlightened times will come, though, and this will be turned around.

Senator BUCKLAND (South Australia) (4.24 p.m.)—I seek leave to incorporate the speeches of Senator Hogg, Senator Denman and Senator Wong.

Leave granted.

Senator HOGG (Queensland) (4.24 p.m.)—

Senator Hogg's incorporated speech read as follows—

Firstly, I support the bill.

Having said that, there are two issues that I wish to raise in respect of this legislation and they are:

- the legislation does not in practice affirm the position it is said to affirm, and
- that, in matters such as this, Senators should be entitled to a conscience vote on the issues.

This bill was cynically introduced by the Government to 'wedge' the members of the Labor Party causing it internal dislocation and disruption on a socially sensitive issue know-

ing that there was a diverse range of views within the Labor Party.

Little did the Government expect that Labor would come to the considered and balanced view that it did.

Labor not only chose to respect the view that marriage was between a man and a woman, but also went further and gave undertakings that it would remove all forms of discrimination against same sex couples.

The wedge did not work.

It is a real pity that this bill is being rushed through the Senate before the Senate Legal and Constitutional Legislation Committee could consider the implications of the terms of the bill and suggest any changes that might improve the quality of the legislation.

Whilst there is an undertaking that the Legal and Constitutional Legislation Committee will review the legislation post its passing, it is highly unlikely that any of the findings of that review will see the legislation revisited.

The Government asserts that its objective in inserting a definition of marriage into the Marriage Act is to reinforce its belief that marriage can only be between a man and a woman.

But, it has failed to define at what point in being, is the sex of a man and/or a woman defined, as jurisdictions in Australia and overseas have raised that the psychological belief of sex would be the determinant factor.

In other words, a person undergoing a sex reassignment from one sex to the other could marry a person of his/her original sex which would result in a same sex marriage thus defeating the Government's stated objective.

This bill imposes no new conditions or requirements on marriage.

It does not make any new law as such.

The bill changes nothing that does not already exist.

2. I fully support that marriage is between a man and a woman.

Whilst I acknowledge that there are a diverse range of relationships in our community, I am firmly of the belief that the sole province of marriage is the union of a man and a woman to the exclusion of all others, voluntarily entered into for life.

My views are an amalgam of basic belief patterns and structures on which my life is built.

But, I know there are people in my own Party and on the other side of politics that have the direct opposite view to mine in this matter.

I respect their view greatly as I believe in instances such as this that they hold those views too for the deepest held personal reasons and should not suffer great personal pain and angst in debates such as this by being constrained by a Party position.

Therefore, in issues such as this, I believe, and have said consistently, that all politicians should have access to a conscience vote such that they are not forced to be at odds with their innermost fundamental and most fervently held beliefs on social issues like this.

I respect the fact that others do have loving and fulsome relationships outside the concept of the traditional marriage.

Marriage between a man and a woman is the fundamental basis of the organisation for our society and its uniqueness should be maintained to the exclusion of the many other diverse forms of relationship that exist today and might emerge into the future.

Senator DENMAN (Tasmania) (4.24 p.m.)—

Senator Denman's incorporated speech read as follows—

Australia in the 21st century ought to be renowned as a tolerant society. It should be respectful of the rights of all of its citizens.

I have to say that I have been extremely disappointed with the lack of tolerance and respect shown by some Australians during the debate about this legislation.

Instead of being a piece of routine legislation designed to codify standard practice, it turned into a campaign by some to vilify others in the community.

Some of the letters and emails I have received in relation to this legislation have been considered and passionate, reflective of genuinely

held views. But others have sadly displayed a level of intolerance and even hatred which have no place in the Australia of 2004 and beyond.

I was dismayed by those who used the recent Marriage Forum here in Canberra to denigrate others.

I have pondered the legislation many times. I have wondered whether it is necessary. After all, it simply states the practice which we have followed in this country for many years.

The Prime Minister originally announced that this bill would be a part of a series of measures pertaining to relationships.

Quite appropriately, the proposed measure in relation to restricting inter country adoptions has been shelved. Adoptions are the responsibility of the states and territories and those are the appropriate jurisdictions in which those matters should be considered.

Sadly, whilst this Bill, has once again, somewhat hastily, been brought before the Senate, there is no proposal from the Government to address the other issues foreshadowed by the Prime Minister.

I make no apology for listening to and considering the matters which all of my constituents raise with me. I have always been and advocate for tolerance and against discrimination.

For too long, some Australians have not enjoyed the same rights and opportunities as others.

But the time should have been long gone when addressing these matters ought to have become a way of driving a further wedge between Australians.

This legislation has two purposes. First of all it formally defines marriage in the manner in which it has been traditionally accepted in this country.

It seems that this remains the view of the majority of Australians. I am not convinced that there is anything inherently unfair or unjust in the enactment of the provision.

But there should not be permitted to be made, thereby, any assumptions which would purport to reduce the rights and privileges of Australians who chose to live in other forms of relationship.

Sadly I know that some will so interpret the passage of this legislation.

It is thus imperative that appropriate other legislation be enacted to protect those rights and privileges. Such legislation, to me, is just as important, and I am pleased that we on this side of the House, along with a majority on the cross benches agree.

I hope that in a very short time that the personal views that many of those opposite will prevail over the seeming intransigence of the prime Minister and the Government in dealing with these important issues of equality.

The same ladder of opportunity should be available for all Australians. Some rungs should not be removed because of the status of the relationship in which Australians choose to live.

I will return to this issue later.

The second aspect of this legislation would ensure that same sex marriages, permitted under laws of other countries, would not be recognised as marriage in this country.

Again, I accept that this is the considered view of the majority of my constituents in Tasmania and of the Australian people. This may change in the future, as has obviously been the case in other jurisdictions, but for the time being, at least, it is not inappropriate for the law of this country to so reflect community wishes.

I note that this is not, however, the view of all Australians, particularly many young adults, who have presented their alternate position to me.

But I am equally certain that the majority of Australians also believe that people who choose to live in relationships other than marriage as defined by this legislation, should not thereby be denied basic rights and privileges.

Every state and territory in Australia, with the exception, as I understand it, of South Australia has responded to this community expectation.

Legislation has been enacted in each of the seven jurisdictions which provides appropriate equality before the law with respect to matters such as intestacy, property matters, medical decision making, statutory compensation acts and state superannuation.

The Commonwealth must follow suit. Just as both sides of the chamber have agreed that this bill ought to be enacted, so too should it be agreed that legislation protecting the rights of all Australians, regardless of their relationship status, be introduced and passed.

In fact I believe that the latter is even more necessary.

Whilst it is possible to argue that the provisions of this Bill, are already the law in this country, it is not the case with the other reforms. They are essential to ensure we provide equality for all Australians.

And I should emphasise that whilst it is often gay, lesbian, bisexual and transgender Australians that are seen to be the most outspoken in their rightful pursuit of these rights, there are many other Australians in relationships, which do not enjoy the rights of others.

Take for example, never married siblings living together, other companion and caring relationships and like situations.

I accept that it is the community's expectation that marriage, as set out in this Bill, be a heterosexual institution. I therefore support the legislation.

I have to say, however, that I would be a great deal more comfortable in doing so, if I knew that there was other legislation in place or, at least, forthcoming which would deliver appropriate rights and privileges to other Australians, who choose forms of relationship other than marriage.

In my view there may possibly be no need for the current bill, if this other legislation were already in place.

I state my commitment, in the time that I have left in this place, to seek appropriate equal rights for all forms of relationships accepted within this country.

I should make it clear that I am not advocating open slather. I am not in favour of the legitimisation of bigamy, child marriages or the like.

But it is a fact that the other relationships, to which I have referred, are accepted in Australian society, as evidenced by the passage of the legislation in the states and territories.

I am proud to be a senator, representing the tolerant new Tasmania of the 21st century.

Tasmania now has what are regarded as some of the most progressive relationship laws in the World. And as it happens contrary to the expectations of some, hell and damnation has not been wrought upon our beautiful island.

Tasmania has taken the substantial step of introducing a partnership registration scheme.

The Tasmanian Partnership Registration Scheme allows for everyone in a significant personal relationship to so register that relationship with the Registry of Births, Deaths and Marriages and to receive a certificate of registration.

The legislation is wide ranging. There are two categories of registration. One which covers both same sex and what we generally know as de facto couples and a second for non-conjugal couples.

Couples in each category must comply with the relevant criteria in order to be registered. Entry into and termination of registered relationships is regulated in the same way as marriage.

This is a serious and valuable advance in legislation. Whilst registration extends no further rights, other than in relation to parenting, it serves the key purpose of providing couples in legitimate relationships with a recognised and simple way of proving the relationship if challenged.

There may be other methods of achieving the rights which ought to be afforded to Australians in relationships other than marriage but it has succeeded in providing equality, and also, I believe, extending tolerance within the Tasmanian community. It has provided dignity.

I believe that rather than create division in our society, as some would have had it, measures such as this, have brought Tasmanians together. It had significant support across party lines and was supported by the traditionally conservative Tasmanian Upper House, which has a majority of independent members.

Recently, one constituent wrote to me in these words, 'I have seen the positive change that the legislation has brought about in attitudes in the community in general and in the self-esteem of many Tasmanians living in same sex couples.'

I have no doubt, from my own observations that he is correct.

Similar registries exist in many Western European countries and in some US states. Great Britain and New Zealand are both expected to pass similar enacting legislation this year.

Each of these jurisdictions have already or are in the process of acknowledging the importance of legislation which extends standard rights to all citizens, regardless of the relationship they are in.

Why should an unmarried sister on the death of the sibling with whom she lived, or a gay man or woman in a similar situation have to go through the heartache of having to prove the relationship or survive the challenges of other relatives, in order to receive the benefits their partner would have wanted them to have.

In drawing my remarks to a close, I affirm my support for the passage of the bill.

In doing so, however, I also urge all senators to consider the real need for other legislation necessary to ensure appropriate recognition of all personal relationships and the rights that flows therefrom.

Senator WONG (South Australia) (4.24 p.m.)—

Senator Wong's incorporated speech read as follows—

It is necessary in politics to place decisions and actions in their context. The decision of the Howard Government to introduce this Bill to amend the Marriage Act has not been taken in a vacuum. This decision has been taken in the context of eight years of decisions made in the interest of political gain, at the expense of the cohesion of the Australian community.

It is in the context of the Howard Government's response to the High Court's Wik decision, where the Howard Government moved to extinguish native title under the false claim that suburban backyards were at risk of being taken by indigenous Australians.

It is in the context of the Prime Minister choosing to quietly endorse the sentiments of Pauline Hanson in an attempt to manipulate her support base.

It is also in the context of the Howard Government's false claim that asylum seekers threw their children overboard in order to find safe haven on our shores.

That claim came as we approached the last election, and was a cynical stunt designed to denigrate people—to make some people seem less decent and therefore less worthy—in order to gain votes. It sought to create a community of 'us' against 'them'.

And the Prime Minister's decision to amend the Marriage Act now is in the context of an election that is likely to be held within weeks. The Prime Minister would happily make lesbian and gay Australians the asylum seekers of this election. He would dearly love this to be the new Pacific Solution.

Above all else, this bill comes in the context of the new political correctness of the Howard Government's Australia. This Prime Minister is always keen to accuse those who work for a fairer Australia of being motivated by some apparently twisted desire to be politically correct. Well, what is politically correct is not fixed, but instead is what is popular,

and this Government has made the populist and subtle denigration of minorities their meal-ticket. Over the past few years, any vestiges of fairness as correctness have been eroded and replaced with prejudice as correctness. A nod and a wink to prejudice is seen as a legitimate political tactic.

If people oppose the Howard Government's agenda in relation to this Bill, I hope they recognise it belongs in the context of the Howard Government's broader agenda to undermine the achievement of fairness—of social justice—in Australia. If people are offended by the Prime Minister's manipulation of prejudices for political advantage in this instance, they should consider that this is not the first instance of such manipulation. And they should recognise that while oppositions and minor parties may tinker with the details of legislation, governments bring forward laws, and the tone of the national debate is set by the government of the day. Prime Ministers in Australia, like presidents in the United States, have a unique platform from which to frame national identity.

When the Prime Minister said recently that Australia has finally gotten over the debate about our national identity, what he really meant was that he had gotten over it, and he believes his view has prevailed.

In terms of the specific effects of this legislation, it has minimal practical effect. It reaffirms the existing common law and statutory definition of marriage. It does not change the legal definition, other than to add the phrase, 'entered into for life'. Of course marriage is intended to be for life but can never be guaranteed for life—and marriages certainly won't be more likely to survive because this phrase is included.

The Government has attached much weight to this legislation, to this bill that simply confirms the existing law. Perhaps they believe it serves a symbolic purpose, that it will somehow demonstrate they really care about Australia's families.

Perhaps they hope that it will distract attention from some of the everyday hardships and difficulties Australian families face on their watch. Rising health costs, being unable to find a bulk-billing doctor for your children or an aged care bed for your parent, the increasing costs of education—these are some of the daily problems families face.

The Government's attempt to use this legislation as a distraction from these issues is self-evident. It is further exposed by their pathetic attempts to misrepresent Labor's position on the bill, and the dishonest and prejudiced scare campaign attempted by those opposite.

From the government who ignored the vast majority of Australians in their recent spree of tax-cuts for the wealthy, the government that strips families of their tax return in their heavy-handed management of their flawed family benefit system, the government that failed to fund the pneumococcal vaccine, and continues not to fund appropriate polio and chicken pox vaccines for Australia's children—from this government we now hear long loud declarations of their support for families.

And they offer up a bill that simply restates the current legal definition of marriage as evidence of this.

The restatement of the definition calls to mind another famous statement by the Prime Minister, that 'we will decide who comes into this country, and the circumstances in which

they come.' That statement was made at the Liberal Party campaign launch before the last election. It was a statement of fact, not a new policy initiative. It simply emphasised a long standing predicament.

The Prime Minister made that statement with a view to capturing nationalist sentiment in the wake of September 11 and the arrival of asylum seekers by boat, and wanted to subtly link the two. Now he restates the definition of marriage, not because there has been any concerted move to change the definition—there hasn't, not by lobby groups and not by parliamentarians—but because he wants to beat his chest about how conservative he is.

Perhaps the next Liberal slogan will be 'We will decide who gets married in this country, and the circumstances in which they marry.'

One thing the Government is not always able to decide is the circumstances in which children are raised, and unless they forced gays and lesbians to be sterilised, there is little they can do to stop loving same sex couples bringing up their own children.

Nevertheless, the Prime Minister has also tried to make it impossible for same-sex couples to legally adopt children from overseas.

This is what we have come to know under this government as the dog whistle: an appeal to people by implication rather than explicit meaning. With the children overboard affair, the Prime Minister and his government implied that asylum seekers were prepared to terrorise Australians and even their own children in order to achieve asylum. Now, the Prime Minister is tapping into a deep-seated prejudice held by some in our community that lesbians and gays are unsuitable parents. He wants Australians to believe that sexuality is the sole criteria for good parenting.

Many in our community have not witnessed the reality of lesbian and gay parenting and so are closed to the possibility that it might not be as dangerous as they might assume. That hesitation is a typically human one. It is hard to understand something which is not in the realm of your experience and not what you're used to—that goes for most of us.

In fact, lesbian or gay parents want and have children for many of the same reasons that other parents do. And like all parents they do the best they can for the children they have.

Above all, it is hard to argue that a child's best interests can be determined by a single piece of legislation. That can only be determined on a case by case basis, and I struggle to understand how a destitute orphan overseas could be worse off with caring parents in Australia.

Sadly, however, that is what our Prime Minister is saying. He says it is better for a child to live in poverty, in war, without shelter or hope, to be sold into slavery or prostitution, than to be cared for by a same-sex couple, so sickened is he by the prospect of them as parents. I find this deeply disturbing.

My colleague, the Member for Sydney, in speaking on the original Bill, gave some heart warming, real-life accounts of gay and lesbian parenting and I would urge honourable senators to read the Hansard of her speech. Indeed, the Member for Sydney, the Member for Grayndler and a number of my colleagues have been very strong advocates for lesbian and gay Australians. And so have rank and file colleagues in Rainbow Labor, which has since its inception only two years ago, brought the Party a long way forward in recognising

that fairness for gay and lesbian Australians is part of our commitment to social justice more broadly.

It is people like these who—out of personal experience or a desire for an Australia that is fairer for their friends and family members—have brought a renewed sense of fairness to Labor's agenda. A recognition that what is important is what lies between two people—the content of their relationship—not their gender.

We will not say one person's love is worth less than another person's love, or that one family is more of a family than any other. Nobody has a monopoly on commitment and love, nobody has the right to judge the worth of another person's relationships.

These are intensely personal issues and the role for government here is questionable; certainly, it is questionable that a government that apparently prides itself on supporting the rights of the individual seeks to curb those rights in the interest of electoral politics.

There are big differences between the Howard Government's approach on this and our approach, and this is in keeping with the historical fact that it is Labor governments that have consistently delivered same-sex law reforms in this country. We do not want lesbian and gay Australians to become a political football in the coming election.

We reject the Government's dog whistle on adoption, and we have indicated that we would oppose the Government's amendments in its original bill on this point. The Attorney-General has blatantly misled the Australian people by saying Labor's amendment will stop foreign countries accepting Australian couples as adopting parents.

We also recognise that the debate around gay marriage in Australia is actually a fairly new one. Unlike the United States and other countries, the debate in Australia has not focused on marriage but on equality more broadly. In large part that reflects Australia's quite comprehensive accommodation of de facto couples in law. In fact, all Australian states, other than South Australia which has signalled amendments to do so, now recognise same-sex relationships in their de facto laws.

Labor will conduct a full audit of Commonwealth legislation, to identify and remove all discriminatory provisions across areas like superannuation, tax, veterans' affairs, social security and immigration. No other party in Australia will do this. We will also legislate against vilification and harassment on the basis of sexuality.

Labor has also committed to ensuring that same sex relationships have equivalent status to de facto heterosexual couples. Again, no other party in the federal parliament can and will do this. The Prime Minister promised superannuation rights for same-sex couples. However, the Bill has not arrived. It is a Labor MP, the Member for Grayndler, who has been pushing for same-sex super since 1998. The Howard Government refuses still, even this month, to debate that Labor Bill.

Perhaps an analogy that can be entertained on these issues is an American experience. We know that the Prime Minister is inspired by current US policy, to the extent that he even mimics his American mentor's electoral strategy to ban gay marriage. However, there is a dark chapter in American history that also warrants consideration.

It was once illegal in several states of America for people of different races to marry. Black and white Americans who

wanted to marry could not in some states. This was a popular policy across most of America. Nevertheless, in 1967, the US Supreme Court struck those laws down, arguing that the right to marry was one of the most basic human rights. Changing the law didn't necessarily change public attitudes, for the next year 72% of Americans still opposed interracial marriage.

We have now consigned those attitudes to the graveyard of history where they belong. We condemn them as dated, offensive and bigoted, and we certainly agree that those attitudes were framed by prejudice.

I hope it is only a matter of time before this Prime Minister is similarly abandoned by the Australian people. I hope instead we will look to a future that is about hope and opportunity, and not about old fears. A future about what we can be as individuals and as a nation, not about what we cannot be.

Senator FERRIS (South Australia) (4.24 p.m.)—I seek leave to incorporate Senator Santoro's speech.

Leave granted.

Senator SANTORO (Queensland) (4.24 p.m.)—

Senator Santoro's incorporated speech read as follows—

This bill is not controversial, except for those who want to fundamentally change not only the law of Australia but also a fundamental tenet of our society.

It has the support of the Labor Party, because all it seeks to do is to make it clear that marriage in Australia is a choice made by a woman and a man.

That has always been the understanding of marriage. That has always been the practice in European societies—and indeed in human society everywhere.

Marriage fundamentally helps create social conditions in which monogamy is the practice, the children of marriages have stable and loving homes in which to be nurtured to adulthood, and society benefits from the stability thus created.

It is the ideal. Australians overwhelmingly understand the principle of monogamous marriage for life and most seek to attain this state.

The fact that there are failures, the fact that a proportion of marriage relationships do not work out is no reason to argue for weakening the institution of marriage by legislation.

Neither is there any reason to change the meaning of marriage by extending the law's recognition of it to people who logically cannot fall within its ambit.

The Marriage Amendment Bill 2004 gives effect to the government's commitment to protect the institution of marriage by ensuring that marriage means what it has always meant and that same sex relationships cannot be equated with marriage.

The principal provisions of the bill define marriage in the terms traditionally understood—as 'a union of a man and a woman to the exclusion of all others, voluntarily entered into for life' and 'confirm that unions solemnised overseas between same sex couples will not be recognised as marriages in Australia'.

The problem is that up to now there has been no definition of marriage in the Marriage Act. It was never necessary, since it was universally understood.

However, section 46(1) already requires authorised celebrants, who are not ministers of religion of a recognised denomination, to explain the nature of the marriage relationship before solemnising a marriage.

The celebrant is required say certain words, including: 'Marriage, according to law in Australia, is the union of a man and a woman to the exclusion of all others, voluntarily entered into for life,' or words to that effect.

This bill amends the Marriage Act so that marriage defined in these terms, in subsection 5(1). It amends subsection 88B(4)—in Part VA of the Act relating to recognition of foreign marriages—by making it clear that the meaning given to marriage in subsection 5(1) applies to Part VA.

I have received a great many representations from Queenslanders and other Australians about this bill and what it proposes to do.

I'm sure every other honourable senator has too.

The majority of the hundreds of representations made to me have been from people who support the amendment of the Marriage Act proposed in this bill.

It is clearly an issue on which huge numbers of Australians feel very strongly.

I have also received strong representations—a lot of strong representations—from people who want the understanding of marriage in Australia to be changed, so that it can encompass unions that are not between women and men.

My view is clear. It is that marriage must be defined as we have always understood it to exist. There can be no such thing as 'same sex marriage'.

I respect the views of everyone who makes representations to me, on any issue. It is always a duty gladly performed to give voice in this place to constituents' representations.

It is clear that a minority of Australians—I suspect a small minority—believe it is time to accord 'marriage' rights to couples who cannot naturally have children together.

They see the move towards recognising same-sex marriages overseas as an opportunity to change the fundamental mould of our society.

They are entitled to make such judgements and to propose consequent changes to our basic laws.

The majority of Australians are entitled to reject these judgements and refuse to countenance any act that would have the effect of diminishing the meaning of marriage.

And I believe the majority of Australians do reject the concept of recognising same-sex marriages.

That is certainly not a matter of making moral or any other judgements on the life choices of free Australians. I certainly make none in the context of this bill.

Of course, the amendment to the Marriage Act that we are discussing today expresses a Judeo-Christian view.

That in itself is unremarkable, I would have thought, since it is the fundamental moral basis of our law as well as of our custom.

But objectors to this bill should consider that monogamous unions between a woman and a man have underpinned every successful civilisation in human history.

In this instance, the Judeo-Christian view accords exactly with the views of other religions—and societies whose basic laws originate in the commandments of their own religions—that have no connection whatsoever with our historic faith.

These are points the Prime Minister made with some force in his address to the National Marriage Forum last Wednesday.

The Prime Minister also said that if there is to be a change in the understanding of marriage, this is not something that should happen bit by bit, judgement by judgement, through a judicial process.

If there is to be a change—and I just observe that there is no evidence I have seen that suggests the mass of the people seek such change—then as the Prime Minister says, it should come from the parliament.

Parliament makes the laws by legislation on behalf of the people.

The courts apply the laws and from time to time interpret them.

It is especially important to stick to that convention in matters of serious social policy.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (4.24 p.m.)—On behalf of the government, I want to sum up on the [Marriage Amendment Bill 2004](#) and thank honourable senators for their contributions to the debate on this bill. Given the time constraints I referred to a few moments ago, I will be brief and will not be canvassing all the issues that have been raised in the course of the second reading debate. I also thank opposition senators for their support for the measures contained in this bill. I place on record that I recognise, as does the government, that there are dissenting views in respect of the objectives intended by this legislation. These views have obviously found expression in the course of this debate.

The timing and urgency of these measures, however, is brought about by the fact that, if we do not act in parliament to address this matter, the matters that are the subject of this legislation will be left to the judiciary to decide. Much has been made of the fact that no decisions of our courts are challenging the accepted common law definition of marriage, and I remind the Senate that there are already proceedings on foot to seek a declaration of validity in Australia for same-sex marriages performed overseas. That is the reason the government has taken the lead on this issue.

I wish to make it very clear on behalf of the government that these provisions are not about discriminating against anyone. They are about this parliament—and not the courts—making clear the meaning of the fundamental institution of marriage, deciding what the laws will be and not leaving it up to the courts. In summary, the purpose of this bill is to give

effect to the government’s commitment to protect the institution of marriage by ensuring that there is a clear definition of marriage in the Marriage Act. The other major provision confirms that unions solemnised overseas between same-sex couples will not be recognised as a valid marriage in Australia.

The issue gives rise, as I said, to strong opinions and I remind honourable senators that this bill reinforces what has always been the traditional, and indeed the legal, understanding of marriage in Australia. I am not sure of the status of the amendments, but I understand that several amendments have been proposed by the Australian Democrats and the Australian Greens. It is the government’s view that the Marriage Act is not the appropriate legislation for these amendments. The bill is dealing with marriage and does not set out in any way to deal with de facto or other relationships. The bill merely seeks to formally confirm the current legal understanding of marriage in this country. The amendments proposed would fundamentally change the nature of the Marriage Act.

In this bill the government seeks to reinforce marriage and its status as a fundamental and special institution in our society. I do not think anyone seriously disagrees with that. This has always been the government’s view and it is what underlines the straightforward provisions in the bill. In those circumstances, and having regard to the time, I commend the bill to the Senate.

Question put:

That this bill be now read a second time

The Senate divided. [4.33 p.m.]

(The Acting Deputy President—Senator H.G.P. Chapman)

Ayes.....	36
Noes.....	8
Majority.....	28

AYES

BARNETT, G.	Boswell, R.L.D.
Campbell, G.	Campbell, I.G.
Carr, K.J.	Chapman, H.G.P.
Conroy, S.M.	Coonan, H.L.
Evans, C.V.	Faulkner, J.P.
Ferguson, A.B.	Ferris, J.M. *
Fifield, M.P.	Forshaw, M.G.
Harris, L.	Hogg, J.J.
Humphries, G.	Johnston, D.
Knowles, S.C.	Lightfoot, P.R.
Lundy, K.A.	Macdonald, I.
Macdonald, J.A.L.	Mackay, S.M.
Marshall, G.	Mason, B.J.
McLucas, J.E.	Moore, C.

Patterson, K.C.	Payne, M.A.
Scullion, N.G.	Troeth, J.M.
Vanstone, A.E.	Watson, J.O.W.
Webber, R.	Wong, P.

NOES

BARTLETT, A.J.J.	Brown, B.J.
Cherry, J.C.	Greig, B.
Murray, A.J.M.	Nettle, K. *
Ridgeway, A.D.	Stott Despoja, N.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator BROWN (Tasmania) (4.36 p.m.)—On behalf of the Australian Greens, I move amendment (1) on sheet 4395:

- (1) Clause 1, page 1 (line 5), omit “Amendment”, substitute “Discrimination”.

The Green amendment substitutes the word ‘discrimination’ for the word ‘amendment’ in the name of this bill so it would make it the Marriage Discrimination Bill 2004. It is a simple exercise in being honest and truthful. It is one that those who value honesty, if they do not value love in this place, will agree to.

Senator GREIG (Western Australia) (4.37 p.m.)—The Democrats will of course support the amendment because it goes to the heart of the matter. While we have heard much and talk and rhetoric today about how the bill is all about reinforcing traditional marriage, the point that I and others have made is that it does nothing of the sort. It denies the fact of the evolution of marriage. It denies the fact that marriage was once banned between interracial relationships. It denies the fact that marriage was once denied the opportunity for divorce. It denies the fact that interfaith marriage was once banned. It denies the fact that marriages were once based on the notion of women being regarded as the property of their husbands—all things which have changed through the evolving paradigm of marriage.

It is a great pity that the opportunity before us today to eradicate one last element of discrimination within the Marriage Act could not be embraced. Senator Brown’s amendment is accurate: the proposal before us is to legislate in stone a definition that quite specifically discriminates against a section of the community. There are those who argue that that discrimination is valid and warranted; nonetheless, that does not change the fact that it is discrimination. We support the amendment.

The TEMPORARY CHAIRMAN (Senator Chapman)—The question is that amendment (1) moved by Senator Brown be agreed to.

Question negatived.

Senator NETTLE (New South Wales) (4.39 p.m.)—I move on behalf of the Australian Greens amendment (1) standing in Senator Brown's and my name:

- (1) Schedule 1, item 1, page 3 (lines 7 and 8) omit the definition of "*marriage*", substitute:

marriage means the union of two persons, regardless of their sexuality or gender identity, voluntarily entered into for life.

This is an amendment which changes the definition of marriage from the one proposed in this legislation. It changes it to read: '*marriage* means a union of two people, regardless of their sexuality or gender identity, voluntarily entered into for life'. This amendment is about recognising that there are a whole raft of different relationships that people enter into and seek to have recognised under the law as a marriage. This amendment says, 'That institution of marriage, that opportunity and choice for people to have their relationship recognised under the law is available to all people regardless of their sexuality and gender identity.' They may be intersex people. They may be people who have had gender reassignment surgery and want to have their relationship recognised with their loving partner.

This amendment is about taking away the discrimination that is inherent in the piece of legislation that we are debating at the moment and ensuring that the opportunity for people to have their relationship recognised as a marriage under the law of this country is available for all individuals. This is an amendment that the Australian Greens are bringing in so that all people, regardless of their sexuality and gender identity, have the opportunity to have their relationship recognised under the law as marriage.

Senator GREIG (Western Australia) (4.41 p.m.)—The Democrats will also support the amendment. Our core argument has been that rather than quarantining marriage to a distinct group it ought to be non-discriminatory but nonetheless defined. The definition spoken to by Senator Nettle would do the reverse of what is before us today: rather than prevent lesbian and gay people from accessing civil marriage, it would allow that. Sadly, that is not the path that we are headed on today, unlike other Western countries—Canada, Denmark, the Netherlands and some states of the US—which have at the very least debated these issues sensibly and moved progressively towards the inclusion of same-sex relationships within their jurisdictions.

I note too that there are similar debates in New Zealand and Britain, although based more around the notion of civil unions. Sadly, we cannot do that and it seems there is no prospect of civil unions under a potential Latham Labor government, and there has been nothing but silence from Labor when questioned on that point. It strikes me as quite strange that in other jurisdictions the debate around same-sex marriage so

alarmed and concerned conservative MPs and religious organisations that they suddenly announced that what the governments in those countries ought to do would be to bring in relationship registers, civil unions or have some other form of recognition but not marriage.

Curiously, the debate in Australia—or the lack of debate really—and the way it has played out is that both civil marriage and other forms of relationship recognition have been denounced by conservative politicians and religious organisations. The debate in that sense is much harsher in terms of a complete denial of the humanity and dignity of a same-sex relationship and a failure to acknowledge that many in such relationships are raising children. Implicit in that is the notion that such children should be further discriminated against by not allowing their partners to marry. It strikes me as odd that groups which claim to be concerned about the family are the same groups which so readily and happily condemn same-sex relationships with children in them, even though—surely—the best interests of those children should be their principal concern.

These groups would argue that same-sex couples ought not be having children, but the fact is that they are. You cannot stop lesbian and gay people from having children. There are increasing numbers of lesbians having children. Most often children in same-sex relationships are from previous heterosexual relationships, but increasingly we are finding, through fertility programs, adoption and access to IVF, many same-sex couples—mostly women—are having and raising children. If we truly believe that the best environment in which children can be raised is marriage, why would we possibly deny that to same-sex couples raising children? The amendment Senator Nettle has moved would incorporate that and would allow for a broader range of definitions. It is more inclusive and much more reflective of the direction the Democrats would like to see Australia take.

Senator STOTT DESPOJA (South Australia) (4.44 p.m.)—I rise to support the comments of my colleague. Rather than unnecessarily dragging out this debate by speaking in addition to Senator Greig, I have sought permission from other members of the chamber to incorporate my speech notes that encapsulate some of my views. They would have been much broader and longer had there not been a guillotine in place today. I seek leave to incorporate my notes on the amendments and the [Marriage Amendment Bill 2004](#).

Leave granted.

The speech read as follows—

I wish to incorporate some of my views about the proposed amendments to the Marriage Act contained in the Marriage Amendment Bill 2004, although due to a guillotine I did not have the opportunity to speak to this legislation.

Clearly, this is a Bill the Government considers to be of national importance, originally listing it for debate prior to an Anti-Terrorism Bill, the Telecommunications (Interception) Bill and the Surveillance Devices Bill. So important is it to the Government that Gay and Lesbian couples not be able to marry or adopt, that they have swept aside other legislation to deal with this Bill. And, unfortunately, as I feared, the Labor Party have helped them do it. In fact, so willing are the Labor Party to help the Government get their agenda through the Senate that they have agreed to a guillotine on this legislation to ensure it passes before the Senate rises, potentially for the last time before a Federal Election.

This Bill has already been before the Senate. The Senate decided the Bill required further examination and sent it to Committee. This Committee has received an extraordinary number of submissions, and members of the Committee have been working through them over the past months. The Committee was due to report on October 7, now it would seem that this Committee's work has been a waste of time.

Content to subvert the democratic process, the Labor Party have allowed the Government to bring this Bill before the Senate today, and at the conclusion of debate, they will renege on the Gay and Lesbian community and support this Bill. Sadly, for the third time today, the Labor Party will capitulate and support a Bill which is not in the best interests of Australia.

At a time when many parts of the world are moving forward, and recognising that relationships and families come in all shapes and sizes, Australia is moving backwards. This Government is seeking to enshrine in law the nuclear family, to the exclusion of all others. It speaks of supporting families, but means only some kinds of families, and only some of the time.

This Government has shown itself willing to amend the Marriage Act 1961 in what they purport to be the best interests of families, yet they have made absolutely no effort to introduce Paid Maternity Leave, or other measures that would genuinely help Australian families. This Bill isn't about protecting families it is about discriminating against gay and lesbian couples. It is a blatant attack on gay and lesbian relationships, an indication that while gay and lesbian relationships may be tolerated, they certainly are not entitled to the same rights, privileges and protections as heterosexual relationships. It is legislative proof that Gay and Lesbian couples are second class citizens, and signals to the community that the Australian Government that this kind of discrimination is acceptable, and even sanctioned.

As Ms Ruth Thompson, convenor of Equal Opportunity Practitioners in Higher Education Australasia noted

'My organisation has a particular interest in ensuring that education and employment in the higher education sector is free from discrimination and harassment, and provides inclusive work and study environments. The proposed legislation is divisive and sends the wrong message to the public on what constitutes acceptable community standards'.

I should clarify though, not all members of the Government are as apparently gung ho about this regressive and discriminatory attitude to gay and lesbian couples. The Hon. Trish Worth, member for the seat of Adelaide in my State of South Australia, has apparently opposed these amendments. As The Advertiser reported on July 5, Ms Worth apparently spoke in

the Party Room in opposition to the Prime Minister's efforts to ban same sex marriage, fearing that it would cost her votes. The seat of Adelaide is one of three key marginals in South Australia, and a seat held by the merest margin of .62 percent.

In an effort to avoid this backlash, Ms Worth contacted concerned constituents via a letter which said she believed the move to be 'completely unnecessary' and stating that, in her view, 'the Government does not need to take such a heavy handed approach to an issue that...does not need to be fixed'. She further said while she saw no real need for same sex marriage, she understood 'meaningful same-sex relationships and respect those relationships as I would any other relationship'. If only this were an attitude shared by her Government colleagues, and the Opposition. Unfortunately, it's not. They are willing to create a hierarchy of relationships which exalts heterosexual marriage for the continuation for the species and which utterly disregards other relationships. This is 2004, in a pluralistic society. This when other nations are embracing the modern family. This when other nations are proactively supporting happy healthy relationships, and legislating to ensure that gay, lesbian, transgender and intersex people enjoy the same legal rights as all other people, the legal rights that international instruments guarantee them.

Perhaps it should not come as a surprise that this Government is willing to enact legislation which breaches international instruments, including the Hague convention and other human rights instruments. They have shown repeatedly that international law and international instruments are not worth the paper they are written on. They have shown time and time again a willingness to erode, and tear down principles of law constructed over decades, and sometimes centuries.

I am not surprised that this Government has pursued this agenda. They have shown again and again over their 8 years in Government a willingness to discriminate against gay and lesbian couples. However, I thought better of the Labor Party. For all their supposed commitment to the GBLT community, the Labor Party's legislative record in this area is woeful, and today they will soundly demonstrate where their loyalties lay in populist politics, rather than with the groups who they claim to represent.

At a time when our country is crying out for leadership, not poll-driven populism, and not the 'isn't wasn't my fault you were misled, I don't have an obligation to ensure the information I provide the public is accurate, well there aren't any weapons, but there might have been', politics we have seen over the past few months from this Government, the Labor party have capitulated. As many of the emails I received said, the Labor Party should be showing their credentials as an alternative Government, not as a Party willing to do whatever the current Government wants for fear of public backlash.

Ms Thompson, also appropriately said,

'At a time of deepening community divisions due to the Iraq war, the Marriage Bill is a diversion which non-government parties should place squarely in perspective. As the alternative government, the Labor Party should show genuine leadership by: 1. not pre-empting the Senate enquiry, 2. demonstrating a public commitment to building inclusive social values'

Let me remind Labor Party members in this Chamber, in the lead up to a federal election, of the poor record of this small target strategy. If they are wanting another three years on the Opposition benches, their continual kowtowing to the Government's agenda will ensure it.

This has been a shameful week in the Senate. It began with the news that our High Court will allow as Constitutional the locking up, potentially for life, of detained persons who have done nothing wrong. It ends in Friday the 13th with a guillotine designed to thwart any democratic debate on the issues before us. Shame.

I note that I am the only South Australian Senator opposing this move by the Government.

Senator LUDWIG (Queensland) (4.45 p.m.)—Labor does not support the amendments. We made that clear during the second reading speech. Labor has in fact made clear that we will not support a change to the existing legal status of marriage.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (4.45 p.m.)—The government does not support the amendment for the reasons I outlined in my summing up speech. The government is seeking simply to reinforce marriage and its status and to give effect in legislation to what is the common legal understanding of marriage.

Senator NETTLE (New South Wales) (4.46 p.m.)—I thought I might explain why the Greens' amendment has this particular wording. We made it intentionally broad so that it says: 'Regardless of sexuality and gender identity as a way to include individuals who may have intersex condition or transsexual people who may have had gender reassignment surgery.' That is the intention of the amendment and why it is broad—to ensure that all individuals, regardless of their current sexuality or change in their sexuality during adult life or childhood, have the opportunity to access the institution of marriage if they so choose. I wanted to explain why we have phrased this particular amendment in the way we have.

Question negated.

Senator NETTLE (New South Wales) (4.46 p.m.)—I move the Greens' amendment R(2) on sheet 4338 revised, in both my name and in the name of Senator Brown:

R(2) Schedule 1, item 3, page 3 (lines 15 to 19), omit section 88EA, substitute:

88EA Certain unions are marriages

A union solemnised according to the law of a foreign country between two persons, regardless of their sexuality or gender identity, voluntarily entered into for life shall be recognised as a marriage in Australia.

This amendment ensures that marriages between two persons, regardless of their sexuality and gender identity, that have been entered into according to the law of

a foreign country shall be recognised as a marriage in Australia. This amendment is to make it clear that individuals who have chosen to have their relationship recognised in another country, perhaps another country with a more enlightened view of the types of relationships and marriages that people experience, can have that relationship equally recognised in Australia when they choose or if they choose to come back to or to live in Australia. It is an opportunity to recognise those people because they have not had the opportunity to have their relationship recognised under Australian law and have chosen to make an often difficult choice to travel overseas and go to a country in which they can have their relationship recognised. They have gone to that effort because they specifically wanted to have their relationship recognised under the law. This amendment says, 'Your relationship will be recognised under Australian law. If you have gone to a country and married under a legal system that is more enlightened than the one we have here and in which your relationship is recognised, it will be recognised here in Australia as well.' That is what the second Australian Greens amendment seeks to do.

Question negated.

Senator GREIG (Western Australia) (4.49 p.m.)—by leave—I move Democrat amendments (1) and (2):

(1) Schedule 1, item 1, page 3 (lines 7 and 8), omit the definition of *marriage*, substitute:

marriage means the union of:

- (a) a man and a woman; or
- (b) a man and a man; or
- (c) a woman and a woman;

to the exclusion of all others, voluntarily entered into.

(2) Schedule 1, item 3, page 3 (lines 13 to 19), **to be opposed**.

Democrat amendment (1) is to help make clear, since the original bill was mooted, that we are strongly opposed to the government's attempts to use gay and lesbian, bisexual, transgender and intersex people as a political wedge. We have consistently attempted to achieve reform in this area for some years and we support an end to discrimination of all kinds of GLBTI individuals.

We too propose that discrimination within the Marriage Act ought to be removed, to the extent of broadening the opportunity for those who might seek civil marriage. So for us amendment (1) would change the definition of marriage or substitute it so that marriage would be: 'The union of a man and a woman, or a man and a man or a woman and a woman to the exclusion of all others, voluntarily entered into.' We make the point that, in coming up with that definition, it struck as odd that so frequently throughout this legislation—and indeed, as I understand it, the legislation that will be passed—the definition of marriage includes the

words ‘for life’ at the end of it. In other words, marriage is voluntarily entered into for life. But, of course, there are many people who do not enter into marriage for life. That would certainly be their aspiration—their expectation and their hope, but many marriages end in separation and divorce. It seems a falsehood to us to claim that marriage is entered into for life, because that is simply factually untrue. It may be the aspiration, but for so many people it is not the case. We have narrowed that definition so that it simply reads ‘to the exclusion of all others, voluntarily entered into’. Certainly we support and endorse the aspiration, but we think that to legislate for a definition that would ensure that marriage has to be for life is just not a factual reflection of society.

Democrat amendment (2) is to oppose item 3 in schedule 1, the intention of which is to effectively ban overseas marriages to prevent the recognition of foreign marriages in Australia. We strongly oppose that. I have spoken to that at length already. We argue that, simply because other Western democracies have gone down a greater human rights path than we in Australia have, and many now formally recognise same-sex civil marriages, we ought not be in a position to deny that. That means that those Australian citizens who may lawfully marry overseas ought to be regarded as lawfully married in Australia. The intention of the first part of these two amendments is, firstly, to broaden the definition of marriage to do the reverse of what is before us in terms of allowing for same-sex marriages; and, secondly, to overturn the proposed ban on recognising overseas marriages from comparable jurisdictions which do recognise and validate civil marriages for same-sex couples.

Senator LUDWIG (Queensland) (4.53 p.m.)—For the same reasons I articulated in relation to the amendments moved by Senator Nettle—although these amendments are in a different form, in part they have the same effect—the Labor Party has been clear that it does not support a change to the existing legal basis of marriage in Australia. Labor will not be supporting these amendments.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (4.53 p.m.)—I will speak to both of the proposed amendments to schedule 1. I repeat that the government’s clear position is that the legislation confirms and clarifies the existing common law, both with regard to the definition of marriage and the recognition of overseas same-sex marriages. The government, for the reasons I have already outlined, will not be supporting the amendments.

Question negatived.

The TEMPORARY CHAIRMAN (Senator Chapman)—The question is that item 3 in schedule 1 stand as printed.

Question agreed to.

Senator GREIG (Western Australia) (4.54 p.m.)—by leave—I move Democrat amendments (1), (2) and (4) on sheet 4392:

- (1) Schedule 1, page 3 (after line 4), before item 1, insert:

1A Title

Repeal the title, substitute:

An Act relating to relationships

- (2) Schedule 1, page 3 (after line 4), before item 1, insert:

1B Section 1

Omit “*Marriage Act 1961*” substitute “*Commonwealth Relationships Act 2004*”.

- (4) Schedule 1, page 3 (after line 8), after item 1, insert:

1D After section 51

Insert:

51A Relationships recognised by the Commonwealth

- (1) The Commonwealth recognises two adult people who live together, in accordance with the conditions in this section, to be in a relationship.
- (2) For the purposes of this Act, a relationship is a relationship between two adult persons:
- who have a relationship as a couple; and
 - who are not related except as provided by this section.
- (3) In determining if two persons have a relationship for the purposes of this section, all the circumstances of the relationship may be taken into account, including but not limited to the following matters so far as they are relevant in a particular case:
- the duration of the relationship;
 - the nature and extent of the common residence;
 - whether or not a sexual relationship exists;
 - the degree of financial dependence or interdependence, and any arrangements for financial support, between the parties;
 - the ownership, use and acquisition of property;
 - the degree of mutual commitment to a shared life;
 - the care and support of children;
 - the performance of household duties;
 - the reputation and public aspects of the relationship;
 - whether the relationship is regarded in a law of a State or a Territory as:
 - a de facto; or
 - a domestic partnership; or
 - a significant personal relationship.
- (4) This Act confers the same rights and entitlements, and imposes the same obligations, on a person in a relationship with another person of the same sex, or when either or both are transgender or have an intersex condition, as is recognised or imposed by

Commonwealth law for a person in a de facto relationship.

- (5) This Act enables two adult persons of the same sex, or when either or both are transgender or have an intersex condition, to be registered in accordance with the registration provisions of this Act as if the relationship were a marriage.

Democrat amendments (1) and (2) combine to amend the title of the Marriage Act 1961 to make it consistent with subsequent Democrat amendments that recognise a broader range of relationships within the scope of the act. Amendment (1) amends the title of the act to read 'An Act relating to relationships'. Amendment (2) re-names the Marriage Act 1961 to read 'Commonwealth Relationships Act 2004'.

Debate on whether same-sex couples should be afforded equal relationship recognition to heterosexual relationships, whether through marriage, de facto recognition or some other form of civil union or registry, has been the subject of much debate over recent years not only in Australia but across the globe. The shadow attorney, Nicola Roxon, says that the Labor Party supports the ban on same-sex marriage because marriage has only ever been between a man and a woman, and at any rate consultation with the gay and lesbian community has always focused on de facto recognition, with no particular consensus on marriage.

It is true that the domestic debate within the gay and lesbian community has, for the most part of the last decade, focused on the extension of equal recognition of de factos. In many ways, this has been because it has been expedient to do so. Advocates recognised that, in order to achieve relationship recognition at all, state and territory campaigns that were focused on achieving equal de facto status for same-sex relationships were more likely to be successful—and they were, at least at a state level. Each state and territory in Australia now recognises same-sex relationships in one form or another—with South Australia still lagging behind as the last state to implement broader reform—and has ensured that the very serious discrimination experienced by people in same-sex relationships and their children has not yet been addressed.

To argue, however, that a focus on de facto recognition as part of a federal relationship reform campaign or an apparent lack of lesbian and gay community consensus on marriage justifies a ban on marriage is just absurd. It is true that there is little consensus within the broader lesbian and gay community on marriage. Some same-sex couples desire to marry; others do not. Some community members believe marriage maintains its position as a relevant institution in a modern society, while others have equally deeply held convictions about the institution's inherent worth. This divergence of views is no reason to prevent lesbian and gay couples who do want to get married from being able to do so. No-one would seriously suggest that, because some

heterosexual people do not want to get married, or believe that marriage is outdated, no heterosexual person should be able to marry. It is clear that lesbian and gay communities are united in their views about marriage in a number of other respects, most specifically with the notion that it ought to remain an option. Our amendment goes to the heart of that.

In Australia, Tasmania has gone down the path of its Relationships Act, which I note was not only introduced by a state Labor government but also endorsed by a Liberal coalition. That act, which governs the whole of the state, has removed from all Tasmanian legislation any reference to 'spouse', 'husband', 'wife' or 'de facto'. Instead, the Tasmanian legislation recognised a very broad range of significant relationships—caring relationships, personal relationships and family relationships—and created a voluntary relationship register scheme to recognise the validity of all those relationships.

I am particularly pleased with the Democrats' role in negotiating the terms of the Senate Legal and Constitutional Legislation Committee inquiry and including the notion of interpersonal relationships. We look often to the Tasmanian model as a way forward. Regardless of what these debates about relationships have highlighted, the recognition highlights that there is a very urgent need for a variety of means by which different relationships may be recognised, and there is a growing willingness—and, more importantly, a readiness—to address the issue. The law must respond flexibly to the diversity of people's experiences by ensuring that significant personal relationships, in a variety of forms, are validated, supported and accorded the same access to the rights, benefits and obligations of any other form of relationship.

In pressing forward with our suite of amendments which go to the heart of recognising same-sex relationships, it remains our desire to bring about the sweeping reform which Labor sometimes indicates but has in no serious way ever progressed from opposition. I know that many Labor speakers have said today that a Latham Labor government would move forward in these areas. My experience, though, as an activist and advocate in this area, has been that I have heard all that before. I heard it during 13 years of Labor governments—and Labor did absolutely nothing in 13 years of government in the area of national antidiscrimination laws and partnership recognition, despite so often promising to do so. I know that Labor has promised an audit of all discriminatory legislation if elected to government, but I have to say that, from speaking to people in the gay and lesbian community, that policy position seems rather pathetic.

The promise of having an audit of legislation if elected to government ignores the fact that, firstly, you can do the audit now; secondly, you need not be

elected to government to initiate such an audit; and, thirdly, the Parliamentary Library could probably quite happily do that for you if you put a phone call through to them. So the promise of antidiscrimination laws, partnership recognition and antivilification laws following an audit is somewhat hollow given that we Democrats have had bills which would do those three things on the *Notice Paper* for nine years. My best efforts just to get the opposition to support a debate on those bills have met with failure. There is deep cynicism within the lesbian and gay community about the promises of the alternative government, because those things that are being promised are also opportunities to be grasped now but which never have been.

To get to the heart of the issue, it is our hope and aspiration with this suite of amendments to recognise same-sex relationships and rights and responsibilities, and to get moving in this area of reform rather than holding out in vain hope that a future government, be it Labor or otherwise, might embark on this course. It is the view of the Democrats—being in a position of never being in government—that the way to bring about reform is to engage the parliament and not to wait for the expectation that you must only ever be in government to bring about change. We have proved on a number of occasions that you do not need to be in government to bring about change. While I heard Senator Ludwig wax lyrical a little earlier today about what he claimed was Labor's policy to reform superannuation and how great it was that Labor got that achievement, the fact is that we Democrats did that, in cooperation ultimately with Senator Coonan and the government, and that Labor had voted against those particular amendments on same-sex couples and super on 11 occasions before they finally supported them.

Senator LUDWIG (Queensland) (5.02 p.m.)—The Labor opposition will not support the amendments. I am sure Senator Greig did listen to my speech in the second reading debate on this matter, and he is aware of our commitment in relation to the issue of recognition of same-sex relationships. I also briefly wanted to reiterate that state Labor governments have introduced significant reform in this area. Senator Greig was correct in identifying the Tasmanian Relationships Act 2003, which amended more than 70 statutes to assign a range of rights and/or responsibilities to same-sex and caring partners. I think that really underpins shadow attorney-general Nicola Roxon's position in relation to this. She has indicated on a number of occasions why she supports an audit of all Commonwealth legislation to go through in a meaningful way, whilst Labor is in government.

You also have to look at the Northern Territory's Law Reform (Gender, Sexuality and De Facto Relationship Act) 2003, which was passed in November 2003. The debates continue in relation to the act in

South Australia, the home state of a number of the Democrats, which passed on 25 March 2004 in the House of Assembly. In your home state of Western Australia, Senator Greig, the Acts Amendment (Gay and Lesbian Law Reform) Act 2001 was dealt with. It dealt with 62 statutes and was effective from 1 July 2003. I can continue to make the point, but I do not want to detract from the debate on the other amendments. We have said that Labor in government can and will progress these matters. We have clearly got the runs on the board in relation to all the other states. We do know that the government cannot be persuaded to do it and, therefore, we will be able to do it in government. That is the clear distinction between us and the government on this matter. As I have said, on the matter before us, we will not support any change to the common law understanding as it currently exists.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (5.05 p.m.)—The government will not be supporting the Democrats' amendments for the reason that neither this bill nor the act deal in any way with de facto or same-sex relationships. There are, in the government's view, some pieces of legislation where it is appropriate that the government look at some of these issues. Quite apart from empty rhetoric and promises, as Senator Greig knows, the government has taken action in a number of areas. I want briefly to note the immigration area, for instance, where interdependency visas allow application for permanent residency of a person's same-sex partner. The superannuation laws, where the definition of 'dependant' has been changed, have no doubt been canvassed in earlier speeches. I have initiated a review of Commonwealth superannuation schemes for consistency with the government's policy to recognise interdependent relationships for superannuation death benefits. The Workplace Relations Act contains a range of measures intended to help prevent and eliminate discrimination, including on the basis of sexual preference.

I am not going to give an exhaustive answer, but I think it is appropriate to say that this government takes it seriously where there is an appropriate response required in relation to some of these matters. This is not the right place for it, in the government's view, because these amendments seek to alter the fundamental nature of the legislation and it is contrary to what the government is trying to do here. The government is seeking to reinforce and confirm the special status the institution of marriage holds in our society. The bill we are debating responds to fundamental concerns in the community about the institution of marriage. It does reinforce the commonly accepted definition and also has the effect, as we have said earlier, of preventing the recognition in Australia of same-sex marriages that may be performed overseas. But this is not the place for any sanctimonious talking about audits. I agree with Sena-

tor Greig: this government has taken action where it was considered appropriate.

Senator GREIG (Western Australia) (5.07 p.m.)—I will respond briefly. I was not aware that the Howard government had made changes to the immigration laws. I knew that changes had been made but I understood that that was under the previous Labor government, when Senator Bolkus was the minister. I do not think the coalition can claim credit for that. I would make the point that, while there have been some timid steps towards partnership recognition in immigration, it is still clumsy, inadequate and discriminatory. It is still very difficult for an Australian citizen who establishes a same-sex relationship with a foreign citizen to bring their partner into the country and to gain citizenship for them. There are many more difficulties and hurdles placed in front of them than there are for other relationships. That includes heterosexual de facto relationships. There is not equality by any means.

While I thank the minister and acknowledge the work she did do in bringing about some superannuation reform, it is still not 100 per cent and there are still some hiccups and difficulties within that legislation. While it is no longer the case that a surviving same-sex partner will face great difficulties establishing that there was a previous relationship or getting access to a death benefit—that has been removed—the fact is that reversionary pensions do not apply to same-sex partners. So that discrimination is still there. It is also the case that, under the scheme that Senator Coonan has introduced and endorsed, to establish an interdependency relationship under the definitions of the act you have to demonstrate that you were living together. That is not the case if you are married. From time to time couples who are still married live apart—that is not so unusual—but they do not have to prove that they were living together. In order to access the death benefit, there is no requirement for them to have cohabited. That is the case under the interdependency provisions. So there is still work to be done in those two areas, even though timid steps forward have been taken.

Senator NETTLE (New South Wales) (5.09 p.m.)—The Greens support this Democrat amendment and indeed all the Democrat amendments that seek to remove the discrimination from the legislation we are currently debating and that has been put in place by the government and supported by the opposition. We will support this Democrat amendment and all the other Democrat amendments.

The TEMPORARY CHAIRMAN (Senator Ferguson)—The question is that Democrat amendments (1), (2) and (4) be agreed to.

Question negatived.

Senator GREIG (Western Australia) (5.09 p.m.)—I move:

(3) Schedule 1, page 3 (after line 8), after item 1, insert:

1C After section 6

Insert:

6A Acceptance of referral of State or Territory legislative authority

- (1) The object of this section is to make provision in relation to unmarried couples regardless of sex, variously referred to in State or Territory law as de facto relationships, domestic partnerships or significant personal relationships.
- (2) Subject to subsection (6), this Act extends to:
 - (a) any State in relation to which a Proclamation under subsection (3) is in force; and
 - (b) any Territory in relation to which a Proclamation under subsection (4) is in force.
- (3) Where:
 - (a) the Parliament of a State refers to the Parliament of the Commonwealth the matter set out in subsection (1); or
 - (b) a State adopts this Act;

the Governor-General may, by Proclamation, declare that this Act extends to that State.
- (4) The Governor-General may, by Proclamation, declare that this Act extends to a Territory.
- (5) A Proclamation under subsection (3) or (4) may be expressed to come into operation on a date fixed by the Proclamation.
- (6) A Proclamation under subsection (3) in relation to a State remains in force only for so long as there is in force:
 - (a) an Act of the Parliament of the State by which there is referred to the Parliament of the Commonwealth the matter referred to in paragraph (3)(a); or
 - (b) a law of the State adopting this Act.

This amendment deals with the relationship between the Commonwealth and the states. The amendment aims to remove an anomaly of law that continues to cause hardship for many separating de facto couples across Australia, not only those who happen to be in same-sex relationships. The amendment will put in place the necessary instruments to initiate the process of referral of state powers regarding de facto couples to the Commonwealth. It indicates the Commonwealth's readiness for that referral and represents the first step required to facilitate its occurrence.

Throughout the course of the debate on marriage we have heard that the granting of de facto recognition to same-sex couples would remove all discrimination in law by providing legal equality to those relationships on a par with marriage. The argument has been used as justification as to why access to marriage is not necessary for same-sex couples, yet we know that this is currently not the case. De facto couples continue to experience different treatment from married couples in a number of areas of law, including immigration, superannuation and access to the Family Court. In in-

stances where one de facto partner lives overseas, couples under the interdependency category, including same-sex couples, must reside together for a period of 12 months prior to the issuing of a visa. This condition places a financially and logistically onerous requirement on same-sex and de facto couples that is not imposed on married couples or those intending to marry; rather, couples intending to marry must simply be engaged and intending to marry for the overseas partner to be granted a visa without any prior co-residency requirement. It is also true that heterosexual de facto couples are subject to the same restriction as same-sex interdependent couples, but at least heterosexual couples have the option to marry if they choose.

On behalf of the Gay and Lesbian Immigration Task Force, I wrote to the Minister for Immigration and Multicultural and Indigenous Affairs, Senator Vanstone, in mid June to request that the government consider extending the prospective marriage visa to interdependent same-sex and de facto heterosexual partners seeking to live together in Australia. As yet there has been no response from the minister. Additionally, the very process of recognising de facto relationships differs from married couples in that married couples need only provide a certificate but de facto couples must demonstrate that they fulfil a whole range of criteria. While we recognise the significance and the importance of extending de facto recognition to same-sex couples, and we will continue our decade long campaign to achieve that goal, we still do not regard it as full equality. That is why we advocate for civil marriage. It is also why we advocate for a new system of civil partnership registration, as I discussed in amendment (1). If de facto couples were able to register their relationship, they would have automatic proof of that relationship that is on a par with married couples. These examples provide a clear demonstration of the way in which de facto relationships still cannot access a full range of automatic benefits and entitlements accorded to those who are married. There are also the issues in the Family Court upon separation.

The Prime Minister has made a great deal of his support for families and ensured the best possible outcomes for couples and their children while they are together and while they are separating but, when it comes to same-sex families, and to a lesser extent de facto couples, the Prime Minister has made it clear they are not deserving of the same benefits and support while they are together or while they are separating. Under the powers of the Family Law Act, the benefits for separating married couples of access to a single court for child custody issues, property and financial settlements are clear: a single process, a single court and a uniform national approach to deal with the difficulties that can arise for some separating couples during that period. Where de facto couples are concerned, however, this is not the case. They continue to operate

under a dual system. Referral of child custody issues has been accepted by the Commonwealth, but property and financial matters have not and so still must be addressed in state Supreme courts. This is not only more time consuming but also more expensive. The significant stumbling block is the Commonwealth's refusal to accept a referral of power that includes same-sex couples recognised under state or territory law as de facto relationships, domestic partnerships or significant personal relationships.

While introducing into the New South Wales parliament the Commonwealth Powers (De Facto Relationships) Bill, the parliamentary secretary said the referral of power to the Commonwealth:

... in relation to property and other financial resources on the breakdown of a de facto relationship ... has been discussed in the Standing Committee of Attorneys-General for some time ...

He went on to say:

Under the present regime, de facto couples in different States may have their property treated differently for no good reason. Even if States intend to enact and maintain uniform legislation, process delays can result in legislative anomalies. Such an approach would be highly complex, time consuming and impracticable. Success would in any event require a high degree of continuing co-ordination to ensure all necessary amendments to Commonwealth and State legislation were from time to time effected. These difficulties would not arise if States were simply to refer power to the Commonwealth.

I have seen a press release from Mr Rob Hulls, the Attorney-General of the state of Victoria, accusing the Commonwealth of being very homophobic by not accepting the powers as to same-sex couples when that state referred its powers to the Commonwealth in these areas. It is clear that state Labor governments want this to happen and they have condemned the Commonwealth for not allowing it to happen, so I consider this amendment to be a litmus test for Labor. Here is the very opportunity to enact what your state Labor colleagues have called for. Indeed it brings about the de facto recognition which you claim to support. The amendment goes to the referral of powers: it is about allowing that push-up to the Commonwealth for federal oversight of this area but in a way which deals with the de facto relationships of both heterosexual and same-sex partners.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (5.16 p.m.)—I did listen intently to Senator Greig's contribution on this matter, and I commend to the committee the statements that have been made by Senator Ludwig, who has been able to address this matter in a very diligent and sensible way. I also am very happy to admit that I would be concerned by any legislation that might inflame prejudice against any group in society. I would freely admit that, as a result, I was very concerned when I first heard of the government's proposals in this area, but

upon my seeing the legislation it did not take me long to realise that this was a pretty pathetic attempt at wedge politics by the Prime Minister.

I think it is fair to say that the [Marriage Amendment Bill 2004](#) is more about rhetoric and political posturing than about making a substantive change to the law. Many have found it hard to get hot under the collar over a bill which confirms the existing common law. I am pleased that the response that the federal parliamentary Labor party has made to the bill has been strong and very clear in its commitment to removing discriminatory provisions from Commonwealth legislation on the basis of sexuality. I think that the Labor Party position, as adopted by the caucus of our parliamentary party, makes it very clear that we believe Australians are entitled to respect, dignity and the ability to participate in society and receive the protection of the law regardless of their sexuality or gender identity.

We have said—and we mean it—that if we are elected to government we will work with all groups to reform federal laws to recognise the diversity of legitimate relationships in the Australian community. We have also said and made it very clear—and my colleague Senator Ludwig has put forward in a very forthright and thorough way our position—that we will not be redefining marriage. That has governed our approach to this bill. We have indicated we will support the bill that is before the chamber without amendment. But we have also said that we will work to eliminate discrimination against Australians in same-sex relationships across a range of federal laws including taxation, superannuation, immigration, family law, industrial relations and government benefits. I think that position is well known to the committee. I understand that it does not find favour with Senator Greig, just as sometimes the approach of the opposition does not find favour with the Australian Democrats. On this occasion there is a different approach to dealing with amendments to this bill, but I commend the opposition's approach to the committee. We have also said that, as part of our consideration of measures to eliminate discrimination against Australians on the grounds of sexuality, we will examine options to achieve a more consistent national treatment of—

Senator Brown—Mr Temporary Chairman, I rise on a point of order. I do not want to interfere with this speech by Senator Faulkner, but he did vote for the guillotine and there is a very short amount of time left for this debate and some very important amendments to come. I hope he will consider that.

The TEMPORARY CHAIRMAN—There is no point of order.

Senator FAULKNER—We will have to check the division lists on that, Senator Brown. If you are suggesting because there is a short amount of time left that you would like to make a comment, that is fine. You

could have passed me a note, as is the normal procedure. I respect that; you know I do. I try to cooperate with senators in the chamber, so I will cooperate with you. There is no need to take a spurious point of order. You know—as you do, Mr Temporary Chairman—that my general approach to these things is to try to fit in with colleagues. Because Senator Brown and perhaps others want to make a contribution and time is short, I will conclude on this point. I said that we would be examining options to achieve more consistent national treatment of all de facto relationships, and I think we have also made it clear that we will look at the recommendations made by the Senate inquiry into the [Marriage Amendment Bill 2004](#). I respect Senator Brown's interest in making a speech at this point in time, and I will cut short my remarks to allow other senators to make a contribution. I commend to the committee the approach of the opposition.

Senator NETTLE (New South Wales) (5.23 p.m.)—I have a question for the minister relating to an Australian Greens amendment. It is coming up on the running sheet, but I am not sure whether I am going to have an opportunity to move it. Our amendment seeks to ensure that marriages that have currently been entered into will continue to be recognised under this legislation. It comes from a number of queries to our office from constituents about whether or not the marriages of people who are currently in heterosexual relationships in which one of the partners is going to go through a gender reassignment surgery process or has gone through such a process continue to be recognised as a result of this legislation. I have not been able to find an answer to that question and I wonder whether the minister might be able to answer it for us.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (5.23 p.m.)—I do have some information that I think would be of assistance in resolving that issue. I will get those advising me to turn it up. The referral of powers amendment, which is what we were dealing with, is not supported by the government. The government has made it quite clear that it is a matter for the states and territories to deal with and not, in our view, a matter that should be referred to in the Marriage Act. If I am not able to give you an answer to your question in the short time that is available, Senator Nettle, I will make sure that I try to give you that information. I have seen—if not in the notes that I have here—some information on that.

Senator NETTLE (New South Wales) (5.25 p.m.)—I will set a broader framework for that question. It concerns not just people who are going through gender reassignment surgery but also people who were born with an intersex condition or indeterminate sex, had a gender assigned to them at a certain point during the first two years of their life and subsequently have

gender reassignment surgery or take on their birth sex which was wrongfully assigned—with or without consultation with their parents—at the time when they were born of indeterminate sex. How does this legislation impact on those individuals? They may or may not have entered into a marriage. They were born of indeterminate sex, a decision was made to assign them a particular gender which was not the gender identity that they subsequently determined for themselves, and they will have gender reassignment surgery or surgery to return to the gender which they have identified for themselves. How will they be impacted on by this legislation?

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (5.26 p.m.)—My understanding of the situation—and I will be corrected if I give you incorrect information—is that gender reassignment enables people to marry, but not to someone of the same sex. So if somebody has a gender reassignment and they wish to marry somebody who is not of their sex, that is supported by this act.

Senator NETTLE (New South Wales) (5.26 p.m.)—My question relates in particular to people who are currently married in a heterosexual relationship and are undergoing—next year, for example—gender reassignment surgery. Currently their relationship is a heterosexual one recognised under the law. After this legislation comes in and they go through gender reassignment surgery, will their relationship and their marriage still be recognised under the law?

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (5.27 p.m.)—My understanding is that that would mean that they would then be two people of the same sex purporting to be married to each other. They could obviously seek a declaration of validity, but I doubt whether the act would respond to recognise that relationship as valid.

Senator BROWN (Tasmania) (5.27 p.m.)—I have friends in this position. Is their marriage valid or not? What is going to happen? Are people going to arrive and say, ‘Where’s your marriage certificate—give it to us; we’re going to rip it up’? What is Mr Howard going to do with the folk who are in this situation and are bringing up children? Is he going to tell them that, under this new discrimination legislation, suddenly they are unmarried because the Prime Minister said so? We need an answer—they need an answer. These people need an answer to a question like this. How is the Prime Minister going to dissolve the marriage? Is he going to ring up Archbishop Pell and get an annulment in some other country? Please let those folk know.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (5.28 p.m.)—Given the fact that we will be cut off, I emphasise the very valid point

Senator Nettle has raised. The answer the minister has given shows the absurdity of the whole thing. You should be able to get married to the person you fall in love with. The whole suggestion that choosing to undergo gender reassignment might mean having to make a decision to invalidate the lawfulness of your marriage shows how ridiculous the whole concept underlying this situation is. It is a future amendment, but obviously the Democrats would support it if there were an opportunity to get it moved.

The TEMPORARY CHAIRMAN (Senator Ferguson)—The question is that Democrat amendment (3) on sheet 4392 be agreed to.

Question negated.

Senator GREIG (Western Australia) (5.29 p.m.)—I move Democrat amendment (1) on sheet 4394:

(1) Schedule 1, page 3 (after line 8), after item 1, insert:

1BA After subsection 5(1)

Insert:

- (1A) It is not intended by this Act that, in relation to any Commonwealth law, the definition of marriage in subsection (1) should be taken to mean or imply that a relationship between two people of the same sex who are not married to each other should have other than the same status as an equivalent de facto relationship between a man and a woman.

This final Democrat amendment is word for word an amendment moved by Ms Tanya Plibersek in the House of Representatives. It goes to the heart of saying that, if this amendment is passed:

It is not intended by this Act that, in relation to any Commonwealth law, the definition of marriage in subsection (1) should be taken to mean or imply that a relationship between two people of the same sex who are not married to each other should have other than the same status as an equivalent de facto relationship between a man and a woman.

In other words, this amendment, moved by Labor in the House of Representatives to represent its aspirations for lesbian and gay couples, is now moved by me—not by them—here in the Senate chamber. It is another litmus test for Labor. I call on Labor to demonstrate its professed commitment to this, to acknowledge the humanity and dignity of lesbian and gay people in same-sex relationships and to support the amendment to do this—originally your amendment—here in the committee now.

The TEMPORARY CHAIRMAN (Senator Ferguson)—Order! The time for debating the bill has expired. I put the question that Senator Greig’s amendment (1) on sheet 4394 be agreed to.

The committee divided. [5.34 p.m.]

(The Temporary Chairman—Senator A.B. Ferguson)

Ayes.....	6
Noes.....	38

Majority..... 32

AYES

Brown, B.J. Greig, B. *
 Lees, M.H. Murray, A.J.M.
 Nettle, K. Stott Despoja, N.

NOES

BARNETT, G. Bishop, T.M.
 Buckland, G. Carr, K.J.
 Chapman, H.G.P. Colbeck, R.
 Coonan, H.L. Eggleston, A.
 Evans, C.V. Faulkner, J.P.
 Ferguson, A.B. Ferris, J.M. *
 Fifield, M.P. Forshaw, M.G.
 Harradine, B. Harris, L.
 Johnston, D. Kirk, L.
 Knowles, S.C. Lightfoot, P.R.
 Lundy, K.A. Macdonald, I.
 Mackay, S.M. Mason, B.J.
 McGauran, J.J.J. McLucas, J.E.
 Moore, C. O'Brien, K.W.K.
 Ray, R.F. Santoro, S.
 Scullion, N.G. Stephens, U.
 Tchen, T. Tierney, J.W.
 Troeth, J.M. Vanstone, A.E.
 Watson, J.O.W. Webber, R.

* denotes teller

Question negatived.

The TEMPORARY CHAIRMAN (Senator Ferguson)—As the time for debating this bill has expired, I put the final amendment, which is Australian Greens amendment (3).

The amendment read as follows—

R(3) Schedule 1, page 3 (after line 19), at the end of the bill, add:

4 After section 88E

Insert

88EB Continuing validity of a marriage

For the avoidance of doubt, a union solemnised and recognised as a marriage in Australia before the commencement of the provisions of the *Marriage Amendment Act 2004* will continue to be recognised as a marriage in Australia after the commencement of that Act.

The TEMPORARY CHAIRMAN—The question is that that amendment be agreed to.

Question negatived.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

The ACTING DEPUTY PRESIDENT (Senator Chapman)—The question is that the remaining stages of the bill be agreed to and the bill be now passed.

Question put.

The Senate divided. [5.40 p.m.]

(The Acting Deputy President—Senator H.G.P. Chapman)

Ayes..... 38

Noes..... 6

Majority..... 32

AYES

BARNETT, G. Bishop, T.M.
 Boswell, R.L.D. Buckland, G.
 Carr, K.J. Chapman, H.G.P.
 Colbeck, R. Coonan, H.L.
 Eggleston, A. Evans, C.V.
 Faulkner, J.P. Ferguson, A.B.
 Ferris, J.M. * Fifield, M.P.
 Forshaw, M.G. Harradine, B.
 Johnston, D. Kirk, L.
 Knowles, S.C. Lightfoot, P.R.
 Lundy, K.A. Macdonald, I.
 Mackay, S.M. Mason, B.J.
 McGauran, J.J.J. McLucas, J.E.
 Moore, C. O'Brien, K.W.K.
 Ray, R.F. Santoro, S.
 Scullion, N.G. Stephens, U.
 Tchen, T. Tierney, J.W.
 Troeth, J.M. Vanstone, A.E.
 Watson, J.O.W. Webber, R.

NOES

BARTLETT, A.J.J. Brown, B.J.
 Greig, B. * Murray, A.J.M.
 Nettle, K. Stott Despoja, N.

* denotes teller

Question agreed to.

Report adopted; bill read a third time.

Senator FERRIS (South Australia) (5.43 p.m.)—I would like to draw to the attention of the Senate a letter from Senator Len Harris, who is unable to be here this afternoon but has asked that his vote be recorded in favour of this bill.

Senator MURRAY (Western Australia) (5.43 p.m.)—Senator Lees asked that her vote be recorded against the bill.