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Ms Alannah MacTiernan; Ms Margaret Quirk; Mr Colin Barnett; Mrs Cheryl Edwardes; Ms Sue Walker; Mr Mike Board; Mr John Day; Mr Jim McGinty; Mr Rob Johnson; Acting Speaker; Dr Janet Woollard; Mr Matt Birney; Ms Sheila McHale; Mr John Hyde; Mr Rod Sweetman; Mr Bernie Masters; Mr Bill McNee; Mr John Bradshaw; Mr Arthur Marshall; Deputy Speaker; Speaker

ACTS AMENDMENT (LESBIAN AND GAY LAW REFORM) BILL 2001

Second Reading

Resumed from an earlier stage of the sitting.

MS MacTIERNAN (Armadale - Minister for Planning and Infrastructure) [3.45 pm]: I express my support for this legislation. I owe it in particular to those gay men and women whom I know and who have been my friends for many years to publicly acknowledge my support for this legislation and this move to provide for them an institutional framework of equality. As the member for Roleystone said powerfully this morning, this Bill will not in any way solve all of the problems that are met by gay people in our community and the disability of homophobia in our community will remain. However, it is important that, at least in terms of the institutions of state, we address this issue. There has been a great deal of debate on this issue and most of the salient points have been covered. I urge members opposite to consider how they would have felt if they had been gay and whether they would have wished to endure a system which discriminated against them on the basis of a sexual preference over which, in many instances, they had no control.

The member for Roleystone made an important point this morning: homosexual behaviour is natural. When one goes back to first principles there is nothing abnormal or abhorrent about it. It has been part of human nature for a long time. There have been deep cultural taboos against it associated no doubt with the need, perhaps in less civilised times, to preserve the basic economic unit of the family and to ensure the propagation of the species. Now, with the entrenchment of humanity as the dominant species on the globe, I do not think we need to worry that the species is not being propagated sufficiently. One might argue, as many environmentalists do, that we have gone too far in propagating the species. This is a matter of recognising that fundamentally gay people are like non-gay people, that other than in the issue of sexual preference they have a vast array, like any other member of the community, of vastly different qualities, and that their virtue and righteousness is not in any way diminished by their sexual preference. They have the same capacity to make a valuable contribution to the community. They have the same right of enjoyment of life and the same rights to have intimate relationships that heterosexual people do.

One of the most truly extraordinary propositions that one sometimes hears advanced is that it is not wrong to be a homosexual but it is wrong to practise it, denying gay people the opportunity of sexual fulfilment that heterosexual people claim for themselves.

I acknowledge that genuine disquiet has been expressed in the community; I do not dismiss that. Concerns were raised about stranger adoption. Adoptees might already be struggling because they will be brought up without a natural parent. It does not matter how loving, wonderful and committed the adoptive parent might be, the evidence is clear that adoptive children struggle with their identity and the reasons they have been relinquished by their natural parents. Some people believe that if those children were placed with a gay couple, it might add to their distress, because they would be in a non-mainstream arrangement. I am not sure that that is true.

In any event, the Government's proposed amendment makes it clear that the capacity to provide a suitable family environment will be the determinant in deciding who are the most appropriate adoptive parents. The legislation will now provide that any decision made about adoptive parents will not be subject to review by the Equal Opportunity Commission. That is an important amendment; it makes it clear that the adoption process must serve the needs of the children and not the parents or adults. I have no doubt that one factor taken into account in determining where a child is to be placed is the availability of suitable role models. An adoption agency might decide that the presence of a mother and a father, regardless of their sexuality, is an important factor in the selection of the appropriate parenting family. Those amendments will provide the protections -

Mr Birney: They are Clayton's amendments. They do not mean anything. They are designed to appease *The West Australian*.

Ms MacTIERNAN: They are designed to address the legitimate concern that children might not be placed in an appropriate environment. I am not suggesting for one moment that gay people are not capable of being adequate and decent parents. However, it must be accepted that an adoptee may already be operating under a disability because of the absence of a birth parent.

Mr Birney: Do you support a birth parent having the right to discriminate against a gay couple?

Ms MacTIERNAN: I support the right of a relinquishing parent to nominate what she considers to be the appropriate family environment for her child.

Mr Birney: You are comfortable with that.

Ms MacTIERNAN: It has nothing to do with being gay or lesbian. The adopting parents might be a husband and wife who are gay and lesbian. That is not an unknown scenario. It has nothing to do with their sexuality. If a relinquishing parent makes it clear that she wants her child brought up in a family comprising a mother and a father - that is, the traditional family configuration - that is a reasonable call on her part, and the legislation provides that it must be given due regard. An adoption agency implementing the decision of a relinquishing parent is protected from review by the Equal Opportunity Commission. Clearly, the relinquishing parent has the right to nominate the family environment that she wants for her child.

Mr Birney: Are you comfortable with the relinquishing parent being able to say that she does not want her child to go to a gay couple?

Ms MacTIERNAN: That is appropriate for -

Mr Birney: Don't you think that is discrimination?

Ms MacTIERNAN: It is a question of that relinquishing parent making a judgment about the best interests of her child.

Mr Birney: Are you comfortable with that?

Ms MacTIERNAN: Yes. That is why the Government has introduced that provision. It believes it is appropriate.

Mr Birney: Don't you see that as discrimination?

Ms MacTIERNAN: No, it is a matter of choice. The Government is not making homosexuality compulsory! The member must come to terms with that.

Mrs Edwardes: We girls won't need men after this legislation is proclaimed.

Ms MacTIERNAN: The member for Kingsley should remember that Queen Victoria ensured that women were not necessarily restricted in the same way that men were some time ago.

Many people in my electorate have serious concerns about the legislation, and the Government believes that it has addressed those concerns.

I am perturbed about the way some members opposite have approached this aspect of the legislation. They refer to gay men "getting a child". As the Minister for Health pointed out, the adoption process is very intrusive. Members opposite appear to be suggesting that men, simply because they are homosexual, will go through the process to get access to a child. The implication is that they will thereafter abuse and molest that child. That is a most unfortunate suggestion and it fails to recognise that heterosexuals and homosexuals are equally capable of being good parents and responsible and caring adults in charge of children. No-one accuses a heterosexual male seeking to adopt a female child of being predatory.

I call upon members to recognise that this is a matter of compassion and treating homosexuals as we want to be treated. There is nothing in the nature of homosexuality that in any way, shape or form deems homosexuals to be any less virtuous or worthy than heterosexuals. I am sure that most Christian people recognise that. They also recognise that sound Christian principles require that we afford to homosexuals the same rights we heterosexuals afford to ourselves.

MS QUIRK (Girrawheen) [3.59 pm]: I commend the Bill to the House. I hoped that members would approach this matter with generous spirits and open minds. That has not been the case with some members. I thank those members who have approached the issue in a mature and appropriate manner and for their deep thought and consideration.

Mr Barnett: Given that, you would have been offended by the behaviour of Labor members towards the member for Moore last night.

Ms QUIRK: I was not offended. It was robust debate and it was late in the evening. Many points the member made were not germane to the issue and deserved everything they got.

Mr Barnett: Did they deserve ridicule?

Ms QUIRK: I do not believe that he was ridiculed.

Mr Birney: Do you support three homosexuals in a relationship having the right to adopt a child?

Ms QUIRK: With all due respect to the member for Kalgoorlie, that question is academic. I am pleased that the member has asked me this question because there are some fundamental principles about anti-discrimination law

of which he is obviously not familiar. It is permissible to have certain exceptions; for example, it is the right of the relinquishing parent to say who does or does not get the child.

Mr Birney: What about the example? Does the member support that example?

Ms QUIRK: Is that a likely possibility?

Mr Birney: Yes, it is a possibility.

Ms QUIRK: I am not in a position to opine or to make ex cathedra announcements on these matters.

Mr Birney: What is your view?

Ms QUIRK: My view is irrelevant; what matters is the law. The Adoption Act determines what is in the best interests of the child. On top of that the views of the relinquishing parent must be taken into account. They are the two paramount matters.

Mr Birney: The legislation that resulted from your committee will allow that to happen. As chairman of that committee, what is your view?

Ms QUIRK: My view is that the interests of the child should be paramount, end of subject.

Mr Birney: Is it fine if three homosexuals adopt a child?

Ms QUIRK: The interests of the child are paramount.

If we proceed on the basis of assumptions and stereotypes, we will have some very poor public policy outcomes. I will briefly describe the process undertaken by the committee because there is much misunderstanding as to the committee's purpose and what its brief was. However, before I do that I will provide members with a quote and I will ask them to guess the source of the quote as I think it demonstrates the point that people make assumptions about this issue. Sometimes they are pleasantly surprised and those assumptions are overturned. The quote states -

> The number of men and women who have deep-seated homosexual tendencies is not negligible. They do not choose their homosexual condition; for most of them it is a trial. They must be accepted with respect, compassion and sensitivity. Every sign of unjust discrimination in their regard should be avoided."

Later, I will disclose the source of that quote. I think that it will surprise some members.

Mr Barnett: Why are you trying to stereotype people? I find this incredible. Part of the Labor Party's argument is that homosexuals are vilified, yet so much of the response of the Labor Party is to stereotype those who have a different view into another mould. There is an incredible inconsistency in that approach.

Ms QUIRK: I am glad the Leader of the Opposition made that point. During this debate the Leader of the Opposition has referred to morality and other members on that side of the House have talked about the churches' position. There is no churches' position -

Mr Barnett: There are varying positions.

Ms QUIRK: There are varying positions. Therefore, to refer to the churches' position does not advance the argument because there are a range of views. The views of the Uniting Church, the Anglican Church, the Baptists and the Church of Jesus Christ of Latter-Day Saints vary. Trust me, they have all talked to me about this matter. That is one important aspect. Similarly, members opposite have referred to morality. If one is to be logically consistent, if homosexuality is against God's one true law, members might like to read the rest of the passages in Leviticus that suggest adulterers should be stoned. I hope that the Leader of the Opposition does not suggest that we enshrine that in the legislation - in which case there would be a stone shortage.

Mr Barnett: I do not like people to put words in my mouth. This issue is regarded by a group of people in the community as a moral issue. I do not necessarily see it that way but some do, and that is the point I make.

Ms QUIRK: I also consider it to be a moral issue. However, a range of moral views must be accommodated. Part of the job of the Government is to meld those views, show some leadership and try to collectively come up with the best solution for society and for the common good.

There has been some talk about the Labor Party's platform. I was present at that state conference in 1999 so before I talk about the work of the lesbian and gay law reform committee I will refer to the ALP's platform

announced at the 1999 conference. The ALP's platform asserted that Labor believes that all people are entitled to the same respect, dignity and ability to participate in society and to receive the protection of law regardless of their sexual orientation or gender identity. Similarly, the platform asserts that Labor will implement policies and legislate generally to give effect to this belief and, in particular, it will amend the Western Australian Equal Opportunity Act to provide that it be unlawful to discriminate against people on the basis of their sexual orientation; amend the Western Australian Criminal Code to provide for uniform ages of consent to sexual conduct -

Mr Barnett: Did the member say to provide for uniform ages of consent? Does the platform not specify the age of 16 years?

Ms QUIRK: No. The ALP asserted it would repeal the preamble and part II of the Law Reform (Decriminalization of Sodomy) Act; establish a special inquiry to investigate and make recommendations concerning the legal recognition and regulation of bona fide domestic relationships involving same-sex couples; ensure that women have a choice regarding their reproductive lives on the basis of sound social and medical advice; and ensure that women can access reproductive technology regardless of their marital status or sexual orientation. They were some of the platform items. I emphasise the words "Labor will implement policies" plural, and "in particular will". By no means was that platform prescriptive or inclusive. Any suggestion that we took people by surprise does not hold water given that it was clear from that wording that we would explore a range of legislative action.

I will now refer to the ministerial committee. Its terms of reference were: the extent to which the Western Australian laws directly discriminate against lesbians and gay men and their families; the extent to which Western Australian laws, regulations, procedures and guidelines are designed to offer a means of redress to people who are discriminated against but fail to offer any protection to lesbian and gay men; and the extent to which Western Australian laws reinforce negative stereotypes of lesbians and gay men.

I take this opportunity to thank the members of the committee for their hard work. I thank Merilee Garnett, the nominee of the Attorney General, who is happily married to a male. I thank Mala Dharmananda who is the secretary of the committee and who is also happily married to a male. I also thank Graham Brown, Vivienne Cass, Maxine Drake, Heather Ellis, Christopher Kendall, Dennis Madden, Damian Meyer, Hon Louise Pratt MLC, Mr Robert Smith, Mr Shaun Temby, Midge Turnbull and Hon Giz Watson. Collectively, that committee had years of direct experience of prejudice and of community activism in the area of gay and lesbian rights. They were warriors in the cause and they shared generously of their wide range of experience. Any suggestion that the committee was supposed to consult broadly with the community is a misunderstanding of the brief of the committee, which was to identify areas in which the gay and lesbian community felt it had been unduly discriminated against.

Mr Johnson: Was there no argument against what they said? Did the Government just accept everything they said and that is what the legislation will provide for?

Ms QUIRK: There was robust discussion within the committee. As with any group in the community, the committee members had a range of views. People might be gay and lesbian but they do have minds of their own. The committee members expressed a range of opinions about how certain matters should be treated.

Mr Johnson: They seem to have come up with every possible recommendation that they could ever want. What else could they want?

Ms QUIRK: The committee's brief was to provide a list of the matters that the representatives from the gay and lesbian community regarded as being areas that were in need of law reform. Whether the Government decided to accept those matters was a matter for the Government. The member for Hillarys might also recall that at the time that the report was released there was a suggestion that the purpose of this report was to generate community discussion. I do not believe that anyone has felt constrained about expressing his or her views on this report within the time frame.

Mr Johnson: How many reports were printed?

Ms QUIRK: I am not sure.

Mr Johnson: It could hardly be considered good consultation with members of the public if only a dozen reports were printed. How many members of the public were aware of the report?

Ms QUIRK: I am not aware.

Mr Johnson: Exactly.

Ms QUIRK: Approximately 1 500 reports were printed. I am told that the report also is available on the Internet. I made sure that everyone who contacted my office received a copy. Every member in this place would have received an extensive number of representations from people who may or may not -

Mr Johnson: The Government has accepted all the recommendations from a committee that was overloaded with gays and lesbians. The Government has taken no notice of any of the church or family support groups. It is simply implementing everything that the committee wanted.

Ms QUIRK: The Government in some respects took notice of those representations. It did not accept all the recommendations.

Mr Johnson: Which ones were not accepted?

Mr McGinty: Quite a number of them.

Ms QUIRK: The member for Hillarys has had his opportunity to speak.

I take this opportunity to thank the members of the committee for their forbearance, patience and kindness. I am an unreconstructed heterosexual. I had views about fairness and equity in the abstract, but the committee did much to enlighten and educate me about the range of issues faced by the gay and lesbian community in this State. I am thankful for the kindness and patience of its members, who helped me fully comprehend the difficulties.

[Leave granted for the member's time to be extended.]

Ms QUIRK: The member for Wanneroo gave a very touching speech because she had a personal story. However, by and large, we have been talking only in the abstract about matters that affect people on a daily basis. It is important that we remember that. I have been given permission to read one of the submissions to the committee -

> I am 24 and have lived in WA for all but 1 year of my life. I am a gay man and only now I am beginning to get my life together.
>
> Though I was never a victim of incest, rape, child abuse or was never in a war, my childhood and teenage years were sad. I would never repeat them or wish them on anyone else. My family have loved me and are middle class. I have had a good education, been well provided for and did not want for anything.
>
> But outside my loving family is an unpredictable society. Schools, workplaces, crowds, media, people. Many of them fiercely hate me for being gay.
>
> I "came out" to my mother when I was 16, but not to the world until I was 20. Since that time, life has been wonderful. I have found a loving partner, a stable employment situation and am now able to give back to the community in voluntary activities.
>
> The fact that I had to hide who I was for 9 years (I discovered my sexuality when I was 11) meant that the most awkward years of my life (puberty) ended up being almost like hell.
>
> I was repeatedly truant from school, preferring the silence and solitude of my room than the constant humiliation from being taunted or pushed about for being "a faggot". No one was ever pushed around, teased, stalked or even physically abused for being heterosexual.
>
> From the moment I was aware of my sexuality, I bought into the concept that I was "faulty", "inferior", "second class" and not allowed the same rights as my heterosexual colleagues. My desire to be straight was immense, and it was like looking out of a window while being locked in an attic.
>
> While growing up, I had no intimate relationships and no sexual contact with any gender. This was unlike my straight peers, who were encouraged to have girlfriends and take girls to the ball. Everyone asked about whether I had a girlfriend and I had no idea what to say. I lived in fear of any discussion about girls or sex or puberty in general. I hid from people. I shrunk further into myself and away from social interaction.
>
> I feared going to public swimming pools, the beach, parks and shopping centres. I was once humiliated for being "a fag" at a friend's house while swimming one day. Hurtful, embarrassing and I had nothing to come back with but to deny who I was and try to avoid future occurrences . . .
>
> I remember being at dinner parties while very young, and adults making jokes about gays and AIDS. I can remember old men from churches expressing hate at me from televisions in the name of God. I

> remember a decade of crushes on guys my age that I could never express or explore. I remember being frozen inside - trusting no person and forming no intimate relationships, even with mates.
>
> Growing up is frightening at the best of time. The boundaries around you are visible on all sides and many of them are highly questionable. Children and teenagers lack the ability to let intolerance and bigotry slide off their backs - it sinks in and stays for a very long time.
>
> My suicide attempt in 1999 shocked my family and frightened all those around me. It left me hospitalised for 10 days in intensive care and I have lost friends and opportunities because of it. I wanted to die because I could see no way of allowing a human being close to me, after a decade of suppressing my desire for intimacy and love. People I had never met hated me. I was not equal in laws or in the eyes of churches or societies. I was going to hell. As one churchgoer said about men dying from AIDS: "they are better off dead anyway". The media raised me to believe that gay stood for Got AIDS Yet?
>
> It really hurt.

The letter goes on. I think it is important to stress that we are talking about people's lives. One might ask how a piece of legislation can impact on an individual. That submission graphically shows that we can make an impact. We need an express recognition that lesbian and gay people in Western Australia are entitled to live their daily lives in a manner that is consistent with that enjoyed by heterosexuals.

Mr Johnson: How will the legislation affect people's attitudes? I do not condone the vilification of gay or lesbian people. We accept that much of the legislation should be implemented to ensure equality in work environments, housing, education and so forth. We do not agree with certain things, and I do not think many gay people have a problem with that. How will your legislation affect those people's lives? It will simply be a bit of paper that says that in the workplace, gay people shall be treated the same as other people.

Ms QUIRK: It will make a big difference. Gay and lesbian people know that they are criminals and are treated as second-rate people. They are discriminated against. It is a pity that this debate has focused on the issues of age of consent and adoption. The committee report chronicled discrimination in a wide range of areas. If the community were aware of the depth of that discrimination, it would be horrified.

Mr Johnson: They were discriminated against in the old days, but not any more.

Ms QUIRK: Many members who have spoken have failed to realise a very important point. They think that passing this legislation will in some way diminish family values.

Mr Johnson: Certain parts of it will.

Ms QUIRK: I disagree with the member. I cannot see how providing rights to one group will in any way impact on the fundamental unit in this society, the family, which even the report acknowledges will continue to be the predominant social arrangement. Jim Wallis summed it up well in his terrific book *The Soul of Politics* -

> In this controversial battle over gay rights, issues of sexual morality, family stability, cultural breakdown, and even theological interpretations have all been passionately discussed. In the name of these important issues, appeals are made to oppose gay and lesbian rights. But rebuilding strong families will not be accomplished by denying civil and human rights to people because of their sexual orientation. Our family instabilities have other origins. And the lack of healthy sexual ethics in our culture can hardly be blamed on gays and lesbians. To deny fundamental human rights to a group of people is to violate the core of professed theological integrity. Cultural breakdown is real, but it does not easily submit to simplistic slogans aimed at somebody else. Homosexuals have become the convenient scapegoat for society's unresolved social and moral crisis.

Similarly, the report refers to Madame Justice L'Heureux-Dube from Canada. According to the report, she said -

> It is possible to be pro-family without rejecting less traditional family forms. It is not anti-family to support protection for non-traditional families. The traditional family is not the only family form, and non-traditional family forms may equally advance true family families.

It is important that we make that distinction. Passing this Bill and giving long-overdue rights to the gay and lesbian community in Western Australia will in no way diminish the fundamental commitment of the Gallop Labor Government to family values and the family unit.

Mr Johnson interjected.

Ms QUIRK: The member for Hillarys has reduced this debate to the gutter. I will not dignify that question with an answer.

I will now deal with the suggestion that lowering the age of consent will in some way increase the extent of paedophilia. I refer to an extensive report - it is three volumes - of the Wood royal commission - the so-called paedophilia inquiry in 1997. In that inquiry, Mr Justice Wood concluded that to perpetuate the distinction between consensual homosexual and heterosexual activity, or to suppose that legislative change to achieve uniformity in this area would bring about any behavioural shift, or that it would, in real terms, expose any more children to the risk of paedophile activity than are presently exposed to that risk, was not tenable.

Mr Masters: Based on evidence?

Ms QUIRK: Based on fairly extensive evidence. One volume of appendices lists the submissions and the huge amount of evidence. The statistics that the member for Kimberley gave this morning of the fact that the greatest incidence of paedophilia involved family or family friends, and that the majority of people involved were heterosexuals, were also quoted. Therefore, the myths about paedophilia cannot be sustained. It even grieves me that I must raise this matter. However, this extensive inquiry in New South Wales failed to find any nexus between lowering the age of consent and an increased incidence of paedophilia. In fact, the recommendation was that the age be equalised at 16 years, because it would stop police blackmail and extortion and regularise the status of many young men who were facing trauma and marginalisation with the age of consent at the existing level.

Consent means just that; consent is consent. If a young person is drugged or under duress, or there is in some way a diminution of the consent, an offence of indecent sexual assault or rape will be committed. The Criminal Code will continue to be enforced with vigour in these matters. For a few years, I prosecuted child sexual abuse cases in Canberra. It was not pleasant. One wonders whether it is appropriate for young men who engage in consensual sex to be exposed to the courts. I can assure members that it is not an enviable experience for anyone.

At the beginning of my speech I read out a quote, which I will repeat -

> The number of men and women who have deep-seated homosexual tendencies is not negligible. They do not choose their homosexual condition; for most of them it is a trial. They must be accepted with respect, compassion, and sensitivity. Every sign of unjust discrimination in their regard should be avoided."

Does any member have any idea where that came from?

Mr Barnett: I do not know, but I think that is a very appropriate sentiment.

Ms QUIRK: It is, and it might surprise members that it came from the authorised Catholic catechism. I am concerned that people are using so-called moral or religious views to generate intolerance, when probably one of the most conservative church's official position is reasonably supportive of homosexuals. A quotation like that demonstrates that compassion and commonsense can come from the most surprising places. Unfortunately, it does not come from those opposite as often as it might. I beg members to take an equally open and generous approach to this Bill when they vote on it. Let us give gay and lesbian members of our community a fair go rather than a fear go.

MR BARNETT (Cottesloe - Leader of the Opposition) [4.25 pm]: I understand that I will be the last speaker in the second reading debate.

Mr Kobelke: Except for the Attorney General.

Mr BARNETT: Yes, sure. It is the case that most members on both sides of this House have contributed to this debate, which is a good thing. Last week in a matter of public interest debate, I spoke on a number of issues, particularly some of the gay and lesbian issues that have been debated. Therefore, I do not intend to retrace that. However, I will make a few comments. First, it is the case, in my judgment, that this legislation is being proceeded with too quickly. I do not doubt the importance of the legislation, particularly to the gay and lesbian community. Much of the legislation is overdue and should be progressed. However, clearly some issues are sensitive, if not divisive, within the community.

The fact that within this Chamber there has been a divergency of views is simply a microcosm of what is the case in the wider society. That is why members on this side of the House have put it to the Government, I think in a constructive way, that it would be best to proceed with those aspects of this legislation which are less

contentious - perhaps not contentious at all - and for which there would be widespread community support - indeed, most likely bipartisan political support. That would progress an area that is overdue for reform, and it would do it in a non-divisive way. Other issues would still be left to deal with; and, as has been identified by a number of speakers, age of consent, in-vitro fertilisation for lesbian women and adoption rights for homosexual couples are probably the most contentious issues. Those issues could be dealt with as a result of a wider community debate. I suspect that if the Government had the patience to allow that wider community debate to take place, it may well find that it would get a result which is maybe not identical to the result in this Bill but is one which probably has broad community consensus. That would be a far better result for the gay and lesbian community. Not only would the legislation have gone through this Parliament, but it could also be demonstrated that the legislation has both community support and a large degree of bipartisan political support. There may be some issues on which agreement will not be reached - that is fair enough - but there would be greater consensus and agreement than is currently the case.

In the Attorney General's second reading speech and in the debate that followed, the Government emphasised that the rationale for this legislation is to remove discrimination. That is a valid rationale. It has also argued that there is a need to establish equality by itself - that is difficult to argue with - and it has often relied on equality between States. It has also often argued that there is a mandate and that this has been widely canvassed. That is not the case. These issues have not been widely canvassed in the community. That is why there is a community reaction at present. My fear is that, although some elements of debate in this Chamber became a little heated and emotive - as is inevitable with this issue - that could be small compared with the amount of divisive debate that could occur in the community if this is not handled carefully and properly. I again put the proposition that social change is important. Society is continually evolving, and laws should reflect that, and even lead that social change on occasions. Legislative change should not, however, be out of step with the broader community. Some of the changes proposed in this legislation are far ahead of, if not totally out of step with, the values of the community in the year 2001. The Parliament should be sensitive to and respectful of that.

Although much of the argument put by the gay and lesbian community is about the problems of being stereotyped and put into a particular category - almost a clichéd paradigm of what a gay or lesbian person might be - I find it ironic and a little disappointing that the Labor Party members have so often sought to equally stereotype those members on this side of the House who have questioned some aspects of the Bill. The word "homophobe" was used a number of times, though not as excessively as I thought it would be.

Mr McGinty: The word "Nazi" was also used, coming the other way.

Mr BARNETT: If the Attorney General had been listening, he would know that I said some parts of this debate became extreme. That is moderate, however, compared with what might happen in the wider community. The point is that there was an attempt to say that the community, or those who question this law, have a stereotyped way of depicting gay and lesbian people. Equally, the counterargument from the Government has been almost to stereotype those who question this Bill as being homophobic or out of touch and living in the past. That is equally unconstructive, and the debate in this place should rise above that level.

Most evidence that I have looked at indicates that around 10 per cent of the population may be either gay or lesbian. From what I know of the issue, I am willing to accept that people are generally born gay or lesbian. Some people may change throughout their life; I do not know, but for the most part it is a genetic characteristic. I also recognise, as many members on this side of the House were at pains to recognise, that gay and lesbian people face serious issues of depression, suicide, a sense of social isolation, persecution, vilification and the like. Members on this side consistently spoke out against that. I became a little angry and upset when that was not recognised by members opposite. Members on this side of the House consistently stood and defended the rights of gay and lesbian people and argued against any vilification, persecution and unwarranted discrimination in our community. It is a source of great anguish to the whole community, if the finding is correct, that 25 to 40 per cent of gay and lesbian people may attempt suicide at some stage throughout their lives. They are not the only group in the community that may suffer from depression and the like. The Liberal Party recognises that, and that has been expressed by many people on this side of the House.

I also stress that gay and lesbian people need to be recognised and respected as individuals and members of the community. That is not in question at all. When they are not respected and treated properly within the community, that is of concern to all members of this House, and people in the community. From that point, the Labor Party has chosen to go forward in a particular way. It did have a broad agenda, and could even claim some sort of a mandate. It did place in the public arena an undertaking to reform the area of gay and lesbian rights. I do not deny that. There was a broad acceptance in the community that that would happen. There are, however, some difficulties with the way the Labor Party has gone about it. The report of the ministerial

committee on gay and lesbian law reform was released in June this year. It is a valuable document; a well-researched and well-presented paper. However, it was prepared from the perspective of the gay and lesbian community. I do not think the Attorney General has ever suggested anything else. The majority of members of that committee were gay or lesbian. That is not a problem for anyone, but it is the perspective of that particular segment of our society. The other 90 per cent of society have not looked at the issue or thought about the consequences or how they see the issues in the wider community. They have not thought through the issues. They have not had the opportunity to consider a certain number of issues.

The vast majority of this legislation would have bipartisan political support and wide community support. There are just a few issues, the hard ones, on which the wider community feels it has not yet had sufficient opportunity to have input, consult, discuss, or even get used to. It might be that many of these things are accepted, but people do take a little time to get used to the idea. The Opposition is asking the Government to allow time - six months would be enough - for the community to discuss and debate those issues. A result may well be obtained which surprises the Government, and fills it with some sort of joy. It may be a result that is very positive for the gay and lesbian community. The Government should take that six months to allow those issues to be canvassed in the community. I am not saying it will then get bipartisan support on all the issues, but it may well get a far greater degree of community acceptance and even positive support for more of the changes proposed.

One of the things that has been deficient in the way in which the Labor Government has presented its case in this debate is that so often the argument has been one of equality. I take as an example the age of consent. The consistent argument put by a number of members opposite has been that the age of consent for homosexual males should be lowered to 16, on the basis that that would make it the same as the age of consent for heterosexual relationships; for girls, essentially. That is an argument, but it is not the whole argument. Equality can be argued, but not in isolation. I did not hear members opposite argue, at any stage, that the age of consent for homosexual males should be 16 on its own merits or rights. The argument was that it should be 16 because it is 16 for girls. Where was the argument that it should be 16 because that is an appropriate age of consent for those young boys? That argument did not come forward. Indeed members on this side and some members opposite have raised concerns about whether the age of consent should be 16 for girls. That is a valid point. If the Labor Party has an issue about inequality in the age of consent rules for boys as compared with girls, and if there is a general concern that 16 is too young for both boys and girls, why did not this Labor Government take some time to step back from the issue and revisit the whole principle of the age of consent, rather than proceed on the basis of equality for its own sake? As members opposite have consistently said, why should two 17-year-old boys be made criminals, because they have a sexual relationship? No-one on this side of the House, and no-one in the community is suggesting that two 17-year-old boys are criminal or should be regarded as such. The concern about age of consent is about predatory behaviour, typically of older men against younger boys. Equally, all members have a concern about the predatory behaviour of older men against young girls.

So why not revisit the whole age of consent issue so it is not just about consensual sex between heterosexual or homosexual teenagers? There is no great concern about that other than the natural concerns of a parent. Why not raise the debate to modernising an age of consent rule to redefine it properly so it applies equally to boys and girls and addresses the real issue, which is not consensual sex amongst teenagers, but predatory behaviour by older men, typically against young girls or boys. The Labor Party could have done that. Had it done that it may well have ended up with broad community agreement on fixing the age of consent issue. There would have been a divergence of views but the Government would have got a far greater degree of consensus rather than pursuing a divisive debate in the community about whether 16, 18 or 21 years is the appropriate age. I have said publicly before that I find the age of 18 years acceptable. That is not a Liberal Party position. I would like to see an age of consent rule that makes 18 the age for boys and girls. We are not talking about making criminals of 17-year-olds who may have sex with other 17-year-olds. We need an age of consent law that protects young people below the age of 18 years from predatory behaviour from older males, whether they are heterosexual or homosexual. It would be a law that would have a good chance of achieving widespread community, if not political, support.

Adoption rights will prove to be one of the difficult areas of this legislation, especially from a legal point of view. The Labor Party did not tell the community that gay and lesbian couples would have the right to adopt a child. It did not do that at any stage prior to, or during, the election campaign. I will return to the question of mandate later. I do not know what is the wider community view of adoption rights but I know there is a divergence of views about it. The Government should have allowed time for adoption laws to be considered objectively by the wider community, not just a committee from the gay and lesbian population. The wider community should look at any revision of adoption laws. When the adoption laws were passed through this Parliament two or three years ago it was a long and emotional debate but one that produced a consensual

agreement in the House. Members on both sides agreed to modernise adoption laws. Progress could have been achieved on adoption reforms if the Government had taken the time to do it in a different way. The argument of equality with other States is often made, but if this legislation becomes law, Western Australia will be the only State that allows gay and lesbian couples the right to adopt a child.

[Leave granted for the member's time to be extended.]

In-vitro fertilisation is a moral issue for some. For others it is a religious and ethical issue. Medical ethics issues exist, especially as IVF involves waiting lists of a year or more and expensive medical treatment. A number of practical and ethical issues relate to IVF. Community agreement may have been reached with an opportunity to participate in the debate, rather than forcing one viewpoint on the community ahead of the debate. My recollection of the report is that it refers to socially infertile lesbian women. I understand that a lesbian does not want to have a sexual relationship with a male. That is obvious. That reflects the philosophy and values of lesbians. To provide IVF to a lesbian raises other issues. The Attorney General said that IVF treatment is only for physically infertile women. A lesbian couple may have one partner who is physically infertile but the other is not. Is the physically fertile partner entitled to IVF?

Mr McGinty: Yes, as the legislation is drafted.

Mr BARNETT: The partner who is fertile and fit and able to give birth to a child is deemed socially infertile under this policy and is given access to IVF. I do not know whether that is right or wrong; I am not sure whether I have a final view. The community has not dealt with this. There is doubt about how the law will apply. Why not allow the wider community and medical ethicists a view on this? Why should they not be included? Consultation and discussion should be allowed.

Another issue, which has become very contentious in the past week, is that of sex education in schools. I raised this issue last week. Sex education in schools has been there for a long time and it is a valuable part of the curriculum. It is important for the emotional development and knowledge of boys and girls in schools. It forms a progressive part of the curriculum from primary school to secondary school. There appears to be quite a difference of view between the Minister for Education and the Attorney General.

Mr McGinty: No, there is not.

Mr BARNETT: The Attorney General can talk about that in his response. I remind members of what the Attorney General said in the second reading speech, which I referred to last week. He referred to existing legislation that prevents the promotion of homosexuality in schools -

> . . . this section may have impeded beneficial activities such as safe sex education campaigns and the information about safe sex practices in schools since 1989 as this relates to young gay men.

There is no equivocation about that. The Attorney General is referring to safe sex education relating to young gay men. He is talking about homosexual safe sex education. Some would say that is appropriate and others would say that it is inappropriate. The point I raised last week is that the debate has not been raised in the community. I raised the issue and if letters to the editors of newspapers are any guide, public opinion is strongly against it. Similarly, talkback radio listeners are strongly against the idea of safe sex education relating to homosexual males in schools. The community needs a say. Some members opposite, including the Minister for Health who made some lucid comments, talked about the curriculum in schools. The curriculum in schools dates from 1999 and is an outcomes-based curriculum. It does not detail exactly what will be taught in schools. Modern curriculums in schools deal with the levels of knowledge and achievement a child will reach at various stages in his education. The curriculum is not dictated by John Howard in Canberra or by any material produced by any federal agency. That is not part of what constitutes a modern curriculum. Material relating to homosexual education and safe sex practices for homosexuals is the type of material that may be used as teaching materials within the ambit of a curriculum. There is a big difference. Any changes to the curriculum will be changes that facilitate same-sex and safe sex material going to schools. This debate should not be about the curriculum; it is about the materials that will be permissible in schools and whether the materials will be used. I have no doubt at all that the gay and lesbian community and various organisations will prepare and promote various material relating to homosexuality. I do not blame them for doing that. It is their choice. Lots of groups always want to put their material into schools. As Minister for Education, I was confronted on almost a monthly basis with one group or another that wanted to promote a point of view, cause, sentiment or philosophy in schools. I have no doubt that the gay and lesbian community will do the same. If altered, the curriculum may allow that. It is not so much the alteration of the curriculum that matters; it is the permissibility

and type of material that will be allowed into schools, who will prepare it and what will be the criteria for use. It is a real issue. It has not been canvassed in the community.

I want to revisit a few points. Arguments made by members opposite discussed the mandate of the Government and that it campaigned on these issues. Labor won the election. It was a convincing win, albeit with only 37 per cent of the primary vote. I will give members some examples of the policy position of the Australian Labor Party. The now Premier in a radio interview at 10 o'clock on the morning of 2 August last year said there was no need to change the laws relating to IVF. At three o'clock in the afternoon on the same day he said it was clear that the law needed to be reviewed. He flip-flopped within a few hours on the one day on a policy position. During the election period there was no media statement relating to IVF and lesbians. Apparently there was a media article on the issue. In a policy statement called "better opportunities for women" that was launched on the ALP web site on 8 February, there was a reference to IVF. It was a fair statement. It says -

> Labor does not support access to reproductive technology being restricted on the grounds of marital status or sexual orientation . . . Labor will: review Western Australia's IVF laws.

That was a fairly clear statement. However, it appeared only on the ALP web site and only two days before the election. That is hardly canvassing public opinion. It is not telling the public about the issue.

On the age of consent issue the ALP state conference in May 1999 said it would have uniform ages of consent. That was read to us a moment ago by the member for Girrawheen. The ALP did not say that the uniform age of consent would be 16 years of age; it did not nominate an age. The ALP has not debated whether it should be 16, 18 or 21 years of age. There may be many people in the ALP who think that 18 would be an appropriate age and the law should perhaps be changed to deal with predatory behaviour rather than trying to interfere with the relationships that may take place between teenagers. During the election period there was no media statement, no press article and no policy release on the issue of age consent.

On the adoption rights for same-sex couples, there was no media statement, no policy, no press release and no mention of it whatsoever before or during the election campaign; and so it goes on. There is no sense that there is any mandate. There was no campaign by the Labor Party prior to the election and no mention at all during the election campaign. I do not mean this in a provocative way or as a pun, but where is the Government's pride in this legislation? If the Labor Party is so content with this legislation, why is it not going out to its constituencies and telling people about it? Why did the Labor Party not put this policy in its newsletters? At one stage the Premier said it was widely canvassed because the former member for Joondalup, Mr Chris Baker, included it in one of his leaflets as an issue. Good on him! If he raised it in Joondalup, it was raised in one seat out of 57 in an election campaign. The Government cannot claim that as any sort of wide public debate.

The other criteria often used in this debate is that this will provide equality between heterosexuals and homosexuals and the Government is bringing Western Australia up to date with the rest of Australia. The age of consent is 16 years in Victoria and the Australian Capital Territory, 17 years in South Australia and Tasmania, 18 years in New South Wales and the Northern Territory and 21 years in Western Australia. The age of consent is all over the place. As I said before, I would cop 18 as that is probably appropriate; but that is my view.

On adoption, same-sex couples cannot apply to adopt a child in any other State. This is not coming into line with the rest of Australia. We would be ahead not only of the public debate but also in allowing same-sex couples adoption rights. We would be the only State allowing that. I can understand that people might think it is terrific to be progressive and out in front. However, that is not uniformity between States; that is making us the odd State out. The community will need to discuss whether we should be the odd State out on that issue. In New South Wales, Tasmania, Queensland and the ACT, IVF technology is accessible to lesbians and single women. That is reasonably common. They do not have access in Victoria, South Australia, the Northern Territory and, of course, Western Australia. When one tests this idea of a mandate and uniformity between States it does not stand up; it is all over the place.

I recognise that members of the community have differing views. I will read a quote -

> But, whereas all people are equal, all relationships are not. A de facto union where commitment is neither permanent nor public is not equal to marriage. A same-sex union is not the same as a union between husband and wife, open to children, because the latter is the fundamental unit of society which makes society strong and enduring.

That was from Archbishop Barry Hickey, the Catholic Archbishop of Perth; the spiritual leader for perhaps 40 per cent of our population. He clearly is not happy. There is a divergence of view in the community.

I put it to the Attorney General, and I appeal on good grounds once more: proceed with those parts of the legislation where there is agreement and defer, if not the whole Bill, at least those contentious parts, to a standing committee to have a public process to allow the law to be refined and then to progress.

There will be debate over the parts of the Bill relating to adoption, artificial conception, that part of the Criminal Code that relates to the age of consent and the Family Court Act. There is some disagreement about the Human Reproductive Technology Act; and there is probably agreement over births, deaths and marriages, the Cremation Act, equal opportunity, the Guardianship and Administration Act, the Human Tissue and Transplant Act, the inheritance law, the Interpretation Act, Members of Parliament (Financial Interests) Act - that is a bit interesting and very specific - the Parliamentary Superannuation Act, the Public Trustee Act and the State Superannuation Act. The Government would get the Opposition's agreement on the majority of this Act. The Government should put through those parts on which there is agreement, and let us get for the gay and lesbian community a demonstration of bipartisan political agreement on reforms that we agree on. Let us do that as a Parliament. That would be a worthwhile thing to do. Then let the other 90 per cent of the community, who have not yet had a say, have a proper look at the situation.

Amendment to Motion

Mr BARNETT: With reference to Standing Order No 170, I move -

> That the motion be amended by deleting the word "now" and adding the following -
>
> > not before it has been referred to and considered by the Community Development and Justice Standing Committee for the purpose of allowing adequate community consultation

MRS EDWARDES (Kingsley) [4.57 pm]: I support the amendment. As I indicated in the second reading debate, the Opposition and the Government agree on a lot of what is contained in this Bill. The Government would demonstrate bipartisanship if it agreed to the amendment proposed by the Leader of the Opposition. When we go through the individual parts of the Bill it is clear a great deal of agreement exists on issues that the gay and lesbian community have been asking for over a long period. I am sure if we can get those issues through both Houses of Parliament before Christmas.

The legislation has been rushed, and that is evident in a number of areas. The first is that the Bill has not been in the House for long, when one considers its complex nature. It is almost an omnibus Bill with amendments proposed to in excess of 19 Acts. When one looks at the amendments that the Attorney General has already put on the Notice Paper and an additional amendment that was circulated today, one realises the nature of the drafting does not give one any confidence that the legislation will do what it is supposed to do. I draw members' attention to the amendments on the Notice Paper that relate to the Criminal Code, which were drafted after I spoke in the debate. The Attorney General indicated in his second reading speech that he wanted protections put in place for the under 16s, and the Bill refers to the reasonable belief that the young person was 16 and there was an age difference of no more than five years. One of the amendments that has come through, seeks to change the period of five years to three years. I pointed out in my contribution to the second reading debate that the Government had failed to draft an amendment to the reasonable belief defence provision that would have provided for the common practice court interpretation - that is, five years. He also left out the amended defence clause in the primary offences under the Criminal Code. Obviously, parliamentary counsel and departmental staff had not done their job in advising the Attorney General, or he has not had the time to determine whether the Bill does what it is meant to do. The drafting has been very poor.

The Attorney General has moved critical amendments, and I will highlight a number of drafting errors during the consideration in detail stage. Drafting errors of that magnitude, particularly when we are dealing with key issues, such as the lowering of the age of consent for homosexual activities and amending the Criminal Code, and overlooking the primary offences provisions, indicate that the legislation has been rushed. No-one has had time to reflect properly on this legislation. Referring it to a committee will provide members with an opportunity to scrutinise it carefully and to ensure that it will do the job that it is meant to do.

The Government should reflect on what it will achieve by pushing through the Bill in its current form. If the Government were to take up the offer to split it, the non-contentious issues would be passed by both Houses of Parliament this year. The Liberal Party supports the anti-discrimination provisions in the Bill, such as those in the Equal Opportunity Act that include sexuality as a ground for discrimination in all areas. That is a new definition as amended by the Attorney General. If he had not moved the amendment to include heterosexuality, he would have been the first Attorney General in Australia to include a discriminatory provision in an Equal Opportunity Act. Obviously, no-one had pointed out to him that every other ground for discrimination in the

Equal Opportunity Act is neutral. It should have been considered neutral in the first instance. The Equal Opportunity Commissioner released a report in 1994 containing broad-ranging recommendations about the definition of sexuality. Obviously, no-one brought that to the Attorney General's attention during the drafting process.

The Liberal Party also agrees with the amendments to the Administration Act. The amendments provide that same-sex couples will be able to share in the distribution of intestate estates. As I pointed out during the debate on the Family Court Amendment Bill, the Liberal Party agrees with the amendments to the Inheritance (Family and Dependants Provision) Act. There is no doubt about the party's support for the amendments to the Cremation Act. People involved in same-sex relationships should have the opportunity to object to the cremation of their partner. The Liberal Party also has no objection to the amendments to the Guardianship and Administration Act and the Human Tissue and Transplant Act. It is appropriate that partners in a same-sex relationship be deemed the senior available next of kin. The amendments to the Members of Parliament (Financial Interests) Act have the Liberal Party's full support. That legislation should cover same-sex couples. Amendments to the Parliamentary Superannuation Act were debated in this place last year. If the former Government had been able to redraft the legislation within a reasonable time frame late last year, it would have made those amendments. Accordingly, the Liberal Party has no difficulty in supporting them now. There is no question about supporting the amendments to incorporate provisions relating to same-sex couples in the Public Trustee Act and the State Superannuation Act.

As has been pointed out, members on this side of the House believe that the community is not ready to accept four of the Government's proposals. I have always maintained that if law reform moves too quickly and is out of step with the community, we will produce bad law. If legislation moves too far ahead of the community, it can cause a greater level of divisiveness. This legislation was designed to be unifying and to eliminate discrimination. More legislation will be introduced to ensure equal opportunity in all areas of our society. However, if our legislation moves too far ahead of the community, and if it is out of step about adoption, in-vitro fertilisation, the age of consent for homosexual activities and sex education, we will have problems. That impatience could undo some of the good work that has been done over the years.

The Government should divide the Bill into contentious and non-contentious provisions and reintroduce them in two separate Bills. The non-contentious Bill would be passed expeditiously and the contentious Bill could be debated after the community is better informed about the issues of concern. If the Government does not follow that course of action, we will witness even more division in the community. I support the motion to refer this legislation to a standing committee. That approach would have two outcomes: first, it would allow for closer scrutiny of the drafting of the legislation. I have already highlighted major drafting errors. Secondly, it would give the community time to more fully consider the issues of concern. The Government should bring the community with it. If it does not, it could force the debate back into the community, and that would be a retrograde move. I support the motion.

MS SUE WALKER (Nedlands) [5.09 pm]: I support the motion to send the legislation to a standing committee. I will concentrate on only one issue; although I agree with the member for Kingsley that there are four issues of concern. My major concern is the amendments to the Adoption Act. Considerable disquiet has been expressed in the community about legislation that allows same-sex couples to adopt a child. That disquiet was raised with me in telephone calls to my office prior to the debate.

No other jurisdiction in Australia has legislation with similar provisions. The Attorney General said earlier today that a relinquishing mother will have a choice about whether she wants her child to go to a same-sex couple. I do not know whether the Attorney General knows - he probably does - the state of confusion that a young mother might feel when she is having a child and must give that child away, particularly when she is at a very young age. She may not be presented with an appropriate choice. Will she be given a list of choices and asked whether she objects to her child going to a gay couple, a lesbian couple, a heterosexual couple, a single male person or a single female person? When I raised that question with the Attorney General, I was surprised that the Minister for Community Development, Women's Interests, Seniors and Youth said that the mother would have the details. When pressed, she said that it was only the names of the people. I doubt whether she would have the names of people - I do not know what the current procedure is. However, it is important that things like that are nutted out. The notion of two men, for instance, being able to adopt a child, was not raised prior to the election of this Government. For this Government to stand here and say that the mother will have an interest as though that is a safeguard, is very misleading and disturbing to me, as a woman, particularly when it concerns the protection of young women who, when giving up their children, are often in a very distressed and confused state.

In question time today, it was pointed out that no other jurisdiction in Australia had this provision. The Attorney General spoke of drawing support for this and other provisions in the Bill from overseas jurisdictions. My concern with this Bill is that the amendments to the Adoption Act have been snuck in the back door by stealth and put into this large Bill, amongst 18 other Acts. I say that they have been snuck in because they were not raised in any of the information the Labor Party sent out to the electorates before the election. I have received quite a bit of correspondence from the Anglican Church, and, in particular, from the Social Responsibilities Commission. It has asked parliamentarians to support the lowering of the age of consent and the in-vitro fertilisation, the de facto and the equal opportunity provisions. However, when I read out the correspondence in my contribution to the second reading debate today, there was no mention of the Adoption Act. I wonder if the Social Responsibilities Commission is aware that changes to that legislation were afoot by the Labor Party.

The report of the Ministerial Committee on Lesbian and Gay Law Reform refers to parenting and children and the amendments to the Adoption Act. Support has been drawn by the committee from some American cases, which provide only a reference. The cases referred to at page 101 of the report have been taken from an article by Frank Bates. We do not know the facts of the cases or how many judges were involved. The committee is relying on a commentary of some cases taken from an article that does not even supply a case reference. That is of concern because this legislation is based on that nebulous and tenuous support. On page 98 of the report it is noted that relatively few children are available for adoption in Western Australia. In 1998-99 six children were adopted and 10 were adopted in 1999-2000.

The legislation before the Parliament will allow same-sex couples to adopt and be the legal parents of a child. It will allow a same-sex partner to adopt his or her partner's child from a previous relationship and it will also allow the legal carer of a child to adopt and have his or her same-sex partner also recognised as the parent of the child. That is cutting edge legislation that has not been raised and/or discussed in the community. The Gallop Government came into office and said that it would consult the community, particularly on legislation such as this. I have nothing against gay and lesbian people, but we are altering the situation in which a child can be brought up. Following calls from my office, I believe the community needs to think about that, and this Government should have given the community the opportunity to think about the consequences of this legislation. As the member for Kingsley said, the community will accept many of the provisions of the Bill. However, some parts of the legislation, go one step further and, broadly speaking, the community is not aware of what is happening.

Page 99 of the report of the Ministerial Committee on Lesbian and Gay Law Reform refers to the extent and nature of the discrimination. It states -

> The desire to adopt children surfaced in a number of submissions to the Ministerial Committee. Many believed that the needs and rights of the child would be best served by criteria that addressed the suitability to parent, rather than criteria about sexual orientation or the genders of prospective parents . . . The current status whereby same sex couples, in particular the non-biological parent, cannot adopt children leads to uncertainty and insecurity

However, that is the uncertainty and insecurity that the proposed parents feel, not the child. That is also important when we consider this legislation. I support the amendment.

MR BOARD (Murdoch) [5.18 pm]: Standing committees of the House are set up for the exact reason we are debating tonight. This year, not one Bill has been sent to a standing committee. This Bill has a lot of support in an overall sense. However, parts of it need further examination and community input. That is the role of a standing committee. In the past, select committees have done that work prior to Bills coming into this Chamber. In this instance, a ministerial committee was established, but it did not have the full community input that this Bill ought to have had. A select committee of this Parliament reviewed the in-vitro fertilisation legislation and recommendations were made and they received broad community input. That input - some two years ago - indicated that single women should not be supported in their access to IVF treatment in this State. That view was a result of community input to that select committee. This Bill flies in the face of not only community input, but also the recommendations of the select committee, and community consultation is being avoided. We, on this side of the House, argue that certain issues need to be debated further within the community.

Last night I raised the question whether the Parliament should force social and community change, or reflect it. Parts of this Bill go beyond what a large part of the community is prepared to accept. Those parts must be genuinely debated, considered and explored by the committee and the community. I am absolutely horrified by some of the statements that have been made by members opposite. The majority of government speakers have spoken about equity and the need for tolerance and fairness in the community. There is absolutely, categorically

no argument about that. We are talking about another issue entirely. We are talking about the rights of a third person who is totally removed from a gay or lesbian relationship and who is brought into that relationship. That is the crux of the situation. The community has not yet had an opportunity to debate that issue. We accept the rights to which members opposite refer in every aspect of the law. However, when those rights impinge on the rights of a third person, who has no say in the matter, it is an entirely different equation. That is the issue that must be explored within the community because it elevates the debate to an entirely different position. It takes us to cutting edge legislation and makes this State different from all other States of Australia and, indeed, from most of the world. I do not think that is the position of the Western Australian community. That is why we ask the Attorney General to consider seriously splitting the Bill and sending it to a committee or splitting the contentious parts of the Bill and sending them to a committee.

MR DAY (Darling Range) [5.21 pm]: We are currently debating a motion to refer the Bill to the Community Development and Justice Standing Committee. I support that motion. To some extent, we have had a long debate about the merits of the legislation. However, there is no doubt that some people in the community are concerned about parts of this Bill and they have not been adequately consulted. As has been explained copiously, there is bipartisan support for much of the Bill that is being considered but there is also much disquiet in the community about some aspects of it. It is appropriate for the community to have input. It is appropriate that the standing committee can fulfil its responsibilities and do its job over the next couple of months. Members could then be provided with the community's input so that we could debate the more contentious parts of the Bill in a more informed manner. Therefore, it is appropriate to support this motion.

MR McGINTY (Fremantle - Attorney General) [5.22 pm]: In light of the hour and in order to try to accommodate members opposite, I will address in a composite way my closing second reading comments and the motion that is before the Chair in the eight minutes between now and 5.30 pm. The motion is to refer this Bill to the Community Development and Justice Standing Committee of this House in order to facilitate adequate community consultation.

One of the differences on this issue between members opposite and the Government is that the Opposition will never agree to the controversial elements of the Bill either this year or the next. I say that because in 1989, which was the last time the Parliament addressed the issue of homosexual law reform in this State, the Liberal Party bitterly opposed legalising homosexual acts between male adult homosexuals above the age of 21. That legislation was bitterly fought in the Parliament and was something about which members opposite would never be persuaded to support. However, that has now become the norm and is part of the law. What goes on in private between consenting adults is not the concern of Parliament. As I recollect, in the early 1990s, the Equal Opportunity Commissioner recommended that the Equal Opportunity Act be amended to provide that discrimination on the basis of sexuality - in other words, discrimination against homosexuals - be outlawed in this State. Some members opposite endeavoured to introduce legislation to give effect to that recommendation, which today is uncontroversial. Indeed, some members opposite have even indicated their support for it. For eight years members opposite could not bring themselves to introduce a Bill into Parliament to give effect to the Human Rights and Equal Opportunity Commission's report.

Members opposite will not support the three controversial aspects of this legislation; that is, the age of consent and the IVF and adoption elements. Let us not have a charade by saying that to send this Bill to a committee would provide a better opportunity to reach consensus between us because that will not happen. That is the truth. Social progress is made by people occasionally taking bold steps to achieve new norms followed by the conservatives accepting those steps after the event. On this side of the House we pride ourselves with being socially progressive. We think we are in touch with the general thinking in the community.

Mr Pendal: You also have a Caucus.

Mr McGINTY: As do members on the opposite side.

Mr Pendal: Members on your side are obliged to do what they are told on this legislation from fear of losing endorsement. Are you saying there is a free vote on your side?

Mr McGINTY: The Leader of the Opposition initially announced a free vote on the issue of the age of consent but earlier this week he announced there would no longer be a free vote.

Mr Birney: We do not need a free vote; we are all of the same opinion.

Mr McGINTY: That is fine. Members of the Liberal Party do not have a free vote on this issue. I am not sure about the National Party, but I presume they will have a free vote and the Independents will, of course, vote as Independents.

Mr Barnett: Members of the Liberal Party were offered a free vote.

Mr McGINTY: I am trying to accommodate the House so I will get straight to the point of what I have to say. We are setting out to achieve in a broad sense the removal of all forms of statutory discrimination against gay and lesbian people in this State. That is what this legislation is about. I appreciate that some of the issues are controversial. However, since the last debate that took place in this Parliament 12 years ago there has been an enormous leap in the community's attitudes. I think that Parliament is now well behind the rest of the community. There is no contention that everything in this legislation other than those three elements should be removed. The community increasingly wants the Government to fix the current legislation. It wants Government to prescribe for equality, to remove discrimination and then get on with the significant matters of Government. This is not the sort of matter that the broad community wants this Government to be preoccupied with for the next 12 months. That is the essential reason that I oppose the motion to refer this matter to a committee.

The point has already been made that in the 1970s two Labor members of Parliament - Hon Grace Vaughan and Hon Bob Hetherington - first proposed the issue of gay law reform. In the 1970s they introduced legislation that was not accepted by the community or the Parliament at the time. Some people on our side of the Parliament found it hard to accept as well. They did not like it and there were great divisions within the Labor Party -

Mr Pendal: It still applies to your side.

Mr McGINTY: We are a broad church. Of course we have members with a variety of views. We would be an impoverished party if we had a monoculture and a single way of thinking in our party.

Mr Barnett: No members on your side expressed opposition to the Bill.

Mr McGINTY: We have discussed the matter. Members have fed ideas to me and we have accommodated some of those points of view by the amendments we have made to the legislation. Of course members have a variety of views. I do not think that anyone would seriously suggest that because they are a member of the Labor Party that they must leave behind their brain or their life-long experiences and values when they become a member of Parliament. People have a variety of views on this matter. However, we are united on one issue; that is, the need to have equality and remove discrimination against gay and lesbian people. There is no dissension about that on this side of the House.

Most of western Europe has an age of consent of 16 years for both homosexual and heterosexual people. Homosexual and heterosexual people in Australia are overwhelmingly subject to the same ages of consent, although the age itself might vary in each State. Two jurisdictions in Australia have unequal ages of consent - New South Wales and the Northern Territory. With the exception of one State and one Territory, and putting Western Australia to one side, the laws for heterosexual and homosexual people in Australia are equal. That is what we have set out to achieve in Western Australia. People can have an opinion about whether the age of consent should be 16 years or 17 years. The role and function of the criminal law is not to describe what in a desirable world the social condition should be, but to describe those things that are so abhorrent to the social condition that they deserve to be punished by imprisonment and criminal sanctions. I think every parent in this House hopes that their children would not engage in sexual activity at that age. However, the harsh reality is that they do. They often engage in sexual activity before that age. That is the reality with which we must deal. The real issue is the age at which we seriously say that we will send someone to jail for it. That is the issue for me as the Attorney General, who is responsible for the laws of this State; not the age at which such sexual activity is desirable. I have difficulty with increasing the age of consent beyond the age of 16 years, which is what it has been in this State for a great length of time. We are talking about the criminal law and the age at which people should be sent to jail for engaging in sexual activity. That issue is completely different from the one that many members have addressed, which was the age at which it is desirable for people to engage in sexual activity.

Mr Birney: In the past five years, nobody under the age of 21 years has been sent to jail for committing homosexual acts.

Mr McGINTY: I am not so sure about that, but we will cover it in detail later. However, assuming that statement is correct, the fact is that it is on the statute books as a criminal offence. I do not want a statute that we are not prepared to enforce.

Mr Birney: Your answer to a question on notice was -

> There have been no convictions of such acts in the last 5 years.

Mr McGINTY: It would depend on the section. A great many sections in the Criminal Code relate to this issue.

Mr Birney: The question was -

> How many males aged under 21 years have been convicted and/or jailed for participating in consensual homosexual acts in private over the last 5 years?

Your answer was -

> There have been no convictions of such acts in the last 5 years.

Mr McGINTY: A number of different sections apply. I do not have time to deal with it now because I gave an undertaking to the Leader of the Opposition. However, it would depend on the section the member is talking about. People have been convicted of various acts of indecency or having homosexual sex under the age of 21 years, but the convictions may not have been under that section.

As I pointed out to the Leader of the Opposition earlier, it is true that homosexual couples in other States are not allowed to adopt. However, single homosexual people in every other State and Territory can adopt. In Western Australia, single homosexual people have adopted, and homosexual couples have had foster children placed with them. It is not as though we are entering a brave new world. A variety of practices and conditions apply in each of the other States, and I might cover those during the consideration in detail stage.

The question of in-vitro fertilisation is also contentious because it involves the creation of a child. We will need to handle that with appropriate sensitivity. The principle is that what people do in their bedrooms is not relevant to their capacity to be a parent and function as a citizen. I want to remove that criteria and allow those people to be judged on the basis of medical infertility or their merits relative to being a parent.

Mr Board: Do you understand the point we make about the third person - the child of a homosexual couple? It is a quantum leap to introduce a third person into that situation.

Mr McGINTY: I understand those points. I give the example of a lesbian couple, one of whom has a child from a former relationship. The other partner to that relationship might want to adopt that child so that he can be regarded as a child of both partners. That cannot be done at the moment.

Mr Board: That is not the point we are making. In that situation, the child is existing. We may debate that. The extreme situation is when the homosexual couple has no children and wants to adopt a heterosexual child - we assume the child will be heterosexual, although he will be young. That is the issue. It is entirely different.

Mr McGINTY: Last year in Western Australia six babies were put up for adoption by relinquishing mothers - the stranger adoption. I understand that adoption involves a considerable process, with a long waiting list and waiting time. My view is that the likelihood of one of those six children being placed with a gay couple is remote; however, I do not want to exclude the possibility.

Mr Board: I know you want to close the debate, and we are accommodating you. However, if this Bill goes through, there will be some affirmative action in this area, like there has been in all -

Mr McGINTY: I do not think that is right, because it comes back solely to the interest of the child. The legislation will also allow step-parent or carer adoption. We should enable adoptions to occur in that area. The Opposition has indicated that that is appropriate because a family relationship already exists.

The sun will rise tomorrow; the world will not come to an end. We need to take this step forward.

Amendment put and a division taken with the following result -

Ayes (19)

Mr Barnett	Mr Edwards	Mr McNee	Mr Waldron
Mr Birney	Mr Grylls	Mr Marshall	Ms Sue Walker
Mr Board	Mrs Hodson-Thomas	Mr Masters	Dr Woollard
Mr Day	Mr House	Mr Pendal	Mr Bradshaw *(Teller)*
Mrs Edwardes	Mr Johnson	Mr Sweetman	

Noes (27)

Mr Brown	Mr Hyde	Ms McHale	Mr Ripper
Mr Carpenter	Mr Kobelke	Mr McRae	Mrs Roberts
Mr Dean	Mr Kucera	Mrs Martin	Mr Templeman
Mr D'Orazio	Mr Logan	Mr Murray	Mr Watson
Dr Edwards	Ms MacTiernan	Mr O'Gorman	Mr Whitely
Ms Guise	Mr McGinty	Mr Quigley	Ms Quirk *(Teller)*
Mr Hill	Mr McGowan	Ms Radisich	

Pairs

Mr Omodei	Mr Bowler
Mr Barron-Sullivan	Dr Gallop
Mr Ainsworth	Mr Marlborough

Amendment thus negatived.

Second Reading Resumed

Question put and a division taken with the following result -

Ayes (27)

Mr Brown	Mr Hyde	Ms McHale	Mr Ripper
Mr Carpenter	Mr Kobelke	Mr McRae	Mrs Roberts
Mr Dean	Mr Kucera	Mrs Martin	Mr Templeman
Mr D'Orazio	Mr Logan	Mr Murray	Mr Watson
Dr Edwards	Ms MacTiernan	Mr O'Gorman	Mr Whitely
Ms Guise	Mr McGinty	Mr Quigley	Ms Quirk *(Teller)*
Mr Hill	Mr McGowan	Ms Radisich	

Noes (19)

Mr Barnett	Mr Edwards	Mr McNee	Mr Waldron
Mr Birney	Mr Grylls	Mr Marshall	Ms Sue Walker
Mr Board	Mrs Hodson-Thomas	Mr Masters	Dr Woollard
Mr Day	Mr House	Mr Pendal	Mr Bradshaw *(Teller)*
Mrs Edwardes	Mr Johnson	Mr Sweetman	

Pairs

Mr Bowler	Mr Omodei
Dr Gallop	Mr Barron-Sullivan
Mr Marlborough	Mr Ainsworth

Question thus passed.

Bill read a second time.

Consideration in Detail

Clause 1: Short title -

Mrs EDWARDES: This clause states that this Act may be cited as the Acts Amendment (Lesbian and Gay Law Reform) Act. Why is the word "gay" used? The Attorney General may remember that during my second reading contribution I went through some of the history of other jurisdictions and the terminology they have used in their legislation. Those jurisdictions carefully considered the wording of their legislation to ensure that the terms were all-encompassing. A number of them found that the word "homosexuality" was far too limiting in that it did not include lesbians. "Gay" is a colloquial term. Although the word may be recognised and used commonly in the community, I wonder why it has been included in the legislation. In the report of the Ministerial Committee on Lesbian and Gay Law Reform the terminology is used consistently. I did not quickly pick up the reasons for using those terms. Under the definition section on page 16, gay is defined as referring exclusively to homosexual males. The legislation also encompasses bisexuals, transsexuals and other orientation. By using the word "gay" in the title of the Bill, is the Government not limiting the coverage of this Bill? That is the first aspect of my question. The second is whether it is appropriate to use a colloquial term in drafting, particularly in the title of the Bill. Colloquialisms are used in the second reading speech and debate, but this is a legal document. The Oxford dictionary refers to gay as a colloquial term intended for or used by homosexuals. The definition goes on to deal with words like "gay bars". Is the term that is being used correct, and why has it been selected? Given the fact that the legislation is wider than gay and lesbian people, encompassing others, has the Attorney General restricted the scope of the Bill by not incorporating those of differing sexual orientations?

Mr JOHNSON: I will enlarge on what the member for Kingsley has said. I have some doubt about why this Bill is referred to as the lesbian and gay law reform Bill. I can understand the lesbian part completely, but I have a problem with the description of gay. Some of the stories I have heard from members opposite, who are referring to homosexual men, are quite tragic. I do not attempt to ridicule anyone, but some of the stories the House has heard have been quite tragic. Some homosexual males are anything but gay in the true sense of the word, as the dictionary describes. It is a description that should not appear in a Bill that will become an Act, and will be here for perhaps 100 years. There are some gay bars as the member for Kingsley said, but they are not advertised over their doors as gay bars -

Mr Murray: Motor cars used to be referred to as horseless carriages.

Mr JOHNSON: I never did that. In the old days I called a horse and carriage a horse and carriage, and today I call a car a car. I do not know what they do in Collie.

I have always had a problem understanding the word "gay" when used to describe a homosexual male. I am not belittling this at all, but I cannot see the sense in calling people who are homosexuals gay. It is some trendy word that has been invented, probably by the people who are either homosexual or lesbian. They all call themselves gay whether they are homosexual or lesbian. The word "gay" should not really be a description on this Bill. I have met people who are homosexuals, and I have friends who are homosexuals, and even some of them do not like the word "gay" because it stigmatises them straight away. They do not want a name at all. They just want to be called fellow human beings; a fellow male or a fellow female. The House is considering a Bill that is anti-discriminatory, but in the title of the Bill a section of our community is being labelled. I cannot see how that can balance up with all the comments the Attorney General has made about discrimination against people who are homosexuals or lesbians. This Bill will become an Act because the Government has the numbers to put it through the Parliament and it will be here for many years to come. Future generations will look back on it and I hope homosexuals and lesbians are treated the same as anybody else in the community. I look upon a person as either a homosexual or a lesbian; it does not occur to me - they are just fellow human beings. Many different words could have been used in the title other than the word "gay". We know what a lesbian is, and we know what a homosexual is, but the true context of the word "gay", as used in the dictionary, does not adequately reflect the sort of people that this Bill is intended for.

Mr McGINTY: The Government has taken the lead on this question of the title of the Bill from the Ministerial Committee on Lesbian and Gay Law Reform report. Throughout that report, the language used is lesbians and gay men. The member for Collie made the point, by way of interjection, that English is a living language, and it is evolving. Particularly in these areas, the accepted definitions and terminology that are used evolve over time. This has also happened in relation to race. In the United States, racial terminology evolved over time from negroes, to blacks to African Americans. Each of these was acceptable at the time.

Mr Johnson: They would not have any legislation referring to negroes.

Mr McGINTY: They might have done, if it was made in the 1950s or 1960s. I would not be at all surprised if that were the case. One has only to look at some of Western Australia's laws and the antiquated nature of some of the terminology used in those laws, which everyone understood at the time. I do not think the term "carnal knowledge against the course of nature" would be used today to describe a particular act. Nonetheless, at a time when people were much more delicate in the way they expressed things, that was the sort of language that was used.

I have retained a number of copies of the report, and if anyone does not have a copy of the report to use during the committee stage, I have spare copies I can give to members. I suspect that the quality of that report was such, and that there is so much original material in it, that it will be a very useful contribution to the debate during the next couple of days.

This Bill deals with bisexuals, homosexual men and lesbians. They are the three main groups in one way or another, particularly those I would have referred to as homosexual men and homosexual women. In the area of language I am happy to take the lead from the people who are immediately affected by the Bill. There are other groups affected by related issues, but not the same issue. I am thinking of a Bill that was passed through this Parliament last year, under the previous Government, which dealt with the gender dysphoria. People with that, or related, medical conditions have evolved the nomenclature they use to describe themselves. For instance, when I went down to the University of Western Australia to address a group of people who I thought were classified as gender dysphoric, I heard there was another title they had evolved - I do not know when, perhaps I just was not up with things - and which they were now using. The term was intersexual. Maybe they are different subgroups, but they were related, and I had not heard that phrase before I addressed them at the university six months ago. The definitions in the ministerial committee report read -

> Bisexuals: refers to both males and females who are attracted to both members of the same sex and of the opposite sex.
>
> Gays: refers exclusively to homosexual males.
>
> Gay men: refers exclusively to homosexual males.
>
> Homosexuals: refers exclusively to males who are attracted to members of the same sex.
>
> Lesbians: refers exclusively to females who are attracted to members of the same sex.
>
> Sexual orientation: refers to the sexual identity of gay men, lesbians and bisexuals.

Throughout the report the constant terminology was "lesbians" and "gay men". It is a situation in which the language is evolving, and the way in which people like to be referred to is also evolving, in the same way that the terminology referring to some racial groups and other sexual subgroups is also evolving. I am happy to go with the description which is contemporary to those people who are affected by the legislation.

Sitting suspended from 6.01 to 7.00 pm

Mrs EDWARDES: Before the suspension the Attorney General talked about the use of language. I was concerned to ensure that the terminology was appropriate. His response was that language changes and he took guidance from those who were part of the ministerial committee and the use of their words. He did not respond to whether by using the word "gay" in the short title there was a legal impact on the scope of the legislation that extended beyond lesbian and gay people.

Mr McGINTY: I indicated that the bulk of the Bill deals with lesbians and gay men. Some parts of the Bills deal with other people such as bisexuals and some issues affecting single people. The title is meant to be broadly descriptive of the subject matter, which is the reform of the law relating to gay and lesbian people. The purpose of the Bill is contained in the long title and states -

> . . . to provide for the reform of the law relating to same sex relationships, access to artificial fertilisation procedures and for related purposes.

The short description of the people affected by the legislation as lesbian or gay will not in any sense limit the scope of the Bill because it is quite express in other areas in which it extends beyond those two classes of people.

Mr BOARD: Is there any other legislation in Australia that incorporates gay terminology in its title? Is this the first occasion? By incorporating the word "gay" in the short title of the Bill - which is an acceptable term in general terms in the community - does it prevent the use of the word in any other form other than when

describing homosexual relationships? Does the word "gay" become an accepted legal term within Western Australia when referring to male-to-male relationships? Are we for the first time changing a word that has been recognised in the English language in another sense, adopted in a vernacular sense, and now used in a legal sense?

Mr McGINTY: To the best of my knowledge, no other State has legislation that uses the word "gay". Most legislation covering this subject matter generally refers to relationships rather than gay and lesbian people. While the words "gay" and "lesbian" are referred to in the title of the Bill, the words do not appear in the body of the Bill. The equal opportunity amendments refer to a definition of sexual orientation. For the purposes of the Bill they include homosexuality, lesbianism or bisexuality and include homosexuality, lesbianism or bisexuality imputed to a person. We will further amend that definition to include heterosexuality. The term "gay" is descriptive and not contained in the legislation other than in the title. We could equally have referred to it as the Homosexual Law Reform Bill. As I recollect, that was a Bill introduced 12 years ago by Hon John Halden. It was originally called the Decriminalisation of Homosexuality Bill. It was changed by Hon Peter Foss to the Law Reform (Decriminalization of Sodomy) Bill. The title was changed during the debate and the passage of the legislation through the Parliament. The word "gay" is commonly understood to have a contemporary meaning and it is well known.

Mr BOARD: The fact that it is not used in the Bill and only used in the title indicates to me that the Government is not endeavouring to establish the word "gay" in any legalese.

Mr McGinty: That is right.

Mr BOARD: It is being done to either describe or promote the Bill in terms of people understanding what the Bill is. By doing that, it is saying that the word "gay" has such universal acceptance in the community that it now fully describes not a state of euphoria but a sexual relationship. By including the word gay in the Bill the Western Australian Government is entrenching it as the major meaning of male-to-male sex rather than the word homosexual, which for some reason that I do not understand is offensive to some people. The legislation will change the meaning of a word within the English language. There is no precedent for entrenching this word in our vocabulary. It is not one that has been adopted in legalese. However, the Attorney General has been encouraged by people who are offended by the term homosexual to use a meaning that has not found its way in the dictionary in that sense. It may have found its way into *The Macquarie Dictionary* and into other areas, but it is not fully accepted in the English language around the world. By entrenching this word, is the Attorney General saying that the Western Australian Government has adopted this word as the formal term for male-to-male sex?

Mr McGINTY: I do not think a great deal turns on this point. It is the reference of choice of homosexual men. It is not something peculiarly Western Australian. For instance, the Human Rights and Equal Opportunity Commission put out a paper titled "Human Rights for Australia's Lesbians and Gay Men". The same sort of terminology is used in the report of the ministerial committee and also in the title of the legislation. My understanding is that this word is not peculiar to Western Australia. Today the most commonly understood way to describe a homosexual man is to call him gay. The word might even have a broader meaning than that and that is to pick up all homosexual people. However, lesbians regard themselves as different and their choice of description is lesbian. It is a matter of having a title that reflects the nomenclature of choice of the people involved. That is pretty much the accepted reference around those few parts of the world in which I am aware this issue has been debated.

Mr JOHNSON: I have expressed various concerns previously. I am also concerned with using the term gay in this Bill because of the connotations it may have for young people. I know that the Attorney General is happy for homosexuality to be instructed in schools. I am concerned that if the word gay is used too often in schools our young people will be misled. When I first heard the term gay people I thought they were jolly, happy people who enjoyed life and had a good style of living. However, the comments of members opposite contradict that. They make them out to be people who feel sad, who have suffered prejudice in school, the workplace, the armed forces and in many other areas. This Bill will address all of those things. Is gay the right term to use? My concerns are specifically for young people. Adults understand the term and what it means, but many young people would not necessarily understand the meaning of the term gay. The last thing in the world that I would want to see happen is young people being influenced by a term that the Attorney General, the Government and the Parliament will enshrine in an Act that will be here for perhaps 100 years. To some extent we are legitimising the term gay. That term sets people apart from heterosexual people who make up the vast majority in society. I hope that we do not influence our young people in any way, shape or form as to their sexual preferences. I say that we should do the opposite. From what I have heard, the Attorney General is committed

to promoting a heterosexual relationship between a man and woman; that is, a family with a specific mother and father figure and the children thereof. The term gay could detract from that very important constitutional situation of a true family. The Attorney General and I have a fundamental difference in what we believe is a true family. I believe it is a mother and a father and the children that come from that marriage. The Attorney General is happy to say that from now on a traditional family unit will be a homosexual couple or a lesbian couple. The Attorney General is promoting a family unit to be two homosexual men or two lesbian women who adopt children, and for lesbian women to have access to IVF. Will the Attorney General consider changing the name of the title of this Bill into something that is more appropriate?

Mr McGINTY: A publication titled "The National Report on the Sexuality, Health and Well-Being of Same-Sex Attracted Young People" from La Trobe University in 1998 shows frequent references in the bibliography to United States academic literature, a New York paper and so on that refer to gay and lesbian youth. It seems as though it is the accepted international way in academic circles and others to describe homosexual men. That is only one example. Of course, a famous poet once asked what is in a name, and stated that a rose by any other name would smell as sweet. The member might find that analogy appealing.

Mr BOARD: I am sure the previous speaker will want to pick up on that point.

Many new words are used in everyday speech, particularly by young people. Those words go on to be adopted in our schools and traditions. Australians probably do that more so than most other nationalities. However, none of those words finds its way into Bill titles. The Government has chosen to move away from tradition. It has incorporated in the title of this Bill a word that has been used to describe something and deemed it to be terminology. That gives parliamentary sanction to the word as the correct term for a homosexual relationship.

I do not object strongly to the fact that that has been done. I am simply emphasising that that is what is happening. The Government must realise that, by doing this, it is quarantining the word "gay" from any other meaning. It is entrenching it in parliamentary language as the accepted term for homosexual or male-to-male sexual activity. Although I understand and appreciate what is happening, and I do not object to it, I want the Government to know that it is sending a message to the Australian community that that term is officially sanctioned by the Western Australian Parliament. I would like the Attorney General's comments.

Mr JOHNSON: This is the last time I will speak on this clause.

Mr McGinty: Do you promise?

Mr JOHNSON: Yes, unless the Attorney comes up with some astounding comments -

Mr McGinty: Who was the poet?

Mr JOHNSON: I cannot remember. It must have been an Englishman, because it is a very good line. It must have been a fellow countryman of mine.

The Attorney General did not address my concern about the use of the term "gay" in the title of this Bill. My concern relates specifically to the connotations it might have for young people. As I said, older people understand the term; we have come to understand it over the years. I do not want to see young people encouraged into homosexuality by the term. People as young as 10 or 12 years of age do not know what "gay" really means. They will think that it means jolly, fun and so on. That is the definition I have seen in every dictionary I have read. Does the Attorney have any concerns that the word will have connotations for people as young as 10, but more specifically between the ages of 12 and 16? If they understand the term to mean jolly, fun and something they should be seeking, we could have problems. I hate to say it, but we would all like to be gay, but not in the sense in which it is used in this title.

Several members interjected.

Mr JOHNSON: No, not me. I am an undernourished heterosexual. I say it again so that there is no doubt about where I stand.

Mrs Martin: The *Oxford English Dictionary* defines it as -

Mr JOHNSON: It is a colloquial term. I suggest that the member read the citation carefully.

I am not trying to delay this Bill; I am simply offering some constructive comments to the Attorney General. I have already told him that, if he provides a reasonable answer, I will not speak again on this clause.

Several members interjected.

Mr JOHNSON: If anyone is delaying it, it is government members. They have the urge to interject on me every time I rise to speak.

The ACTING SPEAKER (Mr Dean): I draw the member's attention to Standing Order No 179.

Mr JOHNSON: Mr Acting Speaker, I ask for your protection from members on the other side. They are attacking me and my democratic right to put questions and comments to the Attorney. I seek the protection of the Chair.

Several members interjected.

Mr JOHNSON: They are at it again! They are trying to bully me and I will not be bullied. If the Attorney resolves the situation, I will be quiet. I want a reasonable response to the comments and concerns I have raised.

Dr WOOLLARD: I have also consulted a dictionary. *The Australian Pocket Oxford Dictionary* definition of "gay" is "light-hearted, sportive, mirthful, . . . showy, brilliant; homosexual". I do not oppose the use of that word in the title of this Bill. However, I do oppose the use of the word "reform". *The Australian Pocket Oxford Dictionary* defines "reform" as "make or become better; abolish or cure abuses". I do not agree that the amendments to the Criminal Code are improvements. The legislation should be cited as the "Acts Amendment (Lesbian and Gay Law) Act 2001". I wonder why the Government has included the word "reform".

Mr McGINTY: Reform is in the eye of the beholder. The member for Alfred Cove may not see this as a step forward or a change for the better, but I certainly do. For the reasons advanced during debate in this House, and more broadly in the community, the elimination of discrimination and the establishment of equal treatment of all citizens are seen as significant reforms. Although some people might disagree with the nature of the amendments, generally speaking, the community regards them as reforms. The previous Government made amendments to the industrial relations legislation that it referred to as reforms. I thought those amendments were horrendous, but they constituted a significant rewriting of the law; so, in that sense, they were reforms. I can understand that those who do not support these amendments might not see them as reforms.

Government members believe these amendments are reforms. Most members on the conservative side of the Chamber agree that the majority of the amendments are changes for the better, and therefore can be called reforms. The amendments to the Equal Opportunity Act to prohibit discrimination against gay and lesbian people enjoy the overwhelming support of the House. The point has been made that the bulk of this legislation enjoys overwhelming support. We will deal with some contentious areas later, and we can afford to have some differences about those areas.

I will address the member for Hillarys' concern about whether the phrase might mislead young people. The word "green" has at least two connotations to which I will refer. The first is the name of the political party and the second is the colour. The member might argue that people get confused about what the word "green" means. Equally, people listening to this debate might get confused about what the word "liberal" means. People might say there has been false advertising by members of the Liberal Party who want to classify themselves as liberal during this debate. Occasionally words have a number of different meanings. Young people who I speak to are pretty knowledgable and intelligent; they know what the word "gay" means and they know it has several meanings.

Mr Johnson: Surely the big difference in the example put forward is that the word "green" will not affect people for the rest of their lives and have serious consequences.

Mrs Edwardes: Look at the south west!

Mr Johnson: It could do but in the usual situation, it would not.

Mr McGINTY: If the member went to America and called himself a liberal, he would be more reviled than he is here because of the different connotations that are attached to the word.

I inform the member for Murdoch that to my knowledge this is the first time that the word "gay" has been used either in the title of legislation or in a Bill, although there may very well be other legislation elsewhere that uses the word. As the members for Kimberley and Alfred Cove said, the word "gay" is in our lexicon.

Mr Board: It is in *The Macquarie Dictionary* and it has been accepted in the Australian vernacular.

Mr McGINTY: To my knowledge, that was not the case 20 years ago, although I am no expert on these matters.

Mr Board: Will we start a trend in the use of those kinds of expressions within legislation?

Mr McGINTY: That could well be the case. In the same way William Shakespeare reworked the English language some 400 years ago, I expect languages around the world to continue to evolve and to have new words added and new meanings attached to old words. If we are the first to use the word "gay" in legislation, that is another feather in my cap.

Dr WOOLLARD: I draw the Attorney General's attention to the definition of equal, which means the same in number, size, merit, adequate and evenly matched. I have said several times in this House that I believe in equality. As the Attorney General knows, I disagree with lowering the age of consent to 16 years. I believe that the age of consent for sexual activity for gays, lesbians and heterosexuals at 18 years would provide equality that would be acceptable to the majority of the community and to members of the gay and lesbian community.

Mr BOARD: I accept the Attorney General's explanation of the terminology. Although I fully appreciate that, the purpose of my spending time on it tonight was to put on the record that that is what we are doing tonight. However, we are setting a trend.

Earlier, the member for Kingsley asked the Attorney General why the word "bisexual" was missing from the title. I understand the Attorney General's explanation was that the word "gay" covers bisexual activity. Maybe the Attorney General could explain that again. Why then is it referred to in separate terms throughout the legislation? Why does the Attorney General single out bisexual activity in particular parts of the legislation? I find it confusing that it is singled out in some parts of the legislation and not in others. Bisexuality is used in reference to bisexual, gay and lesbian relationships in some parts of the Bill and not others, yet it is not used at all in the title. Where is the consistency in that? Will we accept that the word "gay" refers to bisexual activity, or will we classify bisexual activity as a separate terminology and a separate understanding of a sexual practice within the Bill? If so, it must be referred to on each and every occasion bisexual activity is accepted within the parameters of those changes. I am confused about what the Attorney General is endeavouring to achieve.

Mr McGINTY: Bisexual people are attracted to people of the same sex as well as people of the opposite sex. It would be an inappropriate or incomplete description to refer to them as gay. If one wanted to spell out in great detail in the title of the Bill exactly what was being covered in all circumstances, we would end up with a book. The bulk of this legislation overwhelmingly relates to lesbians and gay men. The Equal Opportunity Act amendments relate to the definition of sexual orientation, which includes bisexuals. It is only in that one area - although it is a significant area - that each of the other amendments deals with various rights of lesbian and gay men. The word "bisexual" is a shorthand way of describing the broad nature of the Bill. Generally speaking, that is what it deals with. It also deals with single women and other situations but it does not deal expressly with single men. It is a shorthand way of referring to the broad subject matter. Lesbian and gay men are dealt with by some 99 per cent of the Bill and that is why we have chosen not to add the word "bisexual". It also touches on other areas and has a minor impact, although it is important that those other areas be addressed. It is not necessary for the title to lay down everything that the Bill does because, by their nature, titles of bills are like titles of books; they give a sense of the flavour.

Mr Board: Why does the Attorney General single out bisexual activity in that part rather than any other part of the amendments?

Mr McGINTY: Much of the legislation deals with rights of people who have certain rights because of the nature of their relationship. The legislation refers to discrimination against bisexual people and we simply say that it is unlawful to discriminate against people because they are bisexual.

Mr Board: You would not know otherwise, would you?

Mr McGINTY: One might be able to live in a bisexual relationship -

Mr Board: People do not walk around telling people they are bisexual. Someone who is a practicing homosexual may be bisexual, but you are not to know that.

Mr McGINTY: That is right. However, nothing much flows from that except the issue of discrimination. The property issues do not flow from that in the same way that they do for lesbian or gay people.

Dr WOOLLARD: What is the rationale behind the age of consent being lowered to 16 years to prevent our youth from being labelled as criminals? I met with the Attorney General's advisers and asked them whether they could do something so that the youth would not be labelled as criminals. It is interesting that last night the member for Nedlands said that the Government could have reduced the age of consent to 18 years and decriminalised consensual sexual behaviour between 16-year-olds and 17-year-olds. She said that the age of consent could have been 18 years, and that could have been legislated in such a way that any offences would not

be considered criminal activities. As the Attorney General also has a law degree, I ask for his opinion of the statement.

Mr McGINTY: The age of consent can be defined as we wish. We would have the powers of the Parliament to prescribe 18 years as the age of consent. If 18 years were prescribed as the age at which both heterosexual and homosexual people could legally engage in sexual activity, it would be in accordance with the principle of equality, about which I have spoken constantly throughout this debate. We could do that. However, I think it would be unreal, which is why we decided to not go down that path. At the moment the age of consent for men engaging in homosexual activities is 21 years. Any homosexual man under the age of 21 who has sexual relations commits a crime under the Criminal Code and is liable to five years imprisonment. We think that the age of consent for homosexual activity should equate to the age of consent for heterosexual activity. We are all aware, through things such as teenage pregnancies and the like, that girls under the age of 16 years engage in sexual activity. The cut-off point becomes one of judgment. The test is when does it become an activity that should be punished by putting someone in prison - when should the State criminalise that activity? It has for a long time been accepted that 16 years is the age of consent for sexual activity among heterosexual people. If a boy and a girl over the age of 16 have sex, they will not be punished by the criminal law. It would be a very significant step to say that 16 and 17-year-old girls should be punished by the criminal law for having sexual intercourse. I do not think that is realistic. Some people might wish that certain things did not occur in society, but we must take society as it is and decide what forms of conduct we wish to criminalise. A 17-year-old girl having consensual sex is not something I wish to criminalise. That would be the effect of the member's proposal.

The ACTING SPEAKER (Mr Dean): The last question was clearly outside the intent of the short title. I should not have allowed it. I draw members' attention to Standing Order No 179, which refers to the relevancy of debate, and provides that questions and explanations must refer to the clause in question. In this case, it is the short title.

Clause put and passed.

Clauses 2 and 3 put and passed.

Clause 4: Section 12A amended -

Mrs EDWARDES: We support this clause, which provides for entitlement to participation in the distribution of intestate estates. I remember a debate only a week or so ago in which the Attorney General strongly argued against retrospectivity. He said that it was totally against his philosophies and principles.

Mr McGinty: What have I done?

Mrs EDWARDES: I bring the Attorney General's attention to subclause (3) -

> The estates of all persons who have died intestate as to the whole or any part thereof before the coming into operation of Part 2 -

That is, if a person dies between now and this legislation coming into operation -

> . . . shall be distributed in accordance with the enactments and rules of law which would have applied to them if that Act had not been passed.

I am pleased that the Attorney General is sticking to his principles.

Mr McGinty: You had me worried!

Clause put and passed.

Clause 5: *Adoption Act 1994* amended -

Mr JOHNSON: I would like the Attorney General to outline his thoughts on why we need to amend the Adoption Act.

The ACTING SPEAKER: Member for Hillarys, you have very little scope in which to present an argument. The clause contains 10 words. Please ensure that you restrict your questions to those 10 words.

Mr JOHNSON: The clause contains 10 words and four numbers.

Mr Birney: It refers to the Adoption Act.

The ACTING SPEAKER: The member cannot refer to the Adoption Act.

Mr JOHNSON: This clause is about amendments to the Adoption Act.

Mr Birney: It is the major part of the Bill.

Mr McGinty: The point being made is that the next clause deals with the amendments, not this clause.

Mr JOHNSON: I thought the Attorney General would like to give a preamble. I wanted to give him that opportunity. If the Acting Speaker rules me out of order, I will ask the question during debate on the next clause.

The ACTING SPEAKER: As directed, the member must speak to those 10 words.

Mr JOHNSON: Can the Attorney General please explain, as a preamble, the amendments in this part of the Bill, which are to the Adoption Act 1994?

The ACTING SPEAKER: That question should be asked in subsequent clauses.

Mr JOHNSON: Mr Acting Speaker, are you ruling my request for the Attorney General to give a general preamble on those words out of order?

The ACTING SPEAKER: Yes.

Mr JOHNSON: I wanted to be clear that I was being ruled out of order.

Clause put and passed.

Clause 6: Section 4 amended -

Mr JOHNSON: I will ask the same question, and I might get more of a reaction. I thought that the Attorney General would have welcomed the opportunity to speak in general terms about the amendments to the Adoption Act. Clause 6 proposes to delete the definition of birth parents and insert instead -

> **"birth parent"** means, in relation to a child or adoptee -
>
> (a) the mother of the child or adoptee; and
>
> (b) the father or parent of the child or adoptee under section 6A of the *Artificial Conception Act 1985*.

I would like the Attorney General to explain in detail his reasoning for that amendment.

Mr McGINTY: This recognises that as a result of allowing a lesbian couple to adopt, a child's parents may be people other than a mother and a father. As a result of the operation of the Artificial Conception Act 1985, the birth parents might be two women. That is the reason that this definition has been inserted in this way. We will deal with that when we deal next with the amendments to the Artificial Conception Act that give effect to that. Essentially, in relation to adoption, it defines the birth parent in that way to pick up a situation in which two women might be the parents.

Mr BOARD: It goes further than that. The term "birth parents" is defined in the interpretation section of the Adoption Act. It states -

> **"birth parents"** means, in relation to a child or adoptee, the mother and the father of the child or adoptee;

A child still has a mother and a father. This provision will change the relationship of the father. Under this interpretation, the father will no longer be referred to as the father, sperm donor or whoever. In fact, the parent substitutes for the father's position. What the Government is endeavouring to achieve is a significant change. Although we might deal with this in other parts of the Bill and come back to the same point, the reality is that by changing the interpretation under clause 6, a significant change is being made in the relationship of the child and the father, because the father will be a parent.

Mr BIRNEY: This clause deals with the definition of birth parent. I take this opportunity to perhaps expand slightly on the question without notice that I asked the Attorney General in the House today about the rights of the birth parents. The law, as it stands, allows the birth parent of a child to indicate who he or she feels might be a good person to adopt that child. That birth parent has the right to veto a couple who might be interested in adopting his or her child. Even though the birth parent has given that child up for adoption, the law, as it stands, allows that birth parent to have a say in who ultimately will adopt the child.

The Labor Party has for some months talked about equal rights for all Western Australians, regardless of a person's colour, race, creed or sexual orientation, and it has sold that message fairly well. However, if the birth

parent decides that he or she does not like gay people, for whatever reason, that birth parent can say that he or she does not want his or her child to be adopted by a gay couple. If the Labor Party were serious about its anti-discrimination policy, it would also amend that provision in the Adoption Act that allows the birth parent to veto any couple who might want to adopt the child. In a nutshell, if the birth parent said no, he or she did not want his or her child to go to a gay couple, that child would not go to the gay couple.

In the context of this debate, is the Labor Party really serious about equalising the rights of gay people in this State, or is it simply talking about things that are easy to do but might not have a lot of effect? If the Labor Party attempted to take that right away from the birth parents, there would be an absolute uproar. I accept and understand that. I understand that it would be a difficult thing for the Labor Party to do. However, if it were a seriously principled political party that believed in the principle that all Western Australians should be equal, regardless of their sexual orientation, this part of the Adoption Act would not sit well with it, and it would amend it so that a birth parent could not discriminate against a gay person or a gay couple who wanted to adopt the child.

Mr Ripper: Labor first proposed that birth parents should have that right.

Mr BIRNEY: Yes. I am having trouble coming to terms with it. The Labor Party is saying that it will wipe out discrimination against gay people, yet when I asked the Attorney General in the House today what his position was on this matter - I wish I had the quote in front of me - he said that he supported discrimination in that case. The Attorney General of this State purports to be a principled person who is fighting a crusade on behalf of the Labor Party, but in fact he is now recorded in *Hansard*, as recently as this afternoon, as saying that he supports discrimination in that case. I thought I would highlight that. It is important that members of the public understand that this Government is not highly principled. If it were highly principled, it would change that provision in the Adoption Act.

Ms McHALE: I have listened intently to the debate over the past couple of days, particularly that which referred to the best interest of the child. I am prompted to speak in response to the member for Kalgoorlie, who has been trying to cleverly argue that there is a discrepancy between our principles. I make it clear that everything the Labor Party has done regarding the Adoption Act, and any amendments to it, has been driven with two principles in mind: first, the principle of equity before the law with regard to gay and lesbian people in our community. Equally important, however, is the principle of best interests of the child. We must ensure that both those principles are given equal and forceful weight in everything we do. To hear the member for Kalgoorlie question our principles regarding the veto that a birth mother has about who or which couple may take her child is extraordinary. We are ensuring that the best interests of the child is paramount in the process of adoption. Therefore, while amending the Adoption Act to ensure that the principles of equity before the law are upheld, we are also ensuring that the best interest of the child is the paramount consideration in the application of the Adoption Act.

Clearly, if we choose to disregard the birth mother's wishes, we are derelict in two respects: first, in safeguarding the interests of the mother; and, secondly and more importantly, in trying to ensure that the best interests of the child are paramount. Those two principles are entirely consistent with each other. Therefore, the member for Kalgoorlie should not try to be smart by undermining one principle or the other. If he feels so strongly about it, he should move a motion to amend the Adoption Act so that the right of the birth mother to have a say in who looks after her child is removed.

Mr Birney: Would you accept that amendment?

Ms McHALE: No, I would not accept it, because our obligation, as a good Government and as legislators, is to ensure that we balance all the principles. There are two basic principles: the principle of equity and the principle of the best interests of the child. The birth mother has the right of veto on the ground of the political persuasion of the couple, so if she did not want a Labor member or a Liberal member to look after her child, so be it. If she did not want a heterosexual or a homosexual couple to look after her child, so be it. If she did not like this or that cultural group, so be it. The Government does not discriminate on the grounds of sexuality.

Mr Birney: What if that Labor member could provide a good life for the child?

Ms McHALE: Does the member for Kalgoorlie intend to amend the Adoption Act to remove the clause that gives the birth mother the right to have a say? He should answer that question, because he is posturing here in a way that does not do him justice. The issue is the best interests of the child. The member for Kalgoorlie quizzed the Government in question time on Tuesday and Wednesday of this week about how it is preserving the best interests of the child. During this debate, I will detail to the member how the safeguards that exist in the

Adoption Act, and in the Government's amendments, will ensure that the principle of the best interests of the child is preserved. He should not come into this House and posture about the principle of equity being undermined by the principle of the best interests of the child. It does not do his intellect any good.

Mr McGINTY: The issue here is the definition of birth parent. I will take a minute to run through the current arrangements. We are talking here about a woman who conceives as a result of a visit to the sperm bank, where she artificially inseminates herself, becomes pregnant and produces a child. Two situations result. Under the current law, if she is single at the time of the birth, the sperm donor is legally the father. Under the existing definition in the Act, even though the sperm donor has nothing to do with the child other than having donated the sperm, he is the father. If, however, the woman is living in a relationship, either married or de facto, and she gets sperm from the sperm bank and becomes pregnant, and the husband or de facto partner consents, he is deemed to be the father, even though biologically he is not the father. I think members can appreciate the difficulty of the proposition that the sperm donor, who has nothing at all to do with the child other than having donated the sperm, is deemed the father, with consequential liabilities flowing from that for the rest of his life.

Mr Board: What if it is a selective donation?

Mr McGINTY: Let us deal with the broad proposition for now.

Mr Johnson: Does all that liability remain for the sperm donor?

Mr McGINTY: For the father - that is the sperm donor - there are all sorts of inheritance and property issues.

Mr Johnson: Does the sperm donor maintain that legal position?

Mr McGINTY: Liability for maintenance is another good example. That is the current law. I am sure that this legal situation is drawn to the attention of men who go to donate their sperm, but it is not something that I was aware of, not having been a sperm donor. That is the consequence at the moment. The rule that applies to people who are married or living in a de facto relationship, is different from that which applies to a single woman. What the Government is proposing to do here is to say that the sperm donor will never be the father, as a matter of law. Therefore, it becomes a question of who will be the father. The effect of these changes - to describe them broadly - will be that where a couple is involved, the other partner, whether it be a man or a woman, will be deemed to be the birth parent, if he or she consents to the process.

Mr Johnson: In a heterosexual relationship, the sperm donor donates the sperm and -

Mr McGINTY: That is the end of him.

Mr Johnson: That is the end of him, and whoever receives that sperm - it must obviously be a woman -

Mr McGINTY: She is the mother.

Mr Johnson: Her partner, whether it be a married or de facto relationship, will be deemed the parent, or the father?

Mr McGINTY: The co-parent - let us put it that way.

Mr Johnson: The co-parent will not be deemed the father as such?

Mr McGINTY: No. That is why the definition of birth parent is the mother. Then there is the mother's partner, whether that be a heterosexual or a homosexual partner. In the case of the single woman, the sperm donor would cease to be the father, with all the attendant liabilities. I think that is a sensible proposition. I will describe it that way because that is what this clause is about in the definition of birth parent. It can be seen from that definition that that is the way in which it flows from here.

Mr BIRNEY: The overriding principle behind this Adoption Act, is the best interests of the child. I was talking about the birth parent, who has the right to veto a particular couple's application to adopt a child. Under the law as it stands - and the Labor Party does not intend to amend that law or to repeal it - a birth parent can say he or she does not like gay and lesbian people, and as such the child will not be adopted by a homosexual couple. The Minister for Community Development said that the best interests of the child are paramount. I ask the minister if sending a child to a gay or lesbian couple is in the best interests of the child.

Ms McHale: I will comment on that when the member for Kalgoorlie has finished speaking.

Mr BIRNEY: Will the minister answer by way of interjection?

Ms McHale: No.

Mr Hyde: That has no relevance.

Mr BIRNEY: It is relevant, because under this legislation -

Point of Order

Mr HYDE: The debate is about the definition of birth parent. There is no relevance in what is coming from the other side of the House, and it is tedious repetition from elsewhere.

Mr BIRNEY: The clause the House is dealing with specifically talks about the birth parents, and various issues attached to the birth parents. The issue I was attempting to bring to the attention of the House is the right of the birth parent to veto a couple's -

Mr Hyde: That is not in this clause.

Mr BIRNEY: I am expanding on what the House is debating here. The clause specifically refers to the birth parent, and the issue I have raised is specific to the birth parent.

The ACTING SPEAKER (Mr Andrews): Because the minister has spoken about this within the last five minutes or so, I will allow the member for Kalgoorlie some latitude, but he should bear in mind that he should address the clause as he speaks. There is therefore no point of order.

Debate Resumed

Mr BIRNEY: The point I was trying to make is that the Minister for Community Development said that the best interests of the child are paramount, and if it can be proved that the best interests of the child can be demonstrated, then a particular couple should be able to adopt that child. The law as it stands allows a birth parent to say no to gay prospective adopting parents. The Labor Party says that it believes a gay couple can provide the same home environment as a heterosexual couple. I am at a loss to know what the Minister for Community Development, Women's Interests, Seniors and Youth is talking about. She is saying that a heterosexual couple and a gay couple can provide the exact same home environment, yet the birth parent has the right to veto a homosexual couple. It is something that the Labor Party should want to pick up on because of its highly principled position.

Point of Order

Mr HYDE: This is the same argument that was raised in question time. It has been raised on three occasions. It is not pertinent to this clause as it has no new relevant information.

The ACTING SPEAKER: There is no point of order. The two circumstances in which this was discussed are discrete.

Debate Resumed

Mr SWEETMAN: Am I correct in concluding from the Attorney General's remarks that a child born to a lesbian couple through artificial insemination will not be able to access records to find out who was the sperm donor? Is not such information currently available to children born in a heterosexual relationship through IVF?

Mr McGINTY: The question of accessing information is one about which there is an evolving view. Information about biological parents should be able to be accessed. No changes to the law are proposed in this legislation. The minister responsible for the Adoption Act may have a different view that an increasing number of people believe that people should have access to information about their biological parents. The minister has indicated that it is her view as well. No change to the law will occur through this legislation.

Mr Sweetman: I must have misheard the Attorney General. I thought he said that the sperm donor is irrelevant to what happens.

Mr McGINTY: The minister will correct me if I am wrong on this but under the current law if a man donates sperm and the woman who receives the sperm gives birth to a child as a result, the man is the legal father. That is the advice I have received. If the woman is in a relationship, the biological father is not deemed to be the father, it is the partner. That is why we have the two different situations. A woman currently in a heterosexual relationship will have her male partner deemed to be the father although biologically he is not. That is the current law. We are proposing that in the case of a single person, the sperm donor will not legally be deemed to be the father. In the case of a person in a relationship, including a same-sex relationship, the birth mother's

partner - male or female - will be deemed to be the co-parent. Any changes to accessing information about biological paternity is a separate issue.

Ms McHALE: As this is a public record of the debate, I want to make things clear so that when people read *Hansard* things are very clear. I am following on from the member for Kalgoorlie's comments. The issue of a birth mother's right will remain. The reason is to ensure that the best interests of the child are paramount. Most of us are focusing on newborn babies. Such a baby cannot express his or her own interests so we must look to the mother to guide us in what is in the best interests of the child. I make it clear that section 45 of the Adoption Act relates to the selection of prospective adoptive parents. The section allows the birth mother, in discussions with the Department for Community Development, to indicate her wishes on the best placement of her child. That has nothing to do ipso facto with the sexuality of the couple. It has a lot to do with a whole range of conditions and circumstances from religion -

Mr Birney: That a mother can refuse to have her child adopted by gay people is discrimination.

Ms McHALE: The member thinks that is a conflict between principles whereas we do not. We see it as ensuring that the best interests of the child are paramount. That has to be the driving factor. If a mother said that she did not wish her child to live with an Irish family because an Irishman raped her, I would not say that that was racist and that she could not say that. As the Minister for Community Development, I would respect such wishes. A woman may have been a party and had sex while drunk with a man with certain characteristics. These are the sorts of things that come into play. Section 45 does not discriminate against sexuality. It does not necessarily discriminate against religion or race. It allows a mechanism whereby, as far as we can ensure, the best interests of the child are considered.

Mr Birney: Why does the minister support a birth parent saying no to a gay couple?

Ms McHALE: Let me return to the fundamental principle of children's services legislation. The mother's decision is in the best interests of the child. If it is the wish of the birth mother, then we will follow it. If the mother does not wish for X, that will be taken into account. It is very clear and simple. We are managing two principles and the member for Kalgoorlie's argument cannot be sustained in a fair society. If the member is not prepared to listen and just wishes to catch out the Government politically, he should stop it. Our paramount concern is to ensure the best interests of the child. The member should believe that and allow this legislation to continue; otherwise he should seek to amend the Adoption Act.

Mr BOARD: Embedded in clause 6 is a definition that the term "de facto" will include a same-sex couple in a marriage-like relationship. That is a change to the interpretation. The Opposition is labouring over this because the Attorney General may be able to deal with these interpretations. That may save some time on other issues. In reference to what the Minister for Community Development said, I am not sure whether she is correct. It was never the intention of the Adoption Act that women, in giving up their children for adoption, have the option of giving their children to same-sex couples. It was never an option under the Adoption Act. The Act never intended that the mother would have that choice. The Government is widening that choice, using this legislation as its vehicle. I am interested in the facts. The Adoption Act does not give the mother the option of choosing the circumstances of her child's adoption. I am sure it says that it has to be an acceptable situation.

Mr Kucera: That is precisely what the minister is saying. Does a Jewish mother have the right to say that her child should not go to a Muslim family?

Mr BOARD: Certainly.

Mr Kucera: Exactly the same position is being presented here.

Mr BOARD: No, it is not and that is what I am arguing.

Mr Kucera: The member should look at this from a pragmatic and sensible point of view.

Mr BOARD: I ask the Minister for Health to let me make my point, because it is critical to the whole Bill. The Minister for Community Development is saying that under the Adoption Act it is normal practice for the mother to choose that a child be adopted by a homosexual couple.

Mr Kucera: All the minister is saying is that the mother has a choice.

Mr BOARD: It is not a choice under the existing law. It is a choice the Government is adding to the Adoption Act. It is not the intention in the Adoption Act that a mother be able to offer her child to a gay or lesbian couple. This Bill will add that to her set of choices under the Adoption Act. I am sure that mothers cannot choose to place their children in a range of at-risk situations. Whether they are considered to be at risk is a matter of

interpretation. The Government is changing what previously would have been considered an at-risk situation to a non-risk situation. The minister cannot argue that choice is already in the Adoption Act, because it is not.

Ms McHALE: I will read into *Hansard* the relevant provision of section 45 of the Adoption Act, which is headed "Selection of prospective adoptive parents" -

(a) the Director-General is to give to the person the opportunity of -

That person is the relinquishing mother, the birth mother -

(i) expressing to the Director-General, the person's wishes in relation to the child's upbringing and the preferred attributes of the adoptive family;

That section exists at the moment. In the example the Minister for Health gave, that section would allow a Jewish mother to choose whether her child went to a Muslim family.

Mr Board: Is there a definition of "family" in the Adoption Act?

Ms McHALE: No, there is not. This is what happens now. We need to focus on that. The birth mother, before and after she has given birth, has a period in which she can consider whether she wishes to give her child up for adoption. When she has finally and fully decided that she will give up her child for adoption, there is an extensive process to meet her requirements and wishes. That clause is important because the member for Murdoch is questioning the Government on how it will ensure the best interests of the child are first and foremost.

Mr Board: She did not have that choice before and you are adding that choice.

Ms McHALE: She always had the choice. I ask the member for Murdoch to listen. She has always had the right to express her wishes about her preferred adoptive family. It has been in the Act for a long time.

Mr Board: She could not choose a gay or lesbian relationship.

Ms McHALE: Of course not, because gay and lesbian couples have not had the right to adopt.

Mr Board: Now you are adding it.

Ms McHALE: The member should use his intellect a little more than he is. We are amending the legislation to ensure equity in the law. Having done that on this side, we are saying that the birth mother still has the right to nominate her preferred adoptive parents. She can indicate that she does not want an Irish couple or anyone else to look after her children.

Mr Johnson: Does the birth mother choose which couple will adopt her child?

Ms McHALE: The birth mother can describe and nominate the preferred adoptive parents and the sort of environment that she wants her child to live in. Most members opposite have not been in an adoptive situation, so this will be hard for them to understand. The birth mother decides what sort of environment she wants her child to live in. The department then looks at the adoptive parents who have been approved and provides the résumés of four cases that it thinks best meets the need of the relinquishing mother. She can then choose which couple. She can throw out any case. If she does not like any of the four, the department will come back with another four.

Mr Johnson: If one of those four couples is a gay couple, does the department point out that they are a gay couple? The inference from the minister's answer was that it simply gave names.

Ms McHALE: They will give names. If it is John and Flo, that is a heterosexual couple. If it is John and Fred, that is a homosexual couple. If it is Shirley and Janet, that is a lesbian couple; and the department will give the names of another couple. In the protocols that the department is determining, that will be made explicit. The relinquishing mother will know the sexuality of those couples.

Mr Johnson: What if someone changes his or her name?

Ms McHALE: I do not want to go into that, because it is reducing the argument to the absurd. The best interests of the child are foremost.

Mr MASTERS: I have been listening to the debate for about 20 minutes or so. I understand what the minister is trying to say and I also understand what the members on my side are trying to say. They are trying to get the Government to admit that it is applying double standards and, through the Adoption Act, it will allow discrimination on the part of the birth mother. I do not have a problem with that. It is an appropriate provision

of the Adoption Act 1994 to allow the birth mother to say whether she wants her child to be adopted by this person or this couple - homosexual or whatever. That is fair and reasonable.

One of the first things I did when elected to Parliament in late 1996 was to meet with a group that represented mothers whose children had been adopted 15 or 20 years ago. The overwhelming message they gave to me, amongst others, was of the enormous pressure they felt in those days when asked to give up their children. Can the minister relate any experiences from this modern day and age, about the pressures on women who give up their babies, and whether they are in a position to know what is a good decision. I have not been involved in this situation in the past. I can only recount the story about a group of mothers I met four or five years ago. Even though I support this provision, I am concerned that many women who have just given birth, or are just about to give birth, will be under a lot of social, financial, psychological and other pressures to make a decision about their child's future, which potentially could include giving up that child. Does the minister believe that under those pressures the birth mother is capable of making a sound, rational and confident decision? At the end of day the pressure is definitely on the birth parent to make a decision. I would like to hear, preferably from the Minister for Community Development, Women's Interests, Seniors and Youth, whether, in this modern day and age, she believes that those pressures are likely to lead to a good decision being made by the parent of the child to be adopted.

Ms MacTiernan: That is just not true. Lots of time is given to the relinquishing mother to make a decision. A very lengthy process is involved in establishing contact between the relinquishing mother and the adoptive parents. By and large, relinquishing parents now keep in contact with their child and are part of an extended family process. The process of adoption is now completely different from that of 15 or 20 years ago.

Mr MASTERS: I am grateful for the minister's comments because I want to be brought up to speed on this issue. She has put her comments on the public record and I hope to get a clear explanation from the Government of the application of this provision of the Bill. In future, relinquishing mothers may find themselves under pressure when making a decision, and may later claim to the authorities, or publicly, that they did not know they were giving up their child to a same-sex couple or, if they did know that was happening, that they did not want it to. I want to get this on the public record to ensure that everyone's intentions are clearly understood on this matter.

Ms McHALE: I am happy to answer that sensible question. The member for Vasse is referring to an era in which women were told, for instance, that their child had died or they were not allowed to see their child when it was born. I assure the member for Vasse and the House that the process of adoption 20 to 40 years ago is vastly different from the current process. Schedule 1 of the Adoption Act sets out the requirements for dealing with and supporting a woman who is considering adopting her child. A 28-day period must lapse after the birth of the child before consent can be given. No longer is the baby rushed away, never to be seen again. I understand that in hospital adoption situations, in more than two-thirds of the cases the mother takes the baby home. In other words, in two-thirds of the cases in which adoption is mooted, the mother and the baby go home as a family and the mother does not give up the child for adoption. I assure the member that things are now vastly different because of mandatory counselling. Schedule 1(1)(a) of the Adoption Act states that oral and written information must be given on -

(i) the alternatives to adoption;

(ii) the community supports available whether or not the child is relinquished for adoption;

(iii) the social implications of adoption for the parties to an adoption;

(iv) the legal process of adoption, including consent, revocation of consent, the selection procedure, adoption plans . . .

(v) the rights and responsibilities of the parties to an adoption

The adoption cannot occur unless the person has been offered counselling and, if counselling has been requested, it must have been received. We are therefore operating in an environment that is vastly different. The members for Nedlands and Vasse said that at that time the mother is in an emotional state and cannot possibly think of what is best for her child. Let me disabuse them of that emotional response. We are now dealing with an environment in which the mother cannot relinquish the child, or sign consent, for 28 days. Counselling and information must be provided. The important point is that two-thirds of the cases in which the mother says that she wants to adopt, do not result in adoption. Thankfully, it is a far cry from the days the member for Vasse mentioned. I reinforce his comment that it is okay to allow the mother to have the right of veto.

Mr BOARD: We need to bring the debate around to what we are dealing with; that is, the interpretation of certain terminology under the Adoption Act. The Government is amending the Adoption Act to change the interpretation, because that interpretation has not been included in the Act before. That is why this legislation is here. It is quite straightforward. The Adoption Act will state that "de facto" will include same-sex couples in a marriage-like relationship. That is part of the intent of this clause. It is ludicrous for the minister to argue that women giving up their children for adoption have had that choice. We are amending the Adoption Act to include that choice; that is the reality of what we are doing. Interpretation is the core issue of this clause and goes to the core elements of the Bill; that is why we are spending time on it. Time spent now with the Government clarifying and explaining this, may save us time when we get to the clauses that deal with the effect of those interpretations. The Government needs to recognise, whether it be through the Attorney General or the Minister for Community Development, that a new interpretation is being added to the Adoption Act; that is, de factos will now include same-sex couples. As a result, it will add to the list of couples to which mothers can give up their children for adoption. It is the very intent of this legislation. Members on this side object to it, but that is the Government's intention. However, the minister's argument that it has been there previously is ludicrous. It is being added to the Adoption Act. It is something new; it is a new interpretation. That interpretation is being widened by this legislation, and that is why it has been included.

The same comments can be made about the definition of birth parent. Those terms must be included in this legislation because they have not been accepted under the Adoption Act. The Attorney said that it was accepted practice. It is not. The Government believes that the definition should be expanded to give women the opportunity to make those choices. The Liberal Party argues that that is not an appropriate choice, because the third person involved has no choice. That is the key reason that members on this side object to parts of the Bill.

If we deal with this issue now, we might save some time later. We need honesty about what the Government is trying to do. It is amending the Adoption Act and changing the definition of a de facto relationship. It has not been accepted as same-sex couples. This clause changes the concept of birth parents.

What is the situation for a male who donates sperm to a lesbian couple and who wants to retain paternity?

Ms McHALE: The member's scenario involves a lesbian woman undergoing IVF treatment.

Mr Board: Members on this side would argue about that too. If that woman became pregnant -

Ms McHALE: We are talking about a woman using donor sperm.

Mr Board: I am talking about a specific father.

Ms McHALE: That is a nominated father.

Mr Board: Yes. That man wants to remain the father and, under this interpretation, he would lose that right.

Mr McGinty: That is the donor.

Mr Board: Yes.

Ms McHALE: The Attorney General may have a different view. However, as a member of the select committee that inquired into in-vitro fertilisation, my understanding is that the legislation as it stands provides that if a woman has IVF treatment using donor sperm, the donor remains anonymous.

Mr Board: That is a sperm bank situation.

Ms McHALE: The member is talking about a lesbian woman who goes to a fertility clinic with a male donor. Is the member asking whether he will be acknowledged as the father of the child?

Mr Board: According to the Attorney, that man would lose the right to maintain his paternity. The partner of the pregnant woman would be recognised as the other parent. The male would relinquish that right, even though he might want to retain it.

Ms McHALE: He would not necessarily relinquish paternity if there were an agreement between him and the woman.

Mr Board: It is very unclear.

Ms McHALE: I believe the Attorney has sought legal advice. We will listen intently to his explanation. I do not believe this will be a huge problem, but I might be wrong.

Mr McGINTY: If these amendments are passed, under the Artificial Conception Act the male sperm donor will not be able to assert himself legally as the father. That is the short answer.

Mr Board: What would happens if he wished to retain paternity?

Mr McGINTY: At the moment, he would not be the legal father if his sperm went to a couple. The mother would obviously be acknowledged as the mother and her partner would be acknowledged as the other parent.

Mr Board: Didn't you say earlier that the sperm donor had legal rights?

Mr McGINTY: Only when the sperm goes to a single women does the donor become the father. Under this legislation, the sperm donor will be the biological father but not the legal father.

Mrs Edwardes: The inheritance issues are enormous. How many parents can a person claim?

Mr McGINTY: This legislation removes those complications. The simple answer to the question is that the sperm donor does not retain paternity if he goes through the procedure provided for under the Artificial Conception Act.

Mr BOARD: This is a core issue, but I will not labour it any further. The Attorney is changing a fundamental principle -

Mr McGinty: I cannot see that.

Mr BOARD: A child has always had a right to a mother and a father. The Government is now saying that a child no longer has a right to a father; it has the right only to have two parents. That is an incredible change. It is one of the reasons Liberal members have argued so strongly that this legislation should be debated more widely in the community. That principle has been debated at length throughout Australia. It was debated at great length about six months ago during a federal parliamentary debate on changes to anti-discrimination legislation. The principle is that, in normal circumstances, a child should have a mother and a father. That has been accepted, not only in this country but also throughout the world. This Government has changed that tonight. A child is now entitled only to two parents, not necessarily a mother and a father. That is extraordinary.

Mr JOHNSON: My colleague the member for Murdoch has said much of what I intended to say. I compliment him on the way he put it. This legislation will change a child's fundamental right to have a mother and a father who are married. I understand that de facto couples cannot adopt children; that privilege is extended only to a mother and father in a committed marriage relationship. I totally agree with that; a child should have parents who have made that lifetime commitment before God and the State. I am talking about a legal marriage that everyone understands to be the foundation of a proper and normal family unit. Every child who comes into the world should expect that.

As I said, this legislation will change that. A de facto couple might not want to make that final commitment. However, members on this side of the House believe they should make such a commitment if they want children. Marriage is hard work. Today, not only this Government but also other Governments do not do enough to encourage the family unit. They do not do enough to encourage parents to go that extra yard or two in the raising of children. We have made it too easy for couples to leave each other; the divorce rate is frightening. The legislation we are considering tonight goes one step further than that, but it is worse. We are saying that a de facto couple of the same sex has the right to adopt a child. I have said publicly that I fundamentally disagree with that. My prime consideration is not the rights of a same-sex or de facto couple; it is not even the rights of the parents who want to adopt a child. As we have said vigorously on this side of the House, our prime considerations are the rights of the child and ensuring that the adopted children have the best possible chance in life. We are considering the best interests of the child.

We have considered other Acts, including the Child Welfare Act. The Minister for Community Development went to great lengths to say that the rights of the child were the prime and overriding consideration. The Attorney General has said that that applies to this Bill. I cannot agree with him. I do not believe that is the prime consideration. I think his consideration is to try to give gay and lesbian people something more than they should have; they would not be the best parents. The child would not be raised in the best environment - not physically, but psychologically.

Mr McRae: You will be on the news again.

Mr JOHNSON: That is fine. I am happy to be shown on the news; I say what I believe.

Mr McRae: You are being offensive.

Mr JOHNSON: I am not being offensive; I am standing up for the best interests of the children, unlike members of the Government who are hell-bent on appeasing the gay and lesbian lobby. I have already said that in the

other areas of discrimination, including employment and housing, we agree with the Government. However, on this principle I can never agree with the Government. I believe this Parliament has not only a right but also a duty to have the best interests of the child at heart. Children have nobody else to look after them. If Parliament neglects and abandons them, they will have nobody else to look after them. I oppose this clause of the Bill.

Mr McNEE: I am amazed at what I am witnessing this evening in this Chamber. I would never have believed that I would be here to see a Government try to legislate the father out of the business of parenting. The facts are that if lesbians or homosexual men were meant to have babies, the maker would have made appropriate arrangements, but he did not do that. The Government is taking on a God-like role by changing the rules. As much as the Government wishes to do that, it should not. However, unfortunately, it can do that, because it has the numbers, but it does not have my support. The Government wants to legislate the father out of the process to allow two ladies to have a baby. I do not know how that can be done because a father is a father is a father. The Government can make all the rules it likes, but, to its absolute disgust, it cannot change that. What about the poor child who is the product of this union? Members opposite are keen to talk about ending discrimination and having regard for people's rights, but what about the child who in 15 or 20 years time will want to know who is its father? We read time and again about people who are lost in the wilderness, who do not know who their parents are. This is the most disgusting piece of legislation and I am amazed that I have been asked to deliberate on this issue tonight.

Ms McHALE: I want to ask the Attorney General whether I understand this clause properly so that we can debate it logically and rationally. Are we still debating clause 6, the definition of birth parent?

Point of Order

Mr BRADSHAW: Mr Acting Speaker, I draw your attention to the state of the House.

The ACTING SPEAKER (Mr Andrews): A quorum is present.

Debate Resumed

Ms McHALE: I want to make sure that we all understand the clause we are debating. We are debating the definition of birth parent. We are proposing to amend the Adoption Act to broaden the definition of birth parent. We are proposing to broaden the definition of birth parent to include the circumstance in which a woman has been artificially inseminated or has undergone IVF with a donor's sperm.

Mr Board: Clause 6 is much wider than that. That is only part of it.

Ms McHALE: I will continue. The Artificial Conception Act makes it very clear that the donor's sperm - that is, the biological father - has no rights. The husband of the woman who receives the donor's sperm will be deemed to be the father of the child. Is that clear? We must make sure that members understand that. The Artificial Conception Act -

Mr Board: This is the Adoption Act.

Ms McHALE: We are trying to make sure that the legislation is valid and comprehensive.

Mr Board: You are arranging the interpretation under the Adoption Act.

Ms McHALE: Okay. We recognise that birth parents may give birth to a child when artificial insemination or IVF has occurred. We are making provision in the Adoption Act to deal with that circumstance.

Mr Board: That is only part of the circumstance.

Ms McHALE: Are members opposite opposing that?

Mr Board: I am opposing a number of things, but this clause deals with more than IVF; it deals with the interpretation of family under the Adoption Act.

Ms McHALE: I do not think it does. For the public record, we must be very clear that the amendment will accommodate the circumstance in which a woman could give up for adoption a child that is the product of either artificial insemination or reproductive technology. That happens. If I understand it correctly - the Attorney General may want to clarify this - we are making the Adoption Act consistent with the circumstances that arise by virtue of another piece of legislation.

Mr BRADSHAW: I called for a quorum to bring government members back into this House. They have not read the legislation. If those people on the other side, who I believed to be decent people, had read this legislation, they would not be supporting what has been brought before this House.

I have no problems with homosexuals or lesbians living together. I have a problem with what the Government is doing to the children who will be affected by this legislation and the problems it will create. The government members who support the legislation are a disgrace. I used to think they were decent people. I cannot believe that they are supporting this legislation. I do not believe they know what is in it. If they did, they would not support it. They should hang they heads in shame.

I was part of the select committee on adoption, which reported about 15 years ago. Those people who do not know who their biological parents are have huge hang-ups. The Government is creating another problem for those people. It will create problems for the next 15 to 40 years, as people try to find out who their parents - their fathers - are. What the Government is setting up is disgraceful, and its members should be ashamed of themselves.

Mr McGINTY: I present some background facts that are relevant to this debate. There has been a dramatic drop in sperm donors in Western Australia in recent years. In the five years from 1992-93 to 1997-98, the number of donors dropped from 103 to 28. The main reason for that is the identifying particulars that accompany sperm donation. I have no doubt that one of the consequences of providing identifying information has been the legal liability that attaches to being the father. In 1980 - 21 years ago - the Standing Committee of Attorneys General proposed a national uniform position on the status of children born as a result of artificial conception procedures. Twenty-one years ago, that commonwealth-state committee proposed that a husband who consents to his wife being artificially inseminated with donor sperm should be deemed the father of any child born as a result of the insemination. The husband would be not the biological father, but he would be the legal father. That was the position recommended 21 years ago. The committee also recommended that the sperm donor should have no rights or liabilities relating to the use of the semen, and any child born as a result of artificial insemination by donor sperm shall have no rights or liabilities in respect of the donor.

This legislation gives effect to that 21-year-old recommendation, which has already been adopted in every other State and Territory in Australia. It has been adopted here to apply to only people in a marriage or de facto relationship. It does not apply to single people. Notwithstanding the fiery rhetoric from some members opposite, this legislation picks up a recommendation which has been implemented everywhere else in Australia and which was made by commonwealth and state Attorney Generals in 1980, when the Liberal Party was in power at both the federal and state level.

Mr Johnson: Your definition of a de facto relationship now includes a same-sex couple.

Mr McGINTY: Yes.

Mr Johnson: Does the sperm donor have the option or the authority to stipulate to whom that sperm will be provided? Can he stipulate that he wants it to go only to a woman in a marriage?

Mr McGINTY: Yes.

Mr Johnson: I am talking about antidiscrimination. Could he also say that he does not want the sperm to go to a single woman or a lesbian couple?

Mr McGINTY: Yes; the donor can stipulate that, substantially for the reason I have just given: if the sperm goes to a single woman and the sperm donor is then legally the father, he is liable to maintain the child. Frankly, an anonymous donor who agrees to allow his sperm to go to a single woman has rocks in his head. That, and the provision of identifying information, is the reason the number of sperm donors in this State has fallen off dramatically.

I understand that people are getting hot under the collar. We are all concerned about issues relating to children. However, this has been done in every State and Territory in Australia. It was recommended in 1980 by the Standing Committee of Attorneys General, when the Liberal Party was in power in Western Australia and in the Commonwealth. We are the only State that has not fully implemented those recommendations. The only area in which those recommendations are still to be implemented relates to single women. I suggest that members opposite have a Bex and a cold shower. This is not as horrific as they suggest.

Mr MARSHALL: In answer to the Attorney General, two wrongs do not make a right. He cannot cover up by saying that all the States of Australia have done this. What do the other States think of Western Australia? We are on our own. We must make our own destiny. We carry the rest of Australia. The Attorney General should not tell me that we must follow the other States when they do something. This legislation is morally wrong.

The DEPUTY SPEAKER: I draw attention to the noise in the Chamber. I also draw the attention of the member on his feet to the requirement for his comments to be relevant to clause 6.

Mr MARSHALL: I thank the Deputy Speaker for that advice. I will talk about this legislation that will wrongly allow artificial insemination for lesbian.

The first time I heard the words "artificial insemination" was when I visited Esperance 20 years ago. The word was that the Santa Gertrudes cattle would be the biggest thing in Western Australia, and that artificial insemination was the way to go. That had never happened before. The member sitting next to me is a farmer, and he tells me that artificial insemination is a big part of merino and stud farming. That is good, but we are talking about animals.

We are now considering artificial insemination for same-sex couples. That disturbs me. This community has a problem. We have a one-sided community in which single parents, mostly mothers, look after children. That is one of the saddest parts of our community. The family needs a male. We also have a lopsided education system. There are not enough male teachers, particularly in primary schools. A school in my former electorate of Murray, North Dandalup Primary School, went for 12 or 15 years without a male teacher. I used to attend the sports days. The women tried to do the right thing with the athletics carnival and cricket and football games. However, North Dandalup never produced a sporting person of any worth. It tried, but the women did not know how. The school was missing the man of the family - the man teacher.

The member for Collie could tell me all about this. Has he read the legislation? Does he understand it?

The DEPUTY SPEAKER: Order!

Mr Murray interjected.

The DEPUTY SPEAKER: Order, member for Collie. I once again draw the attention of the member for Dawesville to clause 6, which relates to birth parents.

Mr MARSHALL: I have nothing against lesbian or homosexual relationships. I know a lot of good people in that mode. However, they want to have children. The community comprises families of children, husbands and wives. This change is unnatural. I am concerned that the child of a lesbian couple will be inhibited because no male person will be able to teach him how to tie up his football boots. That is what this is about. I am also concerned about the other side of it; that is, a gay couple having a child. They can be loving and caring, but again I am wondering about the interests of the child. The kid may go to school and be told to bring home his mates so that they can have a game of cricket in the backyard. Parents would be concerned about their child going into that sort of environment.

I do not think this legislation stacks up. I have been speaking to the Attorney General about this, from a moral point of view, for a long time. I agree with some areas of the legislation. However, this will set back our community a long way. Do not cover it up by saying that because the eastern States do it, it will happen here. That is hogwash. Western Australian people can stand on their own two feet. They do not have to copy any other State of Australia. The community believes that this legislation is a retrograde step, and the Government will suffer because of it.

Clause put and a division taken with the following result -

Ayes (28)

Mr Andrews	Mr Hyde	Ms McHale	Ms Radisich
Mr Brown	Mr Kobelke	Mr McRae	Mr Ripper
Mr Carpenter	Mr Kucera	Mr Marlborough	Mrs Roberts
Mr Dean	Mr Logan	Mrs Martin	Mr Templeman
Mr D'Orazio	Ms MacTiernan	Mr Murray	Mr Watson
Dr Edwards	Mr McGinty	Mr O'Gorman	Mr Whitely
Mr Hill	Mr McGowan	Mr Quigley	Ms Quirk *(Teller)*

Noes (17)

Mr Barnett	Mr Grylls	Mr Marshall	Mr Waldron
Mr Birney	Mrs Hodson-Thomas	Mr Masters	Mr Bradshaw *(Teller)*
Mr Board	Mr House	Mr Pendal	
Mrs Edwardes	Mr Johnson	Mr Sweetman	
Mr Edwards	Mr McNee	Mr Trenorden	

Pairs

Mr Bowler	Mr Omodei
Dr Gallop	Mr Barron-Sullivan

Independent Pair

Dr Woollard

Clause thus passed.

Clause 7: Section 17 amended -

Mr BOARD: I understand this clause amends section 17 of the Adoption Act to include children conceived by artificial conception. The section is amended so that, in addition to a heterosexual partner, a same-sex partner is not required to give consent unless that person is already mentioned as a parent under section 17(1). Will the Attorney General further explain the intent of that clause? What is the intent of the amendment to section 17(2)? It is confusing.

Mr McGINTY: The simple answer to the question posed by the member for Murdoch is that if a child is to be relinquished for adoption, the legal parents must consent to that adoption taking place.

Mr Board: Both parents?

Mr McGINTY: Yes. Working through the arrangement under subclause (2), if the relinquishing mother is married, the mother and the father must consent to giving the child up for adoption.

The DEPUTY SPEAKER: I draw members' attention to the fact that it is disorderly to conduct a conversation inside the Chamber. If you wish to do so, please remove yourselves to the back of the room and show some courtesy to the Hansard staff who are having difficulty hearing the member who has the call, who is the Attorney General.

Mr McGINTY: In the case of a married couple, both parties must consent if they are the people named in section 17(1)(a). If a woman has a child by a previous marriage and she marries a new husband, the new husband does not have to consent to the adoption because he is not a person named; in other words, he is not the parent of the child. That applies in a marriage situation, a de facto situation and in a same-sex relationship. Section 17(2), as amended, states -

> The person to whom a person referred to in subsection (1) is married, or in a de facto relationship with, is not required to consent to the adoption order being made unless the first-mentioned person is also a person referred to in subsection (1).

Proposed subsection (1) spells out these classes of people: the child's mother, the child's father, or parent - in addition to the mother. Therefore, those people must consent, but others are not required to do so. That is the way in which it is worded. To rephrase it generally, those people who are the legal parents must consent, but not otherwise.

Mr BOARD: I thank the Attorney for that explanation. However, I need further clarification. A lot of circumstances arise under this clause. When the Minister for Community Development spoke earlier about women giving up children for adoption - we are dealing with the Adoption Act - she referred only to the mother. I do not think she will be recorded in *Hansard* as referring to the parents or in fact the father of the child. The Opposition is endeavouring to have recorded in *Hansard* that the parents of the child being given up for adoption both need to make a decision.

Mr McGinty: That is right.

Mr BOARD: Is there a difference for a same-sex couple who happen to have a child? If they are giving that child up for adoption, who gives the right for the adoption? Is it the parent under this new legislation, or is it the father?

Mr McGinty: It is the legal parent.

Mr BOARD: Is the Attorney General saying, as was established in the last interpretation, that he is now indicating that the father of the child relinquishes all rights to the parent in a same-sex relationship?

Mr McGinty: Are you referring to the biological father?

Mr BOARD: Yes. Does he relinquish the right to both parents in a same-sex relationship, so that the parent of that child, rather than the biological father, has the carriage of what happens to that child if the child is put out for adoption at a later stage?

Mr McGINTY: The legal effect of adoption is to sever the legal link with the natural parents and vest the legal responsibility for the child in the new parent or parents. The idea of severing the links with the biological parents and creating a new relationship, is exactly what adoption does, and that is the same notion that is involved in this clause.

Clause put and passed.

Clause 8 put and passed.

Clause 9: Section 21 amended -

Mr JOHNSON: Some of the amendments to the 17 different Acts we have in front of us are not easy to follow, and I do not want to pass these amendments without proper scrutiny. Will the Attorney General give a bit more detail on this clause? I am not sure what is meant here. I am not a lawyer and I do not understand some of the small print. Will the Attorney General give a bit more detail of what this clause hopes to achieve?

Mr McGINTY: Proposed section 21(2c) reads -

> A person who has been named as or has claimed to be a child's parent under section 6A of the Artificial Conception Act 1985 is to be notified by the relevant person in accordance with subsection (1) and for that purpose, subsections (2), (2a) and (2b) apply to and in respect of that notification as if a reference in those subsections to "man" was a reference to "person".

This clause requires notice to be given to a person who has been named or has claimed to be a child's legal parent. This is just a requirement that notice of the intention to have the child adopted be given to the relinquishing parent. It is nothing more than a requirement that notice be given.

Mr BRADSHAW: Will the Attorney General clarify whether this actually means that where two lesbians have a child, and the semen donor has been taken out of the equation and is therefore not the father any more, the two lesbians are regarded as the parents? The proposed subsection tries to take the word "man" out of the equation, so that that it will be a person, because there a man will not be the father or the notifiable person.

Mr McGINTY: The biological father, or the sperm donor, has already been taken out of the equation.

Mr Bradshaw: That is what I am trying to get at. Is that what this does?

Mr McGINTY: No, this clause does not do that. Put the sperm donor to one side. This clause says that the deemed parent - in other words the husband or de facto partner of the birth mother who is deemed to be the parent although he is not the biological parent - needs to be given notice of the fact that it is proposed to put the child up for adoption.

Mr Bradshaw: The parents could be two lesbians, not necessarily a male and a female.

Mr McGINTY: Yes, that is right.

Clause put and passed.

Clauses 10 and 11 put and passed.

Clause 12: Section 39 amended -

Mrs EDWARDES: Clause 12 deals with the criteria for application for prospective adoptive parents. Obviously, the amendment seeks to include de facto partners. I know the Attorney General in the debate over

the past couple of days has indicated that it is nothing new for a de facto person to be able to adopt. Section 38(2) refers to an application under section 38(1), which may be made by one person or by two persons jointly. The Attorney General refers to this clause when he says that one person could be a homosexual or lesbian person. How many adoptions have been carried out by single persons in the past few years, and how many of those would have been regarded as homosexual or lesbian, when it has been a familial individual, or even those single persons who have been adoptive parents and have been in familial relationships?

Mr McGINTY: In the past five years there has been only one case of a single person adopting a child in Western Australia.

Mrs Edwardes: Was that in a familial relationship? Were they adopting a family member?

Mr McGINTY: No. It was a stranger adoption.

Mr BOARD: In reference to previous answers to bisexual relationships, which may, as I understand, have more than one partner in the relationship, the Attorney General still uses the term "couple" in the definition. By this change is the Government removing the need for a de facto relationship to be a couple and increase the number of people in the relationship from two to possibly three, four or more? It is an important point. Some of the interjections during the second reading debate lead me to understand that it is an accepted consideration by the Government. It may not be successful in terms of adoption and I would hope it is not. Is it an accepted consideration? It goes beyond what is a couple. In my opinion a couple means two.

Mr McGinty: Mine too.

Mr BOARD: Will the Attorney General confirm that he does not consider a de facto relationship to have more than two people?

Mr McGINTY: A de facto relationship is defined to be a relationship of two people. The situation may arise when a couple who wish to adopt are sharing a house with their parents. It happens on many occasions. Nonetheless, they would be proposing to bring an adopted child into a household of more than two people. The people making application are just the couple even though others may live at the same address. A couple is limited to two persons. We are not talking about people having ongoing orgies with multiple partners or any other fantasies of that nature. Such things are not included in this legislation.

Mr BOARD: I understand and appreciate that but why are bisexuals included?

Mr McGinty: I do not think they are. They are only included in the Equal Opportunity Act in terms of discrimination.

Mr BOARD: In an explanation given earlier, the Attorney General said he would consider bisexuality as being gay. I need clarity. Under no circumstances are we considering any options under the Adoption Act outside a couple? This legislation is difficult enough for us in coming to grips with the ramifications for same-sex couples.

Mr McGinty: Rest assured that a couple means a couple and no more.

Mr BRADSHAW: The explanatory notes state -

> This clause amends section 39 to enable a same sex couple, who have been together for three years, to be considered eligible to jointly adopt. Section 39(3) is amended to remove reference to de facto couples being heterosexual.

Will the Attorney General explain what this means. The explanatory notes are not very explanatory. Why are heterosexuals being taken out of the system?

Mr McGINTY: The provision being deleted states -

> For the purposes of subsection (1)(d), where the joint applicants are cohabiting with each other in a heterosexual relationship, as each other's spouses, although not actually married to each other, and have been so cohabiting for a continuous period of not less than 3 years, the period of the cohabitation may be included when calculating the period mentioned in subsection (1)(d).

In extending the right to adopt to de facto couples in subclause (1) this becomes redundant. It is a redundant clause that has no meaning because that exact situation is already covered. The requirement for a couple to live

in a de facto relationship of three years or more in order to qualify for adoption is picked up earlier. The very lengthy wording is picked up by the words "or de facto relationship".

Mr JOHNSON: This is where I have a problem. Clause 12 pertains to section 39 amended and it seeks in section 39(1)(d) to insert after "married to" the words ", or in a de facto relationship with,". The Attorney General is seeking to insert that passage because the interpretation of de facto relationship includes a same-sex couple. I have less problem with a heterosexual couple living in a de facto relationship than I do with a same-sex couple. That is for obvious reasons that have been explained by members on this side of the House over the past day or so. The amendment is removing the right of a child to go to a home in which the couple is married. I believe the amendment diminishes the value of marriage. The amendment will allow a de facto couple or a same-sex couple to apply to adopt a child. The Government appears to be happy to allow a child to go into such an environment. Such an environment is opposed totally by members on this side of the House. I cannot possibly, in all conscience, vote in favour of this amendment. I am sure the Attorney General understands. I have different principles and a different outlook on how best to protect children and their interests. I do not necessarily have concerns about the physical welfare of a child as much as I have concerns about a child's psychological welfare. I ask the Attorney General to think twice about this amendment but I know he will not.

Mr McGinty: I have already thought twice about it.

Mr JOHNSON: I know that the Attorney General is determined to get these amendments through. If I do not at least voice my opposition and concerns for the children that this legislation will put into that position, then I am not doing my job as a member of Parliament in representing defenceless children in our society. The Government cannot look after children and it must ensure that when they are adopted they go to a normal family environment that has a mother and a father who have made a commitment to marry and live together for the rest of their lives. If I do not oppose this amendment I am not doing my job properly.

I do not think government members have thought about this. The member for Murray-Wellington put it clearly: even the longer-serving members of Parliament are not finding this legislation particularly easy because the Government is amending 17 Acts; it is not simple legislation. The Attorney General keeps bringing in amendments, because it has been such hurried legislation and as they say, "Married in haste, we may repent at leisure". The Attorney General is inflicting something quite disastrous on the people of Western Australia, particularly for the children. I would like the Attorney General to justify - I do not think he can - how he can honestly consider that the best interest of the child would be served by the deletion of clause 39(1)(d) and slipping in de facto relationships, which will include same-sex couples.

Ms McHALE: I would like to put on record a quote from the New South Wales Law Reform Commission on its research into the psychosocial development of children who were brought up in gay and lesbian families. If we want to be evidence based in making good decisions, we need to look at the research that has been conducted. I know that the member for Kingsley tried to refer to some of the research, but I want to put this quote on record, because it is important to realise that the research we know of and the evidence we have about children brought up in gay and lesbian families indicates that those children are brought up in a normal and healthy way in terms of their psychosocial development. The NSW Law Reform Commission's "Review of the Adoption of Children Act" reads -

> . . . there is no evidence to suggest that psychosocial development among children of gay men or lesbians is compromised in any respect relative to that among offspring of heterosexual parents . . . despite the accumulation of a substantial body of research investigating these issues, not a single study has found children of gay or lesbian parents to be disadvantaged in any significant respect relative to children of heterosexual parents. Indeed, the evidence to date suggests that home environments provided by gay and lesbian parents are as likely as those provided by heterosexual parents to support and enable children's psychosocial growth.

Mr Johnson: How many cases were studied?

Ms McHALE: I refer all members to the report, so they can study it. If the prevailing concern is the development and health of the child we must look at the research that has been done. Once members opposite do that they can be somewhat assured that, notwithstanding their personal views and values, the research indicates that a child brought up in a gay or lesbian context is as likely - I will not say any more than that, although I do know of research that has said it would be better - to have psychosocial development that is as healthy as other children. We have to be evidence based and the evidence tells us that those children are very healthy. I am happy for members to look at the report.

The DEPUTY SPEAKER: I draw members' attention to the fact that we are debating clause 12. I remind members about relevancy and ask them to draw their attention to what we are debating.

Mr BOARD: I refer to the comments of the Minister for Community Development. In accepting the research the minister has quoted, I would guarantee that the research is based on gay or lesbian families in which the child is the natural child of one of the partners. The situation in which the natural parent of a child is in a gay relationship is entirely differently from bringing into the relationship a child who is totally unrelated to the people in that relationship. The information the minister has referred to gives a misleading impression of the intention of this side of the House and what we are endeavouring to do. The research would be relevant only if it related to children adopted by gay and lesbian relationships and not children of a natural parent.

Mrs EDWARDES: Could the Attorney General confirm that the other States in Australia, in particular Queensland, have expressly legislated to prevent homosexual couples from adopting children based on what is in the best interest of the child? Could the Attorney General find out before the evening ends?

Mr McGINTY: I am not in a position to comment in detail on the provisions of the legislation in the other States. It is broadly my understanding that there is an ability for single people to adopt in each of the other States.

Mrs Edwardes: I understand there is an express exclusion clause in Queensland.

Mr McGINTY: The notes that I have about the Queensland legislation is that husbands and wives must apply jointly and de facto adoptions are not permitted.

Mrs Edwardes: I understand that homosexual couples are expressly prevented from adopting children.

Mr McGINTY: The brief summary I have on Queensland is that where the director general is satisfied there are exceptional circumstances, which justify making the order, a special needs child placement is in the best interests and welfare of the child. The brief notes that I have, without having the full legislation here, tend to suggest that the legislation covering single people is somewhat tighter than it is here; that is, an allocation can be made only to a single person where there are exceptional circumstances. We have already heard that the number of single people who have successfully applied to adopt is one person in five years. In practice the legislation seems to work in the same way, although we do not have that same restriction. The brief note I have indicates that de factos are excluded and a husband and wife must apply jointly. I do not have any further information. The advice is that we are unaware of the sort of provision that the member is now suggesting.

Mrs Edwardes: Could the Attorney General get that information before the close of debate?

Mr McGINTY: If we find it, we will advise the member. However, our current information is that does not appear to be the case.

Mr MASTERS: I have two questions about clause 12. However, I do not have a copy of the Adoption Act in front of me. Will the Attorney put section 39 in context? More importantly, in certain northern hemisphere countries, laws have been passed allowing same-sex marriages to take place. Does the Government intend to go down that path? Is it intended that this provision will apply to same-sex couples who may be married under future legislation?

Mr McGINTY: The question of same-sex marriages is not contemplated and it is not on the agenda or the radar screen. Consequently, I have given no thought to what I might do if something the Government does not intend to do happens.

Section 39 of the Adoption Act deals with the criteria for people applying to adopt. It lays down that a person cannot apply unless, at the time of the application, he or she is an Australian citizen, is over the age of 18 and is a resident in the State. If it is a joint application, the applicants are required to have been married for at least three years. The amendment will insert the words "or in a defacto relationship with". The provision details the essential criteria applied to people who want to be placed on the list to adopt. It goes on to deal with two people applying jointly. This provision has nothing to do with the child. That is the context and purpose of section 39.

Mr BOARD: If I heard the Attorney and his advisers correctly -

Mr McGinty: You did not hear them.

Mr BOARD: Is he saying that he and his advisers are totally unaware of adoption legislation in other States of Australia that relates to same-sex adoption?

Mr McGinty: I did not say that. The member for Kingsley asked whether the Queensland legislation contained a particular provision. My answer was, "Not to the best of my knowledge." My information is that that is not

the case. I do not have a copy of the Queensland legislation here. However, I do have a summary of the relevant interstate provisions.

Mr BOARD: Is it fair to say that no other State in Australia currently allows same-sex couples to adopt children with no biological connection to either partner?

Mr McGinty: Yes.

Mr BOARD: It was said earlier that this is leading-edge legislation in Australia, and, indeed, in many parts of the world. Is that correct?

Mr McGinty: Yes.

Mr JOHNSON: The more I listen to this debate the more nervous and concerned I become. The member for Murdoch has drawn out of the Attorney a statement that this is the only legislation in Australia -

Mr McGinty: He did not draw it out of me. It is the answer I gave to the Leader of the Opposition in question time today.

Mr JOHNSON: Ours is the only State in Australia that is prepared to allow children to be adopted into a same-sex relationship; that is, when neither partner is the natural parent. That is very frightening. The Attorney is obviously trying to make a name for himself throughout Australia, or perhaps throughout the world. I do not know of any another country that allows that to happen.

The DEPUTY SPEAKER: The member should speak up. His voice is very quiet.

Mr JOHNSON: It is one of my charming characteristics.

Several members interjected.

Mr JOHNSON: I always have trouble hearing the member for Joondalup. He makes many interjections. I only wish I could hear them.

Several members interjected.

Mr JOHNSON: The member simply needs to speak up.

Several members interjected.

Mr JOHNSON: I hope I do. I want to hear every word he has to say. That is particularly important in this debate. I am sure his constituents want to know his views on the legislation. In three years they will want to know what part he played in its passage.

Several members interjected.

Mr JOHNSON: You kept this one hidden under the carpet.

The DEPUTY SPEAKER: Order! The member for Hillarys will confine his remarks to clause 12.

Mr McGowan: Do you still think they are Nazis?

The DEPUTY SPEAKER: The member for Rockingham will come to order. Members will return to clause 12.

Mr JOHNSON: What a dreadful interjection. I have never said they are Nazis.

Mr McGowan: What did you say?

The DEPUTY SPEAKER: Members will discuss clause 12.

Mr JOHNSON: The member should get the footage from the library and watch it all night long.

Mr McGinty: What is the question?

Mr JOHNSON: It is not a question; it is a comment, and one that I am loath to make.

Several members interjected.

Mr JOHNSON: I can understand any minister trying to be a leader in his portfolio area. I have been there and done that. However, I would never want to wear the shame that the Attorney will wear for introducing this legislation and this clause. The Attorney wants to lead the world in allowing children to be adopted by same-sex couples who have no biological link to the children. It does not happen in the rest of Australia and, as far as I am aware, it does not happen anywhere else in the world. The Attorney stands condemned for this clause. He will

carry the associated opprobrium for a long time. I cannot vote for this clause under any circumstances. I will oppose it vehemently.

Mr McGINTY: I will provide some balance to this issue. It is important to bear in mind that gay people can already adopt children in Western Australia.

Mr Birney: Gay couples cannot.

Mr McGINTY: Gay people can. I meant what I said to be taken literally. The member does not need to add anything else. Single people in Western Australia have been allowed to adopt since 1994, regardless of their sexual orientation. A single person can be heterosexual or homosexual. Singles in the Australian Capital Territory can adopt, but only with the consent of the birth parents. The New South Wales legislation provides circumstances in which a single person can adopt.

Mrs Edwardes: The summary makes reference to two cases in which a child has been placed with a same-sex couple and an order has been granted.

Mr McGINTY: I am reading from a different piece of paper. That table shows that gay and lesbian people in other States, for example, in New South Wales, adopt children. The point I make is that adoption by gay and lesbian people is allowed in each of the other States in one form or another, and it is currently allowed under legislation in Western Australia. It seems strange to allow a single gay person to adopt, but to not allow a gay couple to adopt. That does not make sense.

Mr Board: The table shows that single people are allowed to adopt children in New South Wales and that single, homosexual people are not discriminated against. I understand that. However, that is an entirely different from saying that by the mere nature of their homosexuality, a homosexual couple is entitled to adopt.

Mr McGINTY: In essence, we are deleting a clause that says a married couple can apply to adopt, a single person can apply to adopt but gay couples and heterosexual couples who live in de facto relationships cannot apply to adopt. We are deleting those two prohibitions. Effectively, if people can prove they would make the best parents, what they do behind their bedroom door is of no great interest to us.

Mr Board: It is of interest to the child.

Mr McGINTY: It must be, and we will reinforce that with an amendment we will move shortly. Recently in Western Australia foster children have been placed with gay people. Gay, single people can and do adopt children. It is implicit in what a number of members have said that they believe that a mother and a father make better parents than a single parent. Therefore, it is strange that according to the Opposition's definition, a gay couple, for instance two lesbians, should not be able to adopt a child but a single lesbian can. That makes no sense to me. I make the point that, to varying degrees in each State and territory in Australia, single people, including single gay people, can and do adopt.

Mr BIRNEY: I feel compelled to say a few words about clause 12 because it is a significant clause in the context of this Bill. Clause 12 allows a gay or a homosexual couple to adopt children. Over the past couple of days there has been much debate about this Bill. The Opposition does not support the vilification of gay people in any way, shape or form. We certainly do not support any discrimination against those individuals in the workplace, community groups or sporting groups. It is important to put that on the record. However, the Opposition does not believe that a young child, who has found him or herself in an adoption agency for a variety of, sometimes tragic, reasons should be offered for adoption to a gay or lesbian couple. I believe it is vital that young people in their formative years be influenced by, and receive input from, a male parent and a female parent. The Labor Party seeks to deny to young people the sanctity and stability of that traditional family unit.

I must put my views on clause 12 on the record. It is the evil clause in this Bill. This is what the Labor Party is all about. It wants to impose its non-existent moral values onto the people of Western Australia. In a previous debate I said that this is like playing a game of Russian roulette with the young people of Western Australia. Let us consider this matter from a practical point of view. A young person might find himself at an orphanage because his birth parents for whatever reason did not want him or had tragically died. His life would have been uprooted and he would be in an orphanage. The Labor Party would seek to adopt him to a same-sex couple. Of the children in the orphanage, I wonder which child would go to the heterosexual couple and which child would go to the homosexual couple? Surely that is a game of Russian roulette played by the Attorney General and his Labor Party colleagues.

Mr McGinty: The last orphanage was shut down by the time you were born.

Mr BIRNEY: The child would be at an adoption agency; the Attorney General is playing with words. It is vital that young people in their formative years have the influence of a male parent being the father and a female parent being the mother. The member for Kingsley outlined this matter succinctly. Statistics show that homosexual relationships are more prone to disintegrate than heterosexual relationships; that is a fact. A child adopted by a homosexual couple will be part of a relationship that is statistically more prone to breaking down than heterosexual relationships. The Labor Party stands for everything that I do not. I support the rights of the child. A homosexual couple does not and should not have the right to adopt a child. A heterosexual de facto couple does not and should not have the right to adopt a child, but the child should have every right in the world to enjoy the sanctity and stability of a traditional family unit. This Labor Government, which is unlike any Labor Government in the past, seeks to deny them that opportunity. It has abandoned its traditional voting base, which was the working-class man. Many years ago the Labor Party purported that the working-class man was its voting base. Today the Labor Party has abandoned that voting base. This is a Government unlike no other in the past and it will be condemned. History will treat the Attorney General harshly and the people of Western Australia will also treat the Government harshly at the next election.

Clause put and a division taken with the following result -

Ayes (29)

Mr Andrews	Mr Hyde	Mr McRae	Mrs Roberts
Mr Brown	Mr Kobelke	Mr Marlborough	Mr Templeman
Mr Carpenter	Mr Kucera	Mrs Martin	Mr Watson
Mr Dean	Mr Logan	Mr Murray	Mr Whitely
Mr D'Orazio	Ms MacTiernan	Mr O'Gorman	Ms Quirk *(Teller)*
Dr Edwards	Mr McGinty	Mr Quigley	
Ms Guise	Mr McGowan	Ms Radisich	
Mr Hill	Ms McHale	Mr Ripper	

Noes (16)

Mr Barnett	Mr Edwards	Mr McNee	Mr Sweetman
Mr Birney	Mr Grylls	Mr Marshall	Mr Trenorden
Mr Board	Mrs Hodson-Thomas	Mr Masters	Mr Waldron
Mrs Edwardes	Mr Johnson	Mr Pendal	Mr Bradshaw *(Teller)*

Pairs

Dr Gallop	Mr Omodei
Mr Bowler	Mr Barron-Sullivan

Independent Pair

Dr Woollard

Clause thus passed.

Clause 13: Section 40 amended -

Mr BOARD: Clause 13 seeks to amend section 40 of the Adoption Act by replacing the words "stable marriage" with "stable de facto relationship". That section of the Act deals with the assessment of applicants for adoptive parenthood; that is, how a couple is selected for adoption, and the assessment report for that adoption. Through this legislation, the Attorney General is making it possible for gay and lesbian couples to adopt children. Given that so few adoptions in Western Australia are successful -

Mr McGinty: I think they are all successful.

Mr BOARD: I was talking about the success of the applications, rather than the adoptions. How will the Government judge the success of the legislation allowing gay and lesbian couples access to adoption? I fear that affirmative action will be taken to prove the success of the legislation to allow gay and lesbian couples to adopt children, and hence they will be -

Mr Kucera: Who told you that?

Mr BOARD: It is the nature of affirmative action. It has happened in the workplace. Many multicultural people have been sought after as part of affirmative action surrounding decisions about equity and access. The Minister for Health knows that. How will the Government indicate to those conducting the assessment report that affirmative action is not to occur? So few adoptions take place that we might never see an adoption in this instance. How will the Government prevent those making the assessment report from trying to give some credence to the change in the legislation by discriminating against a heterosexual couple that may have equal rights to that adoption?

Mr McGINTY: For the sake of the record, last year six children were put up for adoption in what are referred to as local or stranger adoptions. That is marginally lower than the norm. The average is normally somewhere between six and 10. There were also 20 overseas adoptions, 39 step-parent adoptions and three carer adoptions.

I suggest that members look at the front page of tomorrow's newspaper - which has already been delivered - which contains a compelling story accompanied with a photo of our good friend Hon Giz Watson MLC and her lesbian partner. The story is about the three children her partner brought into the relationship, and the desire of Hon Giz Watson to take responsibility for those children in what I would broadly categorise as a step-parent adoption. These measures in this Bill will allow that. I do not believe that any consideration will be given to affirmative action. The one criterion is the interests of the child. Affirmative action, in which the usual tests are put to one side to achieve a particular outcome, would be utterly inappropriate in the case of adoption. The adoption must always be based on the best interests of the child.

I relate a story of a lesbian woman I know -

> My partner and I have been in a loving relationship for 12 years. My partner carried (is the birth mother of) Tom, our son who is now three and a half years old. During the day she cares for him while I work to support our family.
>
> Law Reform to allow me to adopt Tom and legally be regarded as his parent is not about me. This law reform is not about giving me, a Lesbian, the right to adopt Tom. This law reform is about giving Tom the right to be cared for and claimed under the law. It ensures that he has a parent other than his mother who is committed and obliged under law, to care for him, provide for him, make decisions on his behalf and provide security and guidance to him.
>
> My role in Tom's life has been recognised and respected by all of the people in our lives. I have always known that officially, according to current laws that exist in WA that I am technically invisible and actually disapproved of.
>
> The significance of Lesbian and Gay Law Reform in respect to adoption has overwhelmed me with the possibility that I may be able to adopt Tom. I want Tom to feel claimed by me, as well as to know that he is a full citizen in this community and not stigmatised by his Government because of who his parents are.

Those are the circumstances in which I envisage adoptions in a gay context will occur.

Mr Board: Is that a situation in which one of the parents is the natural parent?

Mr McGINTY: Yes.

Mrs Edwardes interjected.

Mr McGINTY: No, they are not single; they are in a relationship.

Mr Board: The Minister for Community Development, Women's Interests, Seniors and Youth referred to children of gay or lesbian couples. In that situation, one of the parents is the natural parent. I am referring to the situation in which a couple bring into a relationship a child of whom neither is the natural parent. That is my point about affirmative action.

Mr McGINTY: I have dismissed affirmative action as a concept without application in this context. It does not warrant further assessment.

A gay person in a relationship cannot apply to adopt by pretending that he is single.

Mrs Edwardes: How does that apply? According to the Act, one of the criteria for a step-parent adoption is marriage. Why can that person not apply as a single person?

Mr McGINTY: Because a person must be single.

Mrs Edwardes: The person is single; the person is not married. Obviously, I would like to continue to hear the Attorney's response.

The SPEAKER: I am sure we all would.

Mr McGINTY: Section 39(3) of the Act, as it currently stands, states -

> For the purposes of subsection (1)(d), where the joint applicants are cohabiting with each other in a heterosexual relationship, as each other's spouses, although not actually married to each other . . .

That covers heterosexual people; so they cannot.

Mrs Edwardes: Section 38(2) states -

> An application under subsection (1) may be made by one person, or by 2 persons jointly.

Mr McGINTY: That is right.

Mrs Edwardes: Therefore, we are not talking about cohabitation or a marriage; we are talking about a single person.

Mr McGINTY: The department advises that it will always look in great detail at the background of people and, if they are living in a relationship, they will not be regarded as single. They will therefore be excluded. That is the practice applied by the department. Frankly, if a person who was living in a relationship suggested that he or she was single, that person would never be successful.

Mrs Edwardes: If I were a practising lawyer, I would take up the case on that person's behalf, and I would contend that it does apply. The department must reassess its processes, because there is nothing that stops it.

Mr McGINTY: If a couple are not married, they are not eligible to apply.

Mrs EDWARDES: I was arguing about a single person. The Attorney said earlier today that a single homosexual person could adopt.

Mr McGinty: Yes.

Mrs EDWARDES: A couple who are not heterosexuals but who are married are provided for. Cohabiting heterosexual couples are provided for, and single persons are provided for. In that case, it would be a single-person adoption. It is not a heterosexual cohabitation relationship or a marriage relationship; it is a single person. Nothing in that clause would limit it, other than departmental policy.

Mr McGINTY: I can go no further than to say that in practice it would not occur.

Mrs Edwardes: It is departmental policy.

Mr McGINTY: I move -

> Page 7, after line 15 - To insert the following -
>
> (2) Section 40(2) is amended by inserting after paragraph (d) the following paragraph -
>
> (da) shows a desire and ability to provide a suitable family environment for the child;

During the course of debate about the issue of adoption, we thought it appropriate, in the section that deals with eligibility, to reinforce that to be eligible to apply for adoption, an applicant must show a desire and ability to provide a suitable family environment for the child. The purpose of this is to reinforce the importance of the interests of the child and the family environment into which that child will be placed.

Mrs EDWARDES: In the implementation of many pieces of legislation, we all know that departments need guidelines and bases upon which they can test the application of new criteria. An interpretation of "shows a desire and ability to provide a suitable family environment for the child" would be subjective. How would the officers in the department be able to test whether the applicants show a desire and ability to provide a suitable family environment for the child? Is this a test which is currently applied under departmental guidelines but which is not in the legislation? If so, what criteria have been applied under the guidelines? If that is not a test, what test will be put in place so that the officers can tick the little boxes? As we have just heard, it is the department's policy that is stopping Hon Giz Watson from adopting, not the legislation. If individuals in the department make their own subjective decision about how they will implement this provision, according to their interpretation, the department will need guidelines.

We would like to know what the Attorney has in mind, so that when an officer from the department is interviewing the applicants, he will be able to tick the box and say that the applicants comply with this requirement under the legislation. This amendment has been moved for all the right reasons, as the Attorney

outlined them, but it is very subjective. Without guidelines, there will be no confidence that it will be interpreted in the way that the Attorney wants it to be interpreted.

Ms McHALE: To the extent that the member said there may well be an element of subjectivity, she is right. However, the Act must be underpinned by protocols and by an exhaustive evaluation and assessment process for potential adoptive parents. The Act currently states that a prospective adoptive parent must be of good repute. What is good repute? That is subjective. However, that is not something that the member has necessarily raised as a concern when the Adoption Act has been before Parliament.

Mrs Edwardes: What protocols do the officers have in front of them to determine what good repute means? That is what I am interested in. What protocols will be applied to ensure that this is implemented in the way the Attorney wants it implemented?

Ms McHALE: There is a whole series of protocols in the evaluation process, such as group interviews, group sessions and information sessions for prospective adoptive parents, when some informal evaluation is done. Then a series of interviews must take place between the departmental staff and the adoptive parents. Questionnaires must be filled out, and evaluation interviews are conducted. I will list some of the protocols that exist to determine suitability, and then the Attorney will report on what my staff member has said. The criteria include things like healthy family functioning; views on parenting; common views on parenting, so there is a shared view; competent communication between the prospective adoptive parents; agreement on the important aspects of family life; healthy and consistent child-rearing beliefs; partner relationships - again that goes to the stability of the relationship; the ability of a couple to deal with conflict; appropriate conflict resolutions; similarity of attitudes; and the motivation to adopt.

Obviously, adoption is not about infertile and childless couples, notwithstanding the views many people have. Adoption is about finding a good home for a child who has been relinquished by his or her birth parents. The motivation for adopting is thoroughly explored. The Act allows a degree of subjectivity, but to minimise that the department has a series of interviews, psychological testing, group sessions and protocols. Some of those protocols explore and examine ideas about child rearing, a stable family home, management of conflict and so on. Essentially, that is it, but maybe the Attorney General has something else to say.

Mrs Hodson-Thomas: What is the time frame for that process?

Ms McHALE: Most members in this House may have letters from adoptive parents about the length of time it takes. Most of the complaints are about the time being too long. On average, the time frame is about two years, but it has been five or six years for some couples in my electorate. The time frame for adoption is, on average, a minimum of two years. It is not something that happens within a short period. During that period of two years or more, the evaluation and process of assessment goes on.

Mrs Edwardes: It is different for step-parents, is it not?

Ms McHALE: Yes, it is.

Mr McGINTY: I have some notes, which I will read, on the effect and meaning of this amendment -

> The concept of family is not defined directly as there is no one suitable family environment. Family life is complex and many facetted. Family composition has altered and continues to move. Less than 20% of families are the so-called traditional form of a male income earner, a wife and two or more dependent children at home. There are increasing numbers of single headed families, blended families, families where the grandparents are raising their children's children and some same sex adults raising children.
>
> Relationship breakdowns, changing patterns in couple formation and duration and declining rates of fertility add to this complexity. At the same time couples are delaying the point at which they commence having a family. For some, the IVF path is the road to a family, for others it is adoption.
>
> Adoption has been replaced as the preferred path to having children. The numbers of children conceived via IVF is significantly higher than the rate of adoption in WA.
>
> With 6-10 local adoptions per year, and 21 intercountry adoptions, there are few couples who see adoption as a sure bet to family formation.
>
> Decisions about the suitability of applicants for adoptive parenting are difficult when the descriptions of what families are and what they do are shifting. Just having an accurate picture of family life today is not simple.
>
> Adoption Service has developed a set of nine elements to be considered when looking at suitability.

These are the matters referred to by the Minister for Community Development. The nine elements are the physical environment; family life and functioning; child rearing beliefs and parenting style; personal characteristics and interpersonal skills; partner relationship and skills; skill and experience in maintaining relationships; problem solving and the willingness to seek and accept support; motivation and understanding of adoption; and older children and their needs. Family life and functioning, which was the second element, is the only one that refers directly to the situation covered by this amendment.

Mrs Edwardes: With respect, it is broader than that, because you are talking about a family environment. I would have thought you would be picking up all nine aspects.

Mr McGINTY: The member may be right in part, but the Government is saying that there is currently no specific criterion such as that which is now being inserted into the legislation. It may well be that the nine administrative elements that are applied at the moment are given some statutory justification, but the Government wanted to focus on the family environment. Those are the nine factors currently addressed by the adoption service. The document continues -

> Each element is composed of a number of criteria which applicants are expected to demonstrate in the assessment process. Altogether there are 45 criteria that are considered when assessing applicants.
>
> The Assessor analyses the criteria to come to a judgement about the applicant's ability to meet the 9 elements. The assessor comes to an overall professional judgement and makes a recommendation to the Adoption Applications Committee. The AAC uses the assessment report and any other information it has to hand to make its decision. This Committee makes the final decision as to the suitability of the applicants for adoptive parenting.
>
> In placing a child the best interests of the child is the paramount consideration in adoption. Adoption is not a service to find a child for a childless people. While few in number there is a variety of backgrounds represented in the children made available for adoption. The selection process identifies a range of people who might be able to provide a suitable placement for a child needing a family. This range of people provides a choice when the matching occurs at the allocation stage.
>
> The gender of the applicants is not as important as providing, a stable environment, parenting skills, and the ability to nurture and care for a child. In addition to having the very basic needs met, this society expects that prospective families provide consistent high quality love and nurture. The skills requires are those identifies in the elements and criteria mentioned earlier. Not all-natural parents, and not all-adoptive applicants are able to meet these needs.
>
> The Adoption Service process seeks to identify those people who can provide and sustain a family environment that meets the needs of the child.

Mr BOARD: The Attorney General did a good job in describing what is happening in the Australian community at the present time. The Opposition accepts that as the reality of what is happening, not only in this country but also in many other parts of the western world, and the changing nature of the pressures that have been brought to bear on families, relationships and so forth. I understand the Attorney General is indicating that the Government wants the best and most desirable outcome for adopted children.

The point the Opposition is making is that the Attorney General is elevating a homosexual relationship to the status of a desirable family outcome for the process of adoption, and giving it equal status to a heterosexual relationship. That is the principle on which the Opposition argues. There is no doubt that there are loving, caring, homosexual couples who have children. I do not doubt or question that for one second. When that is chosen as a desirable outcome, the principle by which the right to a child is determined changes. The desirable outcome is for the child to have a mother and a father. That is now changed as a result of this amendment. The Attorney General elevates the homosexual relationship beyond that which has been accepted in any other State, not to an acceptance of the relationship, but to a desirable outcome for adoption.

Mr JOHNSON: The Attorney General's amendment contains the words -

> shows a desire and ability to provide a suitable family environment for the child;

We could argue all night about what is a suitable family environment. The Attorney General intends to elevate a same-sex couple to the same status as a married couple in what is known throughout the world as a normal family unit. This side of the House can never agree with the Attorney General's approach. The amendment is being introduced to try to make things better. What were things like when he drafted the amendment? This Bill

contains a lot of nonsense. It is another amendment that has been drafted on the run. It has been introduced in the past few days because the Attorney General realised that he did not get it right in the first place and there has been criticism. He has listened to the criticism and decided to put things right. He has slapped an amendment through.

I am sorry to say it, but this legislation has been very badly drafted. I do not necessarily blame the parliamentary draftsmen. I blame the Attorney General because he is in charge of this legislation. He is a lawyer, although I do not think he has ever practised. He has his degree; he is a bush lawyer. In some ways I think he is still practising in the true sense of the word. This legislation has not been thought through properly and that is why we are getting these amendments. There may be more. This Bill will get through the House because the Government has the numbers, but between the Bill leaving this House and going to the upper House, I will not be surprised if the Attorney General realises this legislation has even more mistakes in it.

I am confident that this Bill will be amended in the upper House, so it will have to come back to this House. It all depends on how desperate the Attorney General is to get the legislation through before Christmas. I have been criticised by certain individuals and groups for some of the comments I have made recently about this legislation. The trouble is that some people - perhaps purposely or because they do not have a clue - totally miss the point I am trying to make. Western Australia has many problems. The budget has a massive black hole and 4 000 jobs are about to be lost in the south west.

There are many areas of concern, but the Government is committed to passing this radical social agenda. It has to get it through. Does this really have priority over everything else, including the 4 000 jobs that are about to be lost? I am concerned that the Government is in such a hurry. A same-sex couple may well love and nurture a child; I do not dispute that. Homosexual people love the same as heterosexual people, they have nurturing qualities the same as heterosexual people, and I am sure they have caring qualities the same as heterosexual people.

Amendment put and passed.

Mrs EDWARDES: Today's front page of *The West Australian* shows a photograph of Hon Giz Watson and her partner. From reading the Act I believe it is only departmental policy that prevents Hon Giz Watson from applying to be an adopting parent. Will the Attorney General confirm that?

Mr McGINTY: I do not think that proposition is right. I cannot point to a section in the Act that expressly states that one member of a gay couple cannot apply to adopt. It has an interesting consequence given the heat generated by some of the older men on the opposition side. The department treats such people as being in a relationship and therefore not single.

Mrs Edwardes: That is what I am saying. It is departmental policy that is stopping that, not legislation.

Mr McGINTY: If the member's proposition is correct, under Western Australian law a gay couple can adopt without these amendments.

Mrs Edwardes: No, it is a member of a gay couple because one partner must be a biological parent. Where there is a biological parent, a single-person partner can adopt.

Mr McGINTY: That is not the view of the department. In a practical sense, the answer is no. If the member is technically and legally right, what we are doing here will not significantly change the law.

Mrs Edwardes: Other than allowing two people to adopt, neither of who is a biological parent. It is a different issue when it involves a biological parent.

Mr McGINTY: Not in the way the Adoption Act is structured at the moment. We are taking it as it is and making that proposition. If we receive advice that we can develop further, I will get back to the member on that.

Clause, as amended, put and a division taken with the following result -

Ayes (27)

Mr Andrews	Mr Hyde	Ms McHale	Ms Radisich
Mr Brown	Mr Kobelke	Mr McRae	Mrs Roberts
Mr Carpenter	Mr Kucera	Mr Marlborough	Mr Templeman
Mr D'Orazio	Mr Logan	Mrs Martin	Mr Watson
Dr Edwards	Ms MacTiernan	Mr Murray	Mr Whitely
Ms Guise	Mr McGinty	Mr O'Gorman	Ms Quirk *(Teller)*
Mr Hill	Mr McGowan	Mr Quigley	

Noes (17)

Mr Barnett	Mr Edwards	Mr Marshall	Mr Waldron
Mr Birney	Mr Grylls	Mr Masters	Mr Bradshaw *(Teller)*
Mr Board	Mrs Hodson-Thomas	Mr Pendal	
Mr Day	Mr Johnson	Mr Sweetman	
Mrs Edwardes	Mr McNee	Mr Trenorden	

Pairs

Mr Bowler	Mr Barron-Sullivan
Dr Gallop	Mr Omodei
Mr Dean	Ms Sue Walker
Mr Ripper	Mr Ainsworth

Independent Pair

Dr Woollard

Clause, as amended, thus passed.

Clause 14: Section 52 amended -

Mr BOARD: This clause will change the terminology in the Adoption Act so that a stable relationship can include a de facto relationship. I refer to the previous amendments that the Attorney General has made, in particular those that concern bisexuality. Does the Attorney General consider a bisexual couple a stable relationship?

Mr McGinty: I did not know that you could have a bisexual relationship for this.

Mr BOARD: Bisexuality must be included because of the nature of the amendment that was made earlier.

Mr McGinty: That was only in relation to the Equal Opportunity Act.

Mr BOARD: Surely under the Equal Opportunity Act, according to his own changes, the Attorney General cannot discriminate against bisexuals. As a result of the changes that have already been made, how will the Attorney discriminate against bisexuals in terms of the stability of a relationship? What does the Attorney understand by the term stable in a de facto relationship which may involve bisexuality?

Mr McGINTY: Bisexuality is irrelevant to this debate. The only place in which reference is made to bisexuality is in the Equal Opportunity Act amendments.

Mrs Edwardes: It is in the definition of de facto relationship in the Interpretation Act. It allows for multiple relationships concurrently.

Mr McGINTY: Each relationship stands on its own. Someone might be in a homosexual relationship, and if they are bisexual they might also be in a heterosexual relationship or in relationships one after the other. Each relationship stands on its own.

Mr Board: You could not consider that to be stable.

Mr McGINTY: I would not have thought so. The member for Murdoch seems to have this obsession with bisexuality, which is not a relevant consideration.

Mr Board: You brought bisexuality into the Act.

Mr McGINTY: Not into the Adoption Act, which is what we are currently talking about.

Mr Board: You brought it in by way of definition.

Mr McGINTY: There is no reference to bisexuality in this clause.

Mr Board: There is reference to it by way of the antidiscrimination provisions.

Mr McGINTY: No. A de facto relationship in the Interpretation Act reads -

> A reference in a written law to a de facto relationship shall be construed as a reference to a relationship (other than a legal marriage) between 2 persons who live together in a marriage-like relationship.

Mrs Edwardes: There is more.

Mr McGINTY: It then states that it does not matter whether the persons are different sexes or the same sex or that either the person is legally married to someone else or in another de facto relationship.

Mrs Edwardes: It allows for multiple relationships.

Mr McGINTY: The member for Murdoch is talking about bisexuality. I am not interested in pursuing something that does not exist. I will leave the phantoms for the member for Murdoch; I want to talk about the legislation. There is no reference to bisexuality in this clause. It talks about different sorts of relationships - gay or lesbian relationships and heterosexual relationships. Each relationship needs to be looked at in its own right. The question of whether a stable relationship is in existence is one that will need to be determined on its own facts. The member for Murdoch should not introduce extraneous notions because they are not relevant to the issues in the Adoption Act.

Mr BIRNEY: Clause 14 requires that the director general will not be permitted to place a child with a view to the child's adoption unless the prospective adoptive parents are able to show that they are in a marriage-like relationship. More importantly, the clause discusses the need for individuals to show that their relationship is stable. We now include de facto relationships in the definition of marriage; and they include same-sex couples. The concept of showing that a relationship is stable is interesting when we talk about a homosexual or gay couple, or a heterosexual de facto couple. It is a fact that some de facto couples might move in together - this includes gay and lesbian and heterosexual couples - after knowing each other for only a short time. I do not know how one can prove that a relationship is stable in the absence of a marriage contract. When people enter into a marriage contract they think seriously about it; they then get engaged and before signing that marriage contract they firmly make that commitment to each other. That goes some of the way towards demonstrating that a relationship is stable - at that time at least. However, when one talks about de facto relationships and homosexual couples, it is a fact that homosexual relationships are more likely than heterosexual relationships to break down. That has been proved statistically. The member for Kingsley has already advised the House that is the case. In the instance of a gay or homosexual couple attempting to adopt children, it would be difficult to prove that their relationship is stable.

Clause 14 deals with section 52. I draw the Attorney's attention to section 52(1)(a), which provides -

> The Director-General is not to place a child with a view to the child's adoption unless -
>
> (a) the prospective adoptive parent - . . .
>
> (v) meets, if relevant, the child's wishes . . . .

This is the first time in the debate that I have seen any reference to the child's wishes. If that child does not want to be adopted by a homosexual couple, what will happen?

Mr McGINTY: Children over the age of 12 years have to consent to adoption; it is their call. If they say no, they are not adopted. Obviously, babies cannot have a say. In that case, the views of the relinquishing mother are relevant. We are talking about children from six to 10 years of age who are capable of expressing a view.

This is not an amendment. The current statute provides that the child is not to be placed unless the prospective adoptive parent meets the child's wishes. In other words, if the child says he does not want to go to that person because he is from Kalgoorlie, is gay or English, that is respected.

Mr Kucera: Obviously the member for Kalgoorlie did not get a choice.

Mr McGINTY: The other very important criterion is that the prospective adoptive parent shows a desire and ability to continue the child's cultural, religious or educational arrangements. A child, having been brought up in a particular religious, cultural or racial setting, might want to continue to live in such an environment. A Jewish child might believe it is crucial to continue living with a Jewish family.

Mr Birney: Are you saying that, if a child over the age of 12 does not want to be adopted by a gay couple, that will not happen?

Mr McGINTY: A child of 12 or over must consent to the adoption and all the circumstances surrounding it. Anyone aged 12 or over has a veto. The prospective adoptive parent must meet the child's wishes in that regard.

The wishes of a child under 12 years of age then become important. The words "if relevant" have been included for obvious reasons. If the child were to say that he did not want to be placed with a homosexual couple, effect would be given to that.

Mr Birney: That is if the child is over 12.

Mr McGINTY: No, under 12. If relevant, the wishes of a child under the age of 12 will be acted upon. A child aged two or three would probably not be in a position to choose.

Mr BOARD: The Attorney responded to my questions about the stability of a relationship and bisexuality. Members on this side are not trying to talk up a furphy. I will explain this process for the benefit of the people in the gallery. Because there are so many grey areas in the Bill, the Liberal Party is endeavouring to get the Attorney General to explain the intention of the legislation for the record. That will provide some direction in these areas. If that is done, government agencies will have clear directions. We are exploring those clauses which are difficult to understand or which do not state a clear intention. The Attorney's explanations will be in *Hansard*.

The Attorney has specifically stated that bisexuality is now covered by antidiscrimination laws. When the term de facto is used, we must now assume that bisexuality is included. Is the Attorney saying that his interpretation of a stable relationship will not include bisexual relationships outside a one-to-one stable relationship for the purposes of adoption?

Mr McGINTY: The Adoption Act will enable de facto couples to apply to adopt. A de facto relationship is a relationship between two people who live together in a marriage-like arrangement. That relationship is the focus of these amendments. The fact that one of those people might be in another relationship prior to, after or even during that relationship is not relevant. The case of someone being bisexual and conducting concurrent heterosexual and homosexual relationships is not relevant.

Mr Board: You would consider that an unstable relationship.

Mr McGINTY: I would not categorise it in that way. I would say that one of those relationships was irrelevant for the purposes of this legislation. To apply, one must be in a de facto relationship. In that case, the applicant would identify the relevant relationship, and that relationship would be the basis for the application with that partner. A de facto relationship is between only two people. A ménage à trois does not apply.

Mr Board: Someone could have a stable relationship with a partner, but have another relationship outside that. Is that considered stable?

Mr McGINTY: No. The department would assess that. In determining whether a stable relationship exists, it would look to all the things that everyone understands to be the constituents of a stable relationship; that is, an ongoing relationship, any disruptions to it and so on. If there have been any interruptions, it is probably not stable. Those elements are indicators of stability. The assessment will include the nature of the relationship, the communication and love and attention within it and so on. If someone is in two relationships concurrently, that might be an indicator that the first relationship is not stable. The department would assess that.

Clause put and passed.

Clause 15 put and passed.

Clause 16: Section 67 amended -

Mrs EDWARDES: Clause 16 refers to who may adopt a child. Although we have referred to those who are eligible to adopt, this clause provides that same-sex couples can adopt. I do not propose to go over all the concerns raised tonight.

Mr BARNETT: I have a simple question. I notice that the criterion for a de facto relationship is three years. Why is three years used in this legislation when two years was used as the criterion in the Family Court Amendment Bill, neither of which I agree with?

Mr McGINTY: That has occupied our minds in recent times. Various Acts provide for different lengths of time for the definition of a de facto relationship. For the purposes of family law and the distribution of property, we have deemed a relationship of two years duration to be sufficient to give rise to an application for a property settlement if that relationship breaks down.

Mr Barnett: Is there no rationale behind it?

Mr McGINTY: The Standing Committee of Attorneys General agreed that two years would be the national standard. Although not every State has followed that standard, it is the recommended national standard. In this case, it was decided that the definition would be three years because the existing provision in the Adoption Act provides that a marriage must have been in existence for three years. For the purposes of adoption, we have taken that existing three-year period rather than disrupt the current arrangements. For the purposes of simplicity of the law, I am coming around to the view that for all purposes wherever relationships are involved two years should be the standard definition. That could be considered in the future.

Mrs Edwardes: You could increase it from two years to three years.

Mr McGINTY: The property law provisions for de facto relationships including same-sex relationships is three years in New Zealand. However, we have used the definition of two years. There is no magic in either of those definitions. Although we will not have absolute consistency in the law, we are picking up what is currently prescribed in the Adoption Act. There is perhaps some justification for having a longer-term relationship when a couple adopts a child than is necessary for the distribution of property.

Mr Barnett: Would it not be discriminatory to have a longer term for adopting couples? Won't there be a future gay and lesbian reform Bill to remove that act of discrimination?

Mr McGINTY: The Leader of the Opposition may be right.

Mr Barnett: We will undertake to correct this anomaly in the future. We might make it consistent at 20 years, but we will correct it.

Clause put and passed.

Clauses 17 to 21 put and passed.

Clause 22: Section 120 amended -

Mrs EDWARDES: We have passed those clauses without debate because it would be repetitive to debate the definitions and insertions. However, because this clause is the last clause in this part, I will state our opposition to it. The Liberal Party opposes this clause because the community is not in accord with the Government on allowing same-sex couples to adopt. Until such time as the community is with the Government, this legislation is too far out in front. The other aspect is that, as the Attorney General has confirmed tonight, Western Australia will become the only State to allow same-sex couples to have the right to adopt children. I believe that the Queensland Labor Government has expressly legislated to prevent homosexual couples from adopting children on the basis of protecting the best interests of the child. The point of the debate we have made before is that this is one of the key issues of concern for people in the broader community. It is a shame that the Bill was not split to allow this and some other controversial issues to be explored in much greater depth.

Mr BOARD: We are addressing clause 22, but in doing so we are leaving the amendments to the Adoption Act as part of this omnibus Bill. We could have dealt with the entire Bill in relation to the amendments on this clause alone. However, it is incorporated in the totality of the Acts Amendment (Lesbian and Gay Law Reform) Bill 2001. As such, it is important that we reiterate that the Opposition believes this was one of the more contentious parts of the Bill. From the community's point of view, we thought that it would have been better to have split the Bills and spent more time on them. Today we moved to deal with the Bill in a standing committee to give the opportunity for the kind of community input that should occur with such a fundamental change to what the community would find acceptable and what it understands to be the definitions of adoption and a family unit.

I appreciate the Government's intent. However, our argument has been that the Government will force and direct community change beyond the community's expectation. Although this Government may feel that it has a

right to do so, that is far beyond what we believe it has been elected to do and what it has a mandate to do. Hence our concerns about this part of the legislation. Many of the members who have spoken about adoption and many of the references to and statistics about adoption for same-sex couples have been about a child who has been a product of one of the parents. In other words, there is a natural parent in that relationship. I suspect that many lesbian may have found themselves forced into a marriage for traditional, religious, social or cultural reasons that never suited them. Some of them may now be in happy lesbian relationships and have a child from their previous marriage. I appreciate and understand that.

That is not the issue. The issue is that this Bill introduces a new set of standards and criteria about the adoption of children not associated with that relationship. We are not talking about siblings or other people but about an adoption outside of that relationship. Although it may or may not affect only a small number of people, it establishes a different principle and a different set of criteria for Western Australia that sets us apart from any other State and most parts of the world. That is why members on this side have raised these issues today.

This Bill is about tolerance, but our objection is not about our not accepting tolerance, equity or understanding. Anybody who tries to portray us in that way maligns us and tries to paint a distorted picture for their own reasons. We are against some extreme elements in the Bill that go beyond what we believe is our elected right to represent to the community. That is the point we make as we finish debating the part of the Bill that relates to adoptions. We will return to it at the third reading stage. We continue to object to the fact that children will be put, against their will, into gay and lesbian relationships for the benefit of those relationships rather than the benefit of the children.

Mr McGINTY: I take this opportunity to deal with two matters.

The member for Kingsley raised the issue of Queensland. In 1992 a prohibition against homosexual adoption was inserted into the Queensland Adoption of Children Act. I am not sure of the precise terms of that prohibition, but they were along the lines of what the member indicated. That provision had a five-year sunset clause, which lapsed in 1997. For the past three years, there has been no direct statutory prohibition on homosexual adoption in Queensland. Although a prohibition did exist, it is no longer in force.

The member also asked whether a person in a gay relationship can adopt - the Hon Giz Watson example.

Mrs Edwardes: When the other partner is the biological parent.

Mr McGINTY: The Adoption Act contemplates three types of adoption. The first is the stranger adoption or relinquishing mother scenario, about which we have spoken. The member has already given some consideration to that. That does not apply because the Director General of the Department for Community Development becomes the guardian of the child. That would not be appropriate if the birth parent was around.

The second type of adoption is step-parent adoption. By definition, a step-parent includes only heterosexuals, so that possibility is excluded. The third category is the carer adoption. That would be possible; however, section 75 of the Adoption Act deems that, for this to occur, the birth parent should no longer be in a parent-child relationship with the child at law. That is the advice I have received. Therefore, a gay person who is in a gay or lesbian relationship cannot adopt as a single person.

Mrs Edwardes: I still disagree. Part of the definition of an adoptive parent is a "person who adopts". Section 38(2) of the Adoption Act allows a single person to adopt, and the definition of adoptive person is a "person who adopts". The Attorney General may have argued all his scenarios, but he has not proved that it cannot happen under this legislation. I say that it can.

Mr McGINTY: I cannot add anything to the advice I have been given, which is the considered legal opinion of the people at the Table. Their view is that it cannot be done. However, it is an interesting point.

Mrs Edwardes: I still believe that it can be done.

Clause put and a division taken with the following result -

Ayes (24)

Mr Andrews	Mr Hyde	Mr McGowan	Ms Radisich
Mr Brown	Mr Kobelke	Mr Marlborough	Mrs Roberts
Mr Carpenter	Mr Kucera	Mrs Martin	Mr Templeman
Dr Edwards	Mr Logan	Mr Murray	Mr Watson
Ms Guise	Ms MacTiernan	Mr O'Gorman	Mr Whitely
Mr Hill	Mr McGinty	Mr Quigley	Ms Quirk *(Teller)*

Noes (17)

Mr Barnett	Mr Edwards	Mr Marshall	Mr Waldron
Mr Birney	Mr Grylls	Mr Masters	Mr Bradshaw *(Teller)*
Mr Board	Mrs Hodson-Thomas	Mr Pendal	
Mr Day	Mr Johnson	Mr Sweetman	
Mrs Edwardes	Mr McNee	Mr Trenorden	

Pairs

Mr Bowler	Mr Barron-Sullivan
Dr Gallop	Mr Omodei
Mr Dean	Ms Sue Walker
Mr Ripper	Mr Ainsworth

Independent Pair

Dr Woollard

Clause thus passed.

Clauses 23 and 24 put and passed.

Clause 25: Section 5 amended -

Mr BOARD: This clause seeks to clarify and amend the Artificial Conception Act 1985 by providing that a woman who undergoes a fertilisation procedure, whether or not she has provided the ovum for the birth of a child, is considered the mother of the child. It is said that this will remove any uncertainty about who is the mother of the child if the artificial fertilisation procedure was not carried out with the consent of a partner of the woman. I seek clarification from the Attorney on the rights of the child to access information at a later stage. Under this clause, is that child entitled to know at any stage who is the mother; that is, the person who donated the ovum? I know that cuts across other legislation that is not the province of this legislation, but it impacts on this clause. As a secondary question, is that consistent with the provisions in other legislation regarding donor ovum in any other form of relationship?

Mr McGINTY: I am told that under the current law, when an egg from another woman was implanted into the woman who was to become the mother, it was only in circumstances in which the husband gave consent that the woman who gave birth would be deemed the mother. That is the current arrangement. If this amendment is successful, the question of consent of the husband is no longer required for the woman who gives birth to be deemed the mother. Is the woman who donates the egg the mother, or is the mother the person who gives birth? That is the issue. One of the important factors in the past in determining who is the mother has been the question of the husband's consent.

The member asked about the situation in the other States. Throughout Australia, the position is that the woman who donates the ovum or the egg is not the mother; the woman who carries and gives birth to the baby is the mother.

Mr BOARD: I understand what the Attorney said about the mother, and I appreciate that. However, I asked about the rights of the child.

Mr McGinty: To get information?

Mr BOARD: Yes.

Mr McGinty: There is currently no right, and that is not proposed to be changed.

Mr BOARD: Is that consistent across Australia?

Mr McGinty: No, there is no uniform position across Australia.

Mr BOARD: Do any States of Australia allow children who are the product of in-vitro fertilisation to get information about the father who donated the sperm and the mother who donated the ovum?

Mr McGinty: I cannot answer that question now; I just do not know.

Mr BOARD: Would the Attorney be able to provide that information, through his good offices?

Mr McGinty: We will certainly look at providing that. We will make a note of that.

Mr BOARD: The rights of the father - that is, the person who donated the sperm - are removed. That is similar to the issues we dealt with relating to adoption.

Mr McGinty: We are dealing only with maternity, not paternity, in this clause.

Mr BOARD: Right. The Attorney introduced that in his explanation, which is why I raised it.

Mr McGinty: I think that is the next amendment with which we will deal, or the one after.

Mr BOARD: Okay. We will deal with it then.

Ms McHALE: I refer the member for Murdoch to the report of the Select Committee on the Reproductive Technology Act, which outlines the provisions regarding access to identifying and non-identifying information in IVF procedures in the different States. The member may like to acquaint himself with the data.

Mr Board: Is that the same committee that recommended against single women accessing IVF?

Ms McHALE: No, this committee recommended that there should be identifying information for IVF procedures.

Mr Board: However, it is the same committee that recommended against single women accessing IVF.

Ms McHALE: That is right. The majority view was against access by single women; the minority view was in favour of it. To answer the member's question, that is different from the adoption legislation, which now provides access to identifying information on birth parents.

Clause put and passed.

Clause 26: Section 6A inserted -

Mr BRADSHAW: Earlier in the evening I said that the report of the select committee that inquired into adoption some years ago pointed out that there are problems for people who are adopted and who are not able to identify natural parents. It causes a lot of consternation and deep-rooted concerns for those people, and they are forever trying to find out who their natural parents are. It becomes an obsession with them, and it is a major problem. Under this legislation, that disharmony and disquiet will continue, and those people will have psychological problems when they suddenly find out that they are not of the parents who are bringing them up and that they have a biological parent somewhere. It is wrong that we are going down this track. As I said earlier, I do not have a problem with homosexual people or lesbians living together. However, I do have a problem when children are brought into the equation.

Obviously there have been situations in which one of the partners in a lesbian relationship has been inseminated. In other situations, people have been in heterosexual relationships, and then split up and gone into homosexual relationships, and children have been taken into those relationships. Those problems cannot be overcome, because that is the way of the world. However, further problems can be prevented by not allowing people access to this IVF program. It is wrong that the Government is going in this direction, because those children will have major problems in the future. It was pointed out earlier today that young people who come out as gay have many problems at school, and are shunned or attacked verbally in various ways. How will children who have gay or lesbian parents cope at school? It will be very difficult, and the Government is creating a lot of psychological problems for the children of these relationships. I do not support this measure.

Mr BOARD: Clause 26 inserts a section into the Artificial Conception Act, under which, if a woman undergoes an artificial fertilisation procedure with the consent of her same-sex de facto partner, that partner is a parent of

any child born as a result. The interesting part is that the consent of the partner is presumed, but that presumption is rebuttable. I ask the Attorney General to detail the basis on which the presumed parenthood is rebuttable. What would be the circumstances of that, or what would be acceptable as a rebuttal? How would someone be able to access IVF if the partner has rebutted the presumed consent? There is no unison in that program. I ask the Attorney General for clarification on what is rebuttable in that situation.

Mr McGINTY: The provisions which state that consent is presumed, but is rebuttable, mean that the onus is on the person who wishes to prove that consent was not given to establish that. That person may be able to prove that the consent was forged, and was not given by the partner. The onus would be on the other party to establish that the consent was not given. No doubt there are other circumstances in which evidence could be adduced that consent was not forthcoming, notwithstanding the appearance on the face of the record that it had.

Mr BOARD: I accept what the Attorney General has just said. Is this an entirely new provision based solely on same-sex relationships, or is it something that currently exists in the case of heterosexual relationships and IVF? If it currently exists, why is it being brought in, particularly as an amendment to this Act? That begs the question that, if it does not exist, why is it only being introduced for same-sex relationships?

Mr McGINTY: This provision currently exists in the Act in respect of married couples and de facto heterosexual couples. This amendment inserts the same provision in every relevant respect, to cover same-sex couples. The same test and the same rules apply, but are just extended to people in same-sex de facto relationships.

Mr McNEE: I am at a loss to understand how the Attorney General can say that, when one member of a same-sex couple goes off and has artificial insemination, the other member will be deemed a parent. He simply cannot do that, because it simply is never likely to be anywhere near the truth. Out there somewhere, is the man from whom the semen came, and that person must be the father. The Attorney General is saying that this other person is deemed to be the father, but I am saying that is a load of garbage. I am really concerned about this legislation, because I do not think that even the Attorney General has considered it properly. My experience in this place is that legislation that is rushed through and ill-considered, leads to an absolute tragedy. That is where the Attorney General is heading, and if he thinks he has achieved the powers to deem that a person is a parent when there is no way in the world that person can be a parent, I feel sorry for him. I cannot see how he can make those adjustments.

Mrs EDWARDES: Many people regard artificial conception and IVF essentially as a treatment and a medical procedure, but it is surrounded by very strong social and legal issues. These issues have been addressed in this House, as it has gone through, in some detail, those social and legal implications. In this instance the House is discussing artificial conception. When a woman in a de facto relationship with another woman undergoes artificial conception, with the consent of her de facto partner, the partner will be deemed to be the parent of the unborn child. It is interesting, because the Attorney General referred to this as "the paternity section". Automatically, the other partner in that lesbian relationship becomes the "father". One subclause deals with the birth mother of the child, and the Attorney General has said that the next section deals with the paternity. He is already putting a woman into the father role, not just into the parent role. It is a legal fiction that has been created in the partner becoming a parent. It is marriage, and not the blood tie, that automatically confers paternity on men. Therefore, it is the documentation of marriage that confirms the paternity of men. The legal relationship, then, is created between the child and its father. This clause does something totally new. It creates a new relationship between the "father" - deemed to be the parent in this Bill - and the child. It also creates a new title and levels of responsibility that go with being a parent by deeming that the other partner - when given consent - will become the parent of that child. It is a critical issue socially, legally and morally. It will create something new in parenting and in the relationship between a child and its father. In doing so, there is the potential to create further difficulties. What documentation will determine so-called paternity or parenthood? What is the documentation used now in a de facto relationship when a child is conceived and born? What is the role of a father? Does he go through the form of adoption we referred to earlier? Will the documentation confirm the rights and responsibilities? We are talking about the status of the child. Donation raises questions about the status of the child and parental rights and obligations. It raises questions about what sort of relationship is created and what sort of fiction of parenthood is created in a moral, social and legal way.

Mr BRADSHAW: I find this very interesting. Will the Attorney General tell me how the system will work. The proposed section states in part -

> . . . with the consent of her de facto partner. . .

Is consent given in writing or verbally? It also mentions that presumption is rebuttable. Will the Attorney General give an example of that? How can it be regarded? I imagine that it would have to be in writing.

Mrs Edwardes: Because of the rights and responsibilities that flow.

Mr BRADSHAW: That is right. If there is a split in the relationship, people could find themselves in a difficult position. They will have all sorts of problems in the Family Court. People who have been adopted often want to know the identity of their biological parents. Will a person who is a product of this arrangement have access to information about the semen donor? It will be a problem for such people in the future when they get to an age when they understand how the system works. They will realise that they could not come from two women and someone must have donated semen. It is not just a matter of wanting to know because they have a burning desire to know where they came from and who their biological parents are. There are medical implications about inheritable medical problems. People want to find out about such problems. I do not support the amendments but it is important that the products of the system know their biological parents.

Mr McGINTY: People can access non-identifying information about sperm donors. They cannot have information about the identity of the donor. Information about medical conditions is available.

Mrs Edwardes: People have to be over the age of 18 years to access information.

Mr McGINTY: I am advised that people can obtain the information at any age. It is not limited. In answer to the question about written consent, the answer is yes. It is clearly spelt out.

Mr Bradshaw: It is not clearly spelt out. It states "with the consent of her de facto partner". It does not state how it is given. The Attorney General is presuming it will be written.

Mr McGINTY: The provisions are in the Human Reproductive Technology Act. Directions state that consent must be in writing. These things go to the points raised by the member for Moore. The sperm donor is the biological father. He will cease to be the legal parent although he is the biological father. When a child is adopted, the natural parents cease to be the parents. The adopting parents become the parents.

Mr McNee: That may be so but the facts are that one's parents are one's parents and there is nothing anyone can do about it. People can be adopted and re-adopted but one's parents are one's parents.

Mr McGINTY: That is right. That is undeniable in a biological sense. We are talking about the situation in which a sperm donor is a complete stranger and has no connection with another person, other than having provided the sperm. That person is the biological father and nothing more. The person in the relationship assumes the role and function of a parent from birth onwards. That person has the legal responsibility of a parent. That does not deny the biological reality.

Mr BRADSHAW: That sounds very good. We are facing a new situation. Has the Attorney General consulted Jigsaw (Adoption) WA? I have had a bit to do with that organisation over the years. Jigsaw has major problems with the non-identification of the biological parents of adopted children. If the Attorney General has not spoken to Jigsaw this Bill should be suspended until he has. Jigsaw would find this part of the legislation disgraceful. I have spoken on many occasions to that dedicated group of people who help people find their biological parents. This legislation will establish a new class of person who will not have access to their biological parents. It is not good enough to say that they will be able to access some identifying traits. That will not satisfy people. They will only be satisfied when they find out who their parents are and can speak to them. That is what adopted people want to do. The Attorney General does not realise the trauma and drama that adopted people go through. Once they realise that the people who raised them are not their biological parents, they get a mission in life to find out who are their parents. They chase down their parents in all sorts of ways. Jigsaw has a great record for finding people's biological parents. It is wrong that we are setting up a new group of people, who will realise at a certain age that two women cannot produce a child and will want to know who is their biological father. That causes a lot of unhappiness and distraction, and they cannot get on with their lives until they find out who that person is.

Ms McHALE: I am heartened to hear the comments by the member for Murray-Wellington and others about identifying information. I hope that when amendments to the Human Reproductive Technology Act come before the House, as a result of the recommendations of the select committee, that we can expect bipartisan support. This is an adjunct, but it is still relevant in the adoption legislation: the former Government refused to implement the recommendations of the review of the Adoption Act about identifying information, albeit in retrospective cases. Nevertheless, the Government supports the need to have access to identifying information about biological parents for the very reasons the member for Murray-Wellington has articulated, from the

evidence of adopted children and also of parents. Part of the Government's agenda and also that of the former Government's was the importance of identifying legislation. That legislation will be coming forward through the Minister for Health in relation to the Human Reproductive Technology Act.

Mr McNEE: I paid attention to what the minister said. The children born in this way will at some stage want to know who is their father. They will not want to know that he had blue eyes, white hair or one arm. Identifying information is a load of rubbish. Will the Attorney General give the name of the father to the child? That is the point made by the member for Murray-Wellington. We all know of examples of people who have fought desperately to find out who their parents are. In fact, when they found out who their parents were, in some cases, it changed their lives remarkably.

Mr McGINTY: The answer is no.

Mr McNee: Then take the Bill and throw it away.

Mr McGINTY: That has been the law in this State for some time.

Mr Bradshaw: You are putting more people into this situation.

Mr McGINTY: The Select Committee on the Human Reproductive Technology Act 1991 recommended that for the future that information be made available. The Minister for Community Development has indicated that legislation will be brought in and the member for Murray-Wellington indicated he would support that. That committee made its report in 1999 and in the fullness of time that legislation will find its way into the Parliament.. Part of the problem is that its recommendations will relate to the future, and will not be retrospective. People who were conceived by donor sperm or whatever will not be able to track back, because the conditions under which the donation was made did not include that identifying material. It will relate only to the future. I have already indicated that sperm donations have dried up as a result of a range of factors, including the provision of identifying information. One could expect that if their names will be available to any child born as a result of the use of their sperm, not too many people will be all that keen to donate.

Mr McNee: Perhaps that is a good thing.

Mr McGINTY: It may be. The member for Kingsley referred to a legal fiction being created about this notion of the parent who is not the biological parent, and I was remiss in not responding to her.

Mrs Edwardes: It is a presumption that has been created.

Mr McGINTY: That came about from a recommendation 21 years ago from all the States and the Commonwealth that the real parent - not the biological parent in the sense of the donor - is the parent who bore, gave birth to, raised and fathered or was the co-parent and should be legally regarded as the parent. That has been applied throughout Australia. They are not the parents in a strict biological sense, but in a real hands-on practical day-to-day sense they are, in the same way that the adoptive parents are the real parents of a child they have adopted. There is a fiction involved in that, because my understanding of a parent is someone who is the biological parent. Once someone goes through an adoption process or the IVF process and use is made of ova or sperm, and someone else then becomes the parent, as we would generally understand it, I do not find that notion objectionable. The biological parent will forever remain the biological parent, and the legal parent is the one who accepts the day-to-day ongoing responsibility. I do not see a problem with that. The member for Moore said there is right and there is wrong, and if one is a parent one is always a parent. However, that is the practical way to handle it.

Clause put and a division taken with the following result -

Ayes (25)

Mr Andrews	Mr Kobelke	Mr McRae	Mr Templeman
Mr Brown	Mr Kucera	Mr Marlborough	Mr Watson
Mr Carpenter	Mr Logan	Mrs Martin	Mr Whitely
Mr D'Orazio	Ms MacTiernan	Mr Murray	Ms Quirk *(Teller)*
Dr Edwards	Mr McGinty	Mr O'Gorman	
Mr Hill	Mr McGowan	Mr Quigley	
Mr Hyde	Ms McHale	Ms Radisich	

Noes (17)

Mr Barnett	Mr Edwards	Mr McNee	Mr Waldron
Mr Birney	Mr Grylls	Mr Marshall	Mr Bradshaw *(Teller)*
Mr Board	Mrs Hodson-Thomas	Mr Masters	
Mr Day		Mr Pendal	
Mrs Edwardes	Mr Johnson	Mr Sweetman	
		Mr Trenorden	

Pairs

Mr Bowler	Mr Barron-Sullivan
Dr Gallop	Mr Omodei
Mr Dean	Ms Sue Walker
Mr Ripper	Mr Ainsworth

Independent Pair

Dr Woollard

Clause thus passed.

Clause 27 put and passed.

Clause 28: References to "fertilization procedure" amended -

Mr McGINTY: I move -

Page 12, line 9 - To delete "s.5(2)".

Mrs EDWARDES: Can the Attorney provide an explanation? This clause deals with a series of amendments changing "fertilization procedure" to "an artificial fertilisation procedure" and refers to a number of sections, one of which is removed. That section refers to fertilisation procedure. Why has the Attorney changed his mind?

Mr McGINTY: Nothing of consequence flows from this, because we have deleted section 5(2) from the Act. Consequently, it should no longer appear in the schedule.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 29: *Births, Deaths and Marriages Registration Act 1998* amended -

Mrs EDWARDES: This clause is consequential upon the amendments passed by the Parliament earlier this evening.

Clause put and passed.

Clauses 30 to 32 put and passed.

Clause 33: Section 13 amended -

Mr BOARD: This clause provides that a person with whom a deceased person has been in a de facto relationship immediately before his or her death has the opportunity to object to the cremation of the deceased person. Like other amendments to various Acts, this is straightforward. However, the clause imposes no time

frame for the de facto relationship. Legislation dealing with de facto relationships usually refers to a time frame of two or three years. This amendment will allow a person who has been in a de facto relationship for only one week to object to the cremation of his or her partner. Why has no time frame been included? Is that intentional or unintentional? Would those involved in a de facto relationship need to have been in that relationship for a period prior to being able to object to the cremation of the deceased person?

Mr McGINTY: There is a two-year time limit to make adjustments to property. We discussed that in the context of the family law amendments. This clause relates to the right of a wife or de facto partner to object to a cremation. The legislation currently provides -

> Notwithstanding anything hereinbefore contained, no person shall cremate, or apply for or grant any permit for the cremation of, the body of any deceased person if he knows that the husband, widow, or any person who is next of kin of the deceased has objected in writing to the body being cremated . . .

This legislation deletes the reference to the husband and the widow, or any person who is the next of kin. It now refers to a person who was married to or in a de facto relationship with the deceased immediately before his or her death.

I understand the point the member is raising. It is important in respect of property adjustments that there be a minimum time frame for a de facto relationship. We have debated how many years that should be. In this case, we are not adjusting any property relationships. A cremation happens within days after death. To be required to establish the date on which someone entered into a de facto relationship and the duration of that relationship at that distressing time would be unreasonably onerous. It might be the subject of challenges and so on. This amendment provides that someone who has been in a de facto relationship, for whatever length of time - that could include periods of less than two years - has the right to object to the cremation of their loved one.

A de facto relationship lacks the certainty that a marriage certificate gives to a husband or wife to object to the cremation of his or her marriage partner. We could not think of a better way to express it other than to provide that those concerned must have been in a de facto relationship. We did not think it was appropriate to impose a rigid time limit that would require a person to go to court to establish the commencement of the relationship and so on. We thought it appropriate to give the person responsible for conducting the cremation a clear direction that if someone objected, that would prevent the cremation taking place. That might allow time for the relative interests to be sorted out. That situation does not require a lengthy time frame. If a person is a nearest and dearest, that would suffice.

Mr BOARD: I understand what the Attorney General said about the difficulty and sensitivity needed at that time to deal with the issue. Some people will face a situation in which they have been in a de facto relationship for an extremely short time and their partner dies. For all sorts of reasons, the partner may want to determine what has been a long-established desire by the deceased to be cremated but the deceased person's family object, or vice versa. Without trying to labour the point, how would that type of situation be dealt with?

Mr McGINTY: Generally speaking, we have not put a time limit on cases dealing with death - not on death, but on the ability of a de facto to become involved in the process. Recently, we dealt with the Coroner's Act and people's rights to object to a post-mortem. This is a similar situation. Similar provisions are contained in the legislation dealing with the right to object to a cremation in the event of a death and the right to object to a post-mortem. We will deal with those provisions later in respect of guardianship in which no time limit is imposed - although that provision does not deal with death; it deals with incapable people. In a number of cases we have not sought to prescribe a minimum period of the de facto relationship. In the event of a conflict after the death of a man between his legal wife and his de facto partner, both of whom would say they have an interest in the matter, the legislation provides that if one of them objects to the cremation, it cannot proceed. That at least puts a hold on the process until it is worked out who should have priority.

Mr Board: I raise this matter because cremation can be an emotive issue. In many cases it is against people's principles or religious beliefs, which may not be known to the deceased if the couple have been in a de facto relationship for only a short period.

Mr McGINTY: It would certainly be unknown to the deceased.

Mr Board: That is correct. Although it might seem a minor point -

Mr McGINTY: I appreciate that these matters are very sensitive.

Mr Board: It is important to know how that problem would be resolved at the time. The very reasons the minister does not want to prescribe any lengthy period are the same reasons that there must be an adequate way of dealing with that situation, so that it is not left to discretion. It must be prescribed so that a course of action is available. The Government may not want to legislate for it, but a principle must be laid down by which people can work, so that the process does not get delayed and become an even more difficult situation for the relatives during that difficult time.

Mr McGINTY: I mention this in the context of the Coroner's Act because it is an analogous situation. The Coroner's Act has not been passed and proclaimed. Currently, if someone dies, the Coroner must ignore the same-sex de facto partner when discussing how he will proceed, particularly when discussing whether a post-mortem and things of that nature will be conducted. We are giving de facto partners a say in the cremation, which is a big step forward for their rights.

Mr Board: We do not object to that.

Mr McGINTY: No. The argument around the edges is whether there should be a minimum time in which that person should have been in the de facto relationship up to that point.

Mr Board: I would make this point regardless of whether it involved same-sex relationships.

Mr McGINTY: The clause extends a right to de facto couples. It lacks clarity in some situations, but, frankly, I cannot think of a better way to handle it.

Clause put and passed.

Clause 34: *The Criminal Code* amended -

Mr BARNETT: This clause is another significant phase of the legislation that relates to the age of consent. The three most significant and contentious aspects of this Bill that will require considerable debate are those sections that deal with the age of consent, the Adoption Act and the part that refers to HIV. We have now covered one-third of the legislation in the consideration in detail stage. It is now approximately 12.30 am. Last Tuesday, Parliament sat until 2.15 am on Wednesday and it sat yesterday until around 11.30 pm. We are now facing a situation in which on three successive nights Parliament has sat past midnight or close to midnight. Already some staff have been put at risk because of that.

This is a significant part of the Bill. If the Attorney General is sensible and adjourns the debate at this stage, it is likely that we will comfortably conclude the consideration in detail stage on Tuesday with full and proper examination. It would be the Government's decision to then debate the third reading if it wished. If the Government is concerned that we will not complete the consideration in detail stage on Tuesday, I suggest that Parliament could sit two hours earlier. If Parliament started next Tuesday at midday or eleven o'clock, the Government could allow the extra time it needs to conclude this legislation. It is inappropriate to put members of Parliament and the staff in this situation after effectively sitting for three late nights in succession. The Government should not discuss sensitive social, emotive legislation when members are clearly tired. Parliament has a tradition of allowing full and proper debate when it deals with social legislation, including the adoption laws, the abortion debate, the IVF legislation and medical care of the dying. To this stage full and proper debate on this legislation has been held. If the House were to now adjourn at a late but reasonable hour, that full and sensible debate could occur on Tuesday and, with its numbers, the Government would win the vote and pass the legislation. However, if the Government chooses not to do that, there can be no guarantee of cooperation on this legislation next week.

Mr Kobelke: Are you giving an undertaking that the Opposition will cooperate so that the Bill can be completed on Tuesday?

Mr BARNETT: Bearing in mind that there are four pages of government amendments to this Bill, it is not perfect in that sense. We will undertake to conclude the consideration in detail stage of this legislation on Tuesday. If the Government wishes to start at noon - I suggest that would be a reasonable time to start - I will give an undertaking that we will not move an Matter of Public Interest on Tuesday. Therefore, we would have a full day to debate the consideration in detail stage, which I expect would finish at around midnight. The Government could proceed with the third reading debate if it wished, bearing in mind that there will be amendments to the Bill. The third reading debate would probably last for two to three hours. However, we would finish the consideration in detail stage after a proper time had been allowed for a full and proper debate. In a reasonable time we have covered one-third of this difficult and contentious legislation. Compared with the

time spent on the adoption laws and some of the other Bills I referred to, we have made rapid progress through a significant and contentious item of social legislation.

Mr BOARD: In relation to the wider aspects of this clause, as referred to by the Leader of the Opposition, I remind the Leader of the House, the Attorney and those in the House who are interested, that the House sat for weeks debating the adoption Bill. The Government of the day allowed open, long and laborious debate on that Bill outside of Parliament to give every opportunity for full consultation by every member, both with groups that came to the Parliament and those who were interested in it. Because in many cases members had a free vote on the Bill, its nature intensified as it developed through the Parliament. The point I make is that it was sensitive, social change in our community, as is this Bill. On this side of the Parliament we ask for a little cooperation and understanding in that, although we do not want to unnecessarily delay the Bill, we are endeavouring to ensure that it is scrutinised. It is not only our right but also our responsibility, as an Opposition, to debate the Bill and to ensure that the Attorney clarifies the provisions. That applies particularly to the parts of the Bill that not only are contentious in their nature but also may be confusing or unclear in their drafting. That clarification will allow some direction to be given to government agencies that will be required to implement the decisions of this Parliament.

In supporting the Leader of the Opposition, I ask for some cooperation and understanding of that principle, as we gave when in government. We do not seek to delay the Bill but we seek to debate it at a reasonable time of the day when members can deal with the issues in an intelligent way and a way in which the public would expect us to deal with it. We should not rush through this Bill in the midnight hours. It is sensitive and difficult legislation that needs to be dealt with maturely and in a rational and sensible way. We ask the Attorney and the Leader of the House to consider that now.

Mr McGINTY: I thank members opposite, particularly the member for Kingsley, for the way in which the debate has been conducted. It has at times been explosive and emotive, particularly during the second reading stage. Generally speaking, the debate has been conducted in a purposeful way and we have progressed well through the legislation, given its controversial and complex nature. I am keen to accommodate the view that has been put forward and I am also keen to make progress on the Bill.

I make two suggestions for the consideration of the Leader of the Opposition. I understand that it is difficult at this hour to deal with what is arguably the most contentious element of the legislation. However, a number of provisions remain in the Bill with which the Opposition agrees. That is not to say that the provisions should not be subjected to scrutiny. I have two alternative propositions to put to the Leader of the Opposition. The first is that we proceed now to part 8 of the Bill, which deals with the Equal Opportunity Act.

Mrs Edwardes: That will take some time because it is extensive.

Mr McGINTY: Yes, but it is agreed.

Mrs Edwardes: It will take some time to go through each of the clauses.

Mr McGINTY: That is proposition number one. I know that the Opposition agrees with it, so it is not contentious in that sense; however, there is some detail that will take some time to go through. In doing that, my proposition is to skip over the Criminal Code, deal with part 8 and come back to the Criminal Code later.

The second proposition is to skip over those two parts and then deal with what I believe are the completely uncontroversial matters. They can be dealt with expeditiously, like the clause we have just passed, which took us not much time. I refer to part 9, the Family Court Act and part 10, the Guardianship and Administration Act. We can skip over the Human Reproductive Technology Act, because I understand that is an issue of some controversy. We could then deal with part 12, the Human Tissue and Transplant Act; part 13, the Inheritance (Family and Dependants Provision) Act; and part 14, the Interpretation Act. We can skip over part 15, the Law Reform (Decriminalization of Sodomy) Act, and then finish off the remaining four parts.

Mrs Edwardes: They would still take in excess of an hour.

Mr Barnett: It is not necessary.

Mr McGINTY: One hour is reasonable.

Mr Johnson: We have made you an offer.

Mr McGINTY: I have made two even better offers.

Mr Barnett: You won't get an offer like that again.

Mr McGINTY: I have given the Leader of the Opposition two offers for his consideration.

Mr Birney: What about the motion that the member for Hillarys made that it go to a standing committee?

Mr McGINTY: That could certainly be done. That is my offer. If there is some accommodation of the uncontroversial parts of the Bill that we can complete now, I am happy to accommodate them.

Mr MARSHALL: I am unhappy about the fact that the House is sitting on Thursday night. I know that we have been discussing the prospective families of different gay and lesbian couples tonight but I am worried about my own family. There is only one country member in the Chamber out of half a dozen country members on our side. We finish at five o'clock on Thursdays for a couple of reasons, out of consideration for all the country members of this Chamber. I have mentioned that to the Leader of the House.

Mr Hyde: You want to go and play golf.

Mr MARSHALL: Just a minute. I want to go home to my family. I want to go home to my wife. I want to see my grandchildren.

Several members interjected.

The DEPUTY SPEAKER: Order, members!

Mr MARSHALL: We are supposed to be leaders of the community and we cannot run our own shop. When a compromise deal is offered in good faith there must always be another squeeze to get something else out of the lemon. I do not believe that is correct. There must be a bit of sportsmanship in this place. Everything that must be done can be done next Tuesday, as the Leader of the Opposition said. If members say at twenty minutes to one in the morning, after finishing at two o'clock in the morning on Tuesday and midnight on Wednesday this week, that we must stay for another hour, it should be one in, all in. If we stayed for another hour, we could stay until eight o'clock in the morning until we have finished the Bill. What is the use of that? Where shall we be? We shall be the laughing stock of the community again, for the sake of an hour. The Attorney should give members, particularly country members, an hour and let them get home to their electorates to meet their commitments. They should be able to drive home safely without having an accident and, most of all, be able to see their families fit and well and be there for their children the next day. It is absolutely ridiculous debating legislation at this time of the night when everyone is tired. I know that the Attorney is dead keen to push this legislation through the Parliament. He must have an ulterior motive if he will not listen to reason and wants to be pig-headed enough to continue to push it through. Commonsense and decency would dictate that we finish right now and knock off the rest of this Bill next week.

Several members interjected.

The DEPUTY SPEAKER: Members, I have allowed enough latitude. There is no motion before the Chair. I ask members to bear with the members negotiating at the Table. There is no requirement for further speeches on this matter and I ask members to please sit. I shall give the call to the member for Kingsley if she seeks it.

Mrs EDWARDES: In those negotiations we have been able to come up with an accommodation to deal with a number of parts of the Bill in which there is agreement and on which there will be minimal debate. Other parts of the Bill will be agreed to after a little debate, but we will not deal with those parts tonight. I suggest that we now deal with parts 9, 10, 13, 14, and 18.

Mr Hyde: Does your part of the offer regarding no private members' business on Tuesday remain?

Mr Birney: Where do you fit into this?

Mr Johnson: No, that was the original offer.

The DEPUTY SPEAKER: I am trying to clarify this so that we can get on with the business of the House. I do not need chitter chatter across the Chamber. It is unparliamentary and unprofessional, and I ask that it cease forthwith so that I can sort this out and get on with the business of the House.

Members have a choice. The motion before the House is that clause 34 stand as printed. Members can deal with clause 34 now, and the Attorney General can then move to postpone clauses 35 to 56. After that, we will deal the clauses members have agreed to deal with and postpone the other clauses.

Clause put and passed.

Clauses 35 to 56 postponed, on motion by Mr McGinty (Attorney General).

Clause 57: *Family Court Act 1997* amended -

Mrs EDWARDES: Part 9 deals with the Family Court Act and is consequential to the changes to the Artificial Conception Act, which were to include in the definition of "parent" the other partner in a same-sex relationship. The clauses in this part relate to the liability of that parent in the operation of the Family Court Act. The changes are consequential; therefore, although we might not agree with the legal fiction that is being created, we will not extensively debate this part.

Clause put and passed.

Clauses 58 to 64 put and passed.

Clause 65: Section 3 amended -

Mrs EDWARDES: This part deals with the Guardianship and Administration Act, and this clause amends section 3 of that Act. Section (3)(1)(a) states -

> . . . relatives of the person . . . who has attained the age of 18 years and is reasonably available at the relevant time . . .

The amendment in the Bill is to delete that and substitute -

> persons, who has attained the age of 18 years and is reasonably available at the relevant time . . .

The new definition also incorporates a spouse or de facto partner. Paragraph (b) of this clause proposes to delete section 3(1)(h), which states -

> the spouse of a person means both a legal spouse and a person who is not legally married to the first-mentioned person but who lives with that person on a *bona fide* domestic basis;

Given that the Government is amending section 3(1)(a) to include a spouse or de facto partner, why is it deleting paragraph (h), which was required to add to the definition of spouse?

Mr McGINTY: The reason is straightforward. Paragraph (h) had the effect of including a de facto spouse, which is seen in the sense of a heterosexual spouse.

Mrs Edwardes: Not necessarily.

Mr McGINTY: The paragraph states -

> the spouse of a person means both a legal spouse -

That is, a wife or a husband -

> and a person who is not legally married to the first-mentioned person but who lives with that person on a *bona fide* domestic basis;

Mrs Edwardes: It sounds like a "marriage-like relationship".

Mr McGINTY: That is what it will be in the future. The case law indicates that this definition refers to a heterosexual relationship. That is why we extensively debated the Family Court Amendment Bill. The concept of a de facto partner including a same-sex partner is picked up in proposed new paragraph (a). It will then mean either a spouse or legally married partner, or a de facto partner including a same-sex partner. The other reason for the amendment is to get some consistency in the definition. That is why we amended the Interpretation Act to include the definition of de facto partner. The member might remember that when discussing the Family Court Amendment Bill, we debated the possibility of the definition referring to people living together on a bona fide domestic basis. That concept is different from the new definition of de facto partner included in the Interpretation Act. We wanted to get rid of the inconsistent definitions.

The only purpose of this change is to make sure that the term "spouse" also includes a de facto partner, including a same-sex partner.

Clause put and passed.

Clauses 66 and 67 put and passed.

Clauses 68 to 72 postponed, on motion by Mr McGinty (Attorney General).

Clause 73 put and passed.

Clause 74: Section 4 amended -

Mrs EDWARDES: This clause amends the interpretation section in the Inheritance (Family and Dependants Provision) Act. Essentially this clause provides for consequential amendments to the previous amendments. Subclause (2) states -

> Section 4(4) is amended by deleting "father and his illegitimate child, and any other relationship traced in any degree through that relationship, shall be recognized only if paternity is admitted by or established against the father in his" and inserting instead -

The words "father and his illegitimate child" are replaced with "parent and a child" and then the rest of the section is picked up. Essentially, the clause contains the consequential amendments to the previous amendments that have been passed this evening.

Clause put and passed.

Clause 75: Section 7 amended -

Mrs EDWARDES: Clause 75 amends section 7 of the Inheritance (Family and Dependants Provision) Act. Section 7 is a very important section. I suggested to the Attorney General, when he was going through the amendments to the Family Court Act, that he should have put those changes in this legislation, rather than make the Administration Act difficult. There will be a great deal of uncertainty with the definition of de facto partner. Delays will occur with those in the Supreme Court who need to issue the letters of administration in a timely fashion. I do not think that will occur. An increase in costs will arise from that. It would have been better if the provisions that the Government is seeking to achieve had been put into these clauses in the legislation. There is a level of uncertainty about whether a person will inherit. That will be one of the key failures of the way in which the Administration Act has been drafted. That is not just my personal view; that is the view of the legal practitioners who have far greater experience in this area than I.

This clause deletes paragraph (a) and inserts the following paragraph -

> a person who was married to, or living as the de facto partner of, the deceased person immediately before the death of the deceased person;

Paragraph (b) of the Act provides -

> a person whose marriage to the deceased has been dissolved or annulled and who at the date of the death of the deceased was receiving or entitled to receive maintenance from the deceased, whether pursuant to an order of any court, or to an agreement or otherwise;

The clause deletes "whose marriage to the deceased has been dissolved or annulled and" and "deceased," and inserts "deceased as a former spouse or former de facto partner of the deceased". Again, to some extent, this clause contains the consequential amendments to the previous amendments.

Clause put and passed.

Clauses 76 and 77 put and passed.

Clause 78: Section 5 amended -

Mrs EDWARDES: Part 14 deals with the Interpretation Act and this clause inserts -

> **"parent"** includes the following -
>
> (a) a person who is a parent within the meaning of the *Artificial Conception Act 1985*;

Consequential to the amendments that have been passed earlier this evening -

> (b) a person who is an adoptive parent under the *Adoption Act 1994*;

Clause put and passed.

Clauses 79 to 89 postponed, on motion by Mr McGinty (Attorney General).

Clause 90 put and passed.

Clause 91: Section 10 amended -

Mrs EDWARDES: This clause recognises the rights of same-sex couples under the Public Trustee Act. Again, this clause is supported by the Opposition. One of the issues is how the Public Trustee deals with sensitive issues between de facto partners, whether they have a heterosexual or a homosexual relationship. The Attorney General and I are dealing with an issue in which the mother of a family from South Australia was in a de facto relationship in Western Australia. The information that I have to date indicates that the Public Trustee did not

deal with it as sensitively as he could have in keeping the family involved. That is not to say that it is not difficult to keep all family members informed. However, a process and a procedure must be put in place, as we mentioned before in relation to the Cremation Act, the Coroners Act and the Public Trustee Act, to ensure that public servants are not put in a position in which they must make subjective decisions, and that the rights of not only the partner but also the family are appropriately dealt with.

Mr HYDE: I fully support this clause. It is one of the most important clauses in the entire legislation. One area that has caused the most disquiet in and prejudice to the members of the gay and lesbian community is the way they have been treated in this State under the Public Trustee Act. Some people in the gay and lesbian community have lived in Western Australia for 27 years and have had longstanding relationships. Under the current laws, the Public Trustee does not recognise them as bona fide relationships, nor does it recognise those partners as the prime recipients in deceased estates. It is important that this clause be supported. I commend those members of the general community who are in the public gallery tonight, as well as those in the gay and lesbian community who have waited for more than 20 years for reform. They have sat through the debate tonight, and, hopefully we will have to wait only until Tuesday before we have reform and equality in Western Australia.

Clause put and passed.

Clauses 92 and 93 put and passed.

Debate adjourned, on motion by Mr McGinty (Attorney General).