

STATES OF JERSEY

OFFICIAL REPORT

THURSDAY, 1st FEBRUARY 2018

PUBLIC BUSINESS - resumption	4
1. Draft Marriage and Civil Status (Amendment No. 4) (Jersey) Law 201- (P.91/2017) ..	4
1.1 Senator A.K.F. Green (Deputy Chief Minister - rapporteur).....	4
1.2 Senator A.K.F. Green:	4
1.3 Draft Marriage and Civil Status (Amendment No. 4) (Jersey) Law 201- (P.91/2017): amendment (P.91/2017 Amd.) (not including paragraph 6)	6
1.3.1 Senator A.K.F. Green (Deputy Chief Minister - rapporteur):.....	7
1.3.2 Connétable C.H. Taylor of St. John:.....	9
Mr. M.H. Temple Q.C., H.M. Solicitor General:.....	10
1.4 Draft Marriage and Civil Status (Amendment No. 4) (Jersey) Law 201- (P.91/2017): second amendment (P.91/2017 Amd.(2))	12
1.4.1 Deputy J.A.N. Le Fondré of St. Lawrence (Chairman, Corporate Services Scrutiny Panel):	12
1.5 Draft Marriage and Civil Status (Amendment No. 4) (Jersey) Law 201- (P.91/2017): second amendment (P.91/2017 Amd.(2)) - amendment (P.91/2017 Amd.(2)Amd.).....	16
1.5.1 Deputy J.A.N. Le Fondré (Chairman, Corporate Services Scrutiny Panel):	16
Deputy J.A. Martin:.....	23
1.5.2 Senator A.K.F. Green:	23
1.5.3 Deputy S.M. Brée of St. Clement:	25
1.5.4 Deputy S.Y. Mézec:.....	26
1.5.5 Deputy K.C. Lewis of St. Saviour:	28
1.5.6 Connétable S.A. Le Sueur-Rennard of St. Saviour:.....	28
1.5.7 The Connétable of St. John:.....	30
Deputy L.M.C. Doublet:.....	31
Deputy M. Tadier:	31
The Solicitor General:	31
1.5.8 Deputy M.J. Norton:	33
1.5.9 Deputy G.P. Southern of St. Helier:	34
1.5.10 Deputy J.A. Martin:.....	35
1.5.11 Deputy R.J. Renouf of St. Ouen:.....	36
LUNCHEON ADJOURNMENT PROPOSED	39
LUNCHEON ADJOURNMENT.....	39

1.5.12	Senator P.F.C. Ozouf:	40
1.5.13	Senator P.F. Routier:	43
1.5.14	Deputy M. Tadier:	44
1.5.15	The Very Reverend M.R. Keirle, B.A., Dean of Jersey:.....	49
1.5.16	Senator S.C. Ferguson:.....	51
1.5.17	Deputy S.M. Wickenden of St. Helier:	52
1.5.18	Deputy R. Labey of St. Helier:.....	53
1.5.19	Connétable P.B. Le Sueur of Trinity:.....	54
1.5.20	Deputy D. Johnson of St. Mary:.....	55
1.5.21	Senator I.J. Gorst:.....	56
1.5.22	Deputy A.E. Pryke of Trinity:.....	59
1.5.23	Deputy L.M.C. Doublet:	59
1.5.24	Connétable A.S. Crowcroft of St. Helier:	60
1.5.25	Deputy J.M. Maçon of St. Saviour:.....	61
1.5.26	Deputy S.G. Luce of St. Martin:	62
1.5.27	Deputy J.A.N. Le Fondré:	62
1.6	Draft Marriage and Civil Status (Amendment No. 4) (Jersey) Law 201- (P.91/2017): second amendment (P.91/2017 Amd.(2)) – third amendment (P.91/2017 Amd.(2)Amd.(3)).....	68
1.6.1	Senator A.K.F. Green (Deputy Chief Minister - rapporteur):.....	69
1.6.2	Deputy M. Tadier:.....	69
1.6.3	Senator P.F.C. Ozouf:	70
1.6.4	Deputy J.A.N. Le Fondré:.....	70
1.6.5	Senator A.K.F. Green:	71
1.7	Draft Marriage and Civil Status (Amendment No. 4) (Jersey) Law 201- (P.91/2017): second amendment (P.91/2017 Amd.(2)) - as amended.....	73
1.7.1	Senator A.K.F. Green:	73
1.7.2	Deputy L.M.C. Doublet:	74
1.7.3	Senator P.F.C. Ozouf:	74
1.7.4	The Deputy of St. Ouen:	78
1.7.5	Deputy M. Tadier:.....	79
1.7.6	Deputy G.P. Southern:	81
1.7.7	Senator S.C. Ferguson:	81
1.7.8	Deputy A.D. Lewis:	81
1.7.9	Deputy M.J. Norton:	82
1.7.10	Senator I.J. Gorst:.....	82
1.7.11	Deputy R. Labey:	83
1.7.12	Senator L.J. Farnham:	83
1.7.13	Deputy J.A.N. Le Fondré:	84
1.8	Draft Marriage and Civil Status (Amendment No. 4) (Jersey) Law 201- (P.91/2017): amendment (P.91/2017 Amd.) - paragraph 6.....	93
1.8.1	Senator A.K.F. Green (Deputy Chief Minister - rapporteur):.....	93
1.9	Draft Marriage and Civil Status (Amendment No. 4) (Jersey) Law 201- (P.91/2017): third amendment (P.91/2017 Amd.(3))	93
1.9.1	Senator A.K.F. Green (Deputy Chief Minister - rapporteur):.....	93
1.9.2	Senator P.F.C. Ozouf:	94
1.9.3	Deputy J.A. Martin:	94

1.9.4 Deputy S.Y. Mézec:	94
1.9.5 Deputy M. Tadier:.....	94
1.9.6 The Connétable of St. Helier:	95
1.9.7 Deputy A.D. Lewis:	95
1.9.8 Senator I.J. Gorst:	96
Senator P.F.C. Ozouf:.....	96
1.9.9 Deputy J.A.N. Le Fondré:.....	97
Deputy A.D. Lewis:.....	97
The Solicitor General:	97
Deputy M. Tadier:	98
1.10 Draft Marriage and Civil Status (Amendment No. 4) (Jersey) Law 201- (P.91/2017): third amendment (P.91/2017 Amd.(3)) - leave to withdraw the amendment.....	99
1.10.1 Senator A.K.F. Green:	99
1.10.2 Deputy A.D. Lewis:	99
1.10.3 Deputy J.A.N. Le Fondré:	99
1.10.4 The Deputy of St. Ouen:	100
1.10.5 Senator P.F.C. Ozouf:	100
1.10.6 Deputy K.C. Lewis:.....	100
1.11 Draft Marriage and Civil Status (Amendment No. 4) (Jersey) Law 201- (P.91/2017) - resumption.....	101
1.11.1 Deputy S.Y. Mézec:	102
1.11.2 Senator P.F.C. Ozouf:	104
1.11.3 Deputy M.R. Higgins of St. Helier:	104
1.11.4 Deputy M. Tadier:	104
1.11.5 Senator A.K.F. Green:.....	108
1.12 Senator A.K.F. Green:	110
1.13 Senator A.K.F. Green:	112
1.13.1 Deputy J.A.N. Le Fondré:	112
1.13.2 Senator P.F.C. Ozouf:	112
1.13.3 Senator L.J. Farnham:	113
1.13.4 Senator I.J. Gorst:.....	113
1.13.5 Deputy M. Tadier:	113
1.13.6 Deputy G.P. Southern:	114
1.13.7 Senator A.K.F. Green:.....	114
ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS.....	115
2. Connétable L. Norman of St. Clement (Chairman, Privileges and Procedures Committee):	115
2.1 Senator I.J. Gorst:	115
ADJOURNMENT.....	116

[9:31]

The Roll was called and the Dean led the Assembly in Prayer.

PUBLIC BUSINESS - resumption

1. Draft Marriage and Civil Status (Amendment No. 4) (Jersey) Law 201- (P.91/2017)

The Bailiff:

We return to the debate in Second Reading on P.91 and the first thing I wish to raise with the Assembly is that there have been a number of amendments which have been lodged late under Standing Order 26(7). We can proceed to permit the amendments to be debated. I shall be grateful if I could receive a proposition to permit the late tabling.

Male Speaker:

Happy to propose that.

The Bailiff:

Is that seconded? **[Seconded]** Does any Member wish to speak on that? Then all those in favour of late tabling kindly show. Those against? Very well. That means that we will be debating all the amendments, which have been tabled late, to P.91. Deputy Chief Minister, do you wish to propose Article 1?

1.1 Senator A.K.F. Green (Deputy Chief Minister - rapporteur)

As you say, we are returning to the Marriage and Civil Status (Jersey) Law 2001. The principles were accepted by this Assembly in November. My first task is just to propose Article 1, which does no more than set out the references to the Marriage and Civil Status (Jersey) Law 2001. I propose the Article.

The Bailiff:

Is it seconded? **[Seconded]** Does any Member wish to speak? All those in favour of adopting the Article kindly show. Those against? The Article is adopted. Deputy Chief Minister, do you wish to propose Article 2?

1.2 Senator A.K.F. Green:

I propose Article 2 of P.91/2017 in the Second Reading. Article 2 substitutes parts 1 and 2 of the current 2001 Law with a new part 1, which includes new Articles 1 to 7 and a new part 2, which includes new Articles 8 to 24G. As we know, the Corporate Services Scrutiny Panel have reviewed the proposed changes to the 2001 law before us today. There are a number of amendments to P.91. Some of which arise from the panel and some from myself. Before starting I would like to thank the panel for its work. While I do not agree with all their proposed amendments, legislative scrutiny provides a vital challenge and we should all welcome those challenges. So I say thank you to the chairman and his panel for the work that they have done. Before we get to those amendments, and the debates that I am sure will ensue, I would like to set out for the Assembly the effects of the new Articles 1 to 24G that form Article 2 of P.91/2017. In doing so, I will try not to repeat all that I have previously said but I do want to remind Members of the key provisions of the amendment law. This includes notably that same sex couples in Jersey will be able to express their love and their commitment to each other through marriage. All people will have more choice over where they get married, including being able to get married outside. They will have more choice over who marries them and more choice over the content of their wedding ceremony. It will be significantly easier for people to book their weddings and register their marriage. Importantly, we will have a law that provides better safeguards against sham and forced marriages. I would like to talk briefly about protections for religious officials and organisations. This Assembly has already agreed in principle

that same sex marriage should be introduced subject to appropriate measures to protect the rights of religious organisations and officials who do not wish to solemnise the same sex marriage. Article 2 provides those protections. A religious organisation or official cannot be compelled by any means to consent to any matters relating to same sex marriage, whether that be consenting to the solemnisation of the same sex marriage or to a place of religious worship being used for same sex marriage or to attend or apply for or provide certificates in any matter relating to same sex marriage. Even where the religious organisation consents, their officials cannot be compelled and, as set out in amendment to P.91, which we will be shortly considering, a person cannot be forced to refrain from withdrawing consent previously given. Additional protections are also provided in relation to Anglican marriage, the common law duty of clergymen to solemnise marriage does not extend to same sex couples, nor does the common law right of a person to have their marriage solemnised by the Anglican clergy. In addition, a usual place of worship, according to the right of the Church of England, cannot be authorised for same sex marriage. We have previously discussed these protections and they accord with those in U.K. (United Kingdom) legislation and are commonly referred to as the quadruple lock. It is important to note however none of these protections prevent religious organisations and officials from solemnising a same sex marriage if they want to. I would like to talk briefly about sham or forced marriage. As previously discussed, it is possible, at present, for a person to organise a marriage in Jersey without the knowledge or consent of their partner who may know nothing about it until they are standing in front of the civil marriage celebrant being asked to make legally binding vows. It may be romantic but it is not right. Such weddings will not be allowed to take place under the amended law, which introduces a range of safeguards, unlike the current 2001 Law. Both parties to the marriage will have to give notice. Both parties to the marriage will need to sign a declaration stating that they are free to marry. Both parties will need to present themselves to the Superintendent Registrar and complete a signature verifier form. The form will be issued to the marriage celebrant so that the celebrant can confirm that the people standing in front of them are the same people given permission to marry. The same people whose passports and visas and supporting documents, which were inspected by the Superintendent Registrar. Article 2 provides that non-residents getting married in Jersey must provide a certificate of freedom to marry confirming that the marriage authority in their place of residence knows of no reason why they cannot get married. No one will be able to give notice to get married until the Superintendent Registrar knows that and, if required, has seen the visa and that it is in place. Once notice is given it must be in the public domain for at least 25 days as opposed to the current 14 days.

[9:45]

Enhanced safeguards included moving from handwritten to printed certificates and documents. I think that is a slight cause for regret but we must protect important legal documents. The new streamlined process I would like to briefly talk about now. The amended law makes it easier for couples to give notice online and to have their marriage registered. Couples are only required to visit the Superintendent Registrar once before the ceremony. They do not need to visit or collect documents from the Parish Registrar. Emergency marriage as well, the amended law makes enhanced provision where there is a risk of death, a person is housebound, or needs urgent medical attention. In these circumstances the Superintendent Registrar can forgo the usual checks and balances so that a couple can marry as soon as possible or in a place not approved for marriage. Further provision is made for those who through illness or disability cannot sign their names or make their mark. Emergency marriage is possible under the current 2001 Law but is via special permission of the Dean, so that excludes same sex couples and those who do not want to marry under Anglican licence. Article 2 also provides that the Superintendent Registrar has the right to refuse to issue permission to marry or to delay issuing permission to marry if a person is not capable of consenting to marriage. If there is doubt whether they have the mental capacity to do so or if they are not sober enough at the time. Restrictions on marriage. Restrictions on marriage are set out in the 2001 Law.

They are largely unchanged except to reflect the introduction of same sex marriage. We have, however, introduced a power allowing us to increase the age of marriage by regulation. We have done this because the U.N.C.R.C. (United Nations Convention on the Rights of the Child) is calling for a minimum age of 18 to protect child brides. Place of marriage. Article 2 provides for an open-air marriage at any location deemed to be solemn and dignified by the Constable. The Minister will provide for an approval process by Order, which will broadly reflect the current processes familiar to Constables. When the open-air location is in private ownership the process of booking the wedding is straightforward. Where the location is public, such as a beach, the process may be more complex as multiple permissions may be required, for example, permission from the Minister for Economic Development, Tourism and Sport under the Policing of Beaches Law. We recognise the complexity, and officers will be working to identify an appropriate and long-term solution. Open-air marriages though, as I said when we did the principles, brings a degree of buyer beware because if it rains the couple will get wet, as they must marry at the location named on the notice to the marriage. This is in order that objectors may attend. A location that is approved for civil marriage is automatically approved for same sex and opposite sex marriage. A place of religious worship is only approved for same sex marriage if the consent of the religious authority is provided. Religious marriages can take place in locations approved for civil marriages, for example, the Methodist Minister may marry a couple on the beach providing that the Minister agrees to do so. I would like to talk briefly about celebrants. Under the 2001 Law civil marriages are solemnised by the Superintendent Registrar or Deputies. Under the amended law civil marriages will be solemnised by civil celebrants, individuals authorised by the Superintendent Registrar. A couple will be able to choose the celebrant who marries them. They will meet in advance and plan the ceremony. This is a contrast to the current law where couples are simply allocated someone with no opportunity to build up a relationship. Humanist celebrants will be able to solemnise marriage in Jersey. They must be authorised to do so, thus ensuring that they have access to the information and support necessary to marry people in accordance with Jersey law, as distinct from the U.K. law. This authorisation process will be described in Order and will apply to all celebrants, except Anglican officials who marry in Jersey. The panel proposes amending the relevant provision in P.91 so that our primary law sets out a requirement for individuals who purport to represent certain groups, such as humanists, that they must provide evidence of their qualifications. We will be accepting that amendment. But we will also provide by Order, as we had intended to do, that the requirement goes beyond qualifications. It will require evidence of accreditation or membership of the organisation as relevant. I talked briefly about the conversion of civil partnerships into marriage. Article 2 provides for couples who are in civil partnership to convert that civil partnership into marriage. Where they do so their marriage will have subsisted since the day of the civil partnership, not the day it was converted to marriage. Conversion can be quick. It is an administrative process, which simply involves the signing of forms or, if the couple want it to be, it can be a full-blown cause for celebration, another wedding ceremony. Article 2 brings forward significant changes to our existing Marriage and Civil Status Law. Changes that I believe benefit our community. I have set those out in the broadest terms. I propose Article 2.

The Bailiff:

Is the proposition seconded? [**Seconded**]

1.3 Draft Marriage and Civil Status (Amendment No. 4) (Jersey) Law 201- (P.91/2017): amendment (P.91/2017 Amd.) (not including paragraph 6)

The Bailiff:

We now come to the amendment to this Article. We come to the amendments to this Article which has been proposed first of all by the Chief Minister. If I may say to Members, many of these amendments seem to me to be completely non-controversial and I would hope to take them fairly swiftly because there are some matters of principle to be debated. If I have misread that obviously it

will become plain during the term of the debate, it will take longer. Deputy Chief Minister, you wish to propose the amendments to P.91 lodged on 30th October last year, except amendment number 6.

1.3.1 Senator A.K.F. Green (Deputy Chief Minister - rapporteur):

That is correct, Sir. This amendment includes 23 separate amendments and, as you say, we will be proposing it in its entirety except for amendment 6. Just to explain, amendment 6 brings forward changes to the new Article 7, which forms part of Article 2 of P.91/2017. As the proposed new Article 7 falls within the proposed panel amendments, now is not the time to debate amendment 6. We may, however, need to return to it at a later point in the proceedings. As stated by both the Chief Minister and myself, we did push for P.91 to be lodged early in October 2017 and we did so because we were concerned that same sex couples were waiting too long to get married. In making that decision we recognised that we would have to amend post-lodging. This does not mean that the policies that underpin P.91 have been poorly considered. I can assure Members that they have been given the fullest consideration. They have been extensively consulted on, albeit primarily at the principle stage as opposed to the consultation on the draft law. Our push for a timely lodging simply means a process of final checks for clarity of language and other associated matters was curtailed. The great majority of the changes set out in this amendment are very minor. They address typos and errors of that sort, they serve to clarify matters of language or provide additional clarity to the effect of the provisions. The Scrutiny Panel have also identified a number of minor changes, as set out in their amendment. Excluding amendment 6, which we are not dealing with at this point, only 7 of the 23 amendments have any material effect on the provisions of P.91. In brief, this includes amendment 5, which clarifies a religious official authorised under the current 2001 Law will automatically be authorised to solemnise marriage under the new law. But they may choose whether or not this includes same sex or marriage in locations other than their usual places of worship. Amendment 14 clarifies that locations currently approved for civil weddings will continue to be approved up until the point that their current approval expires. They will automatically be approved for both opposite sex and same sex marriage. Amendment 17 confirms that the Superintendent Registrar and the Deputy Registrars are employees of the States of Jersey as opposed to the States Employment Board. This amendment simply reflects the provisions under the States of Jersey Employee (Jersey) Law 2005. Furthermore, the existing delegates who solemnise marriage under the current law can, if they wish, become Assistant Deputy Registrars. This will help to ensure that there are sufficient numbers of people to solemnise civil marriage in Jersey while the new market for independent celebrants is developed. Amendment 18 is brought forward in response to consultation with the Comité des Connétables. It provides that the Connétable will appoint the Parish Registrar notifying the Parish Assembly in advance, and that the Parish Registrar will be resident in the Parish unless there is a vacancy, in which case the Connétable may appoint the Superintendent Registrar or Parish employee or Registrar from another Parish. The purpose of this provision is to allow for the Parish registration service to function in emergency circumstances such as pandemic flu. Constables in appointing Parish Registrars will have regard to the role description published by the Superintendent Registrar. This amendment, when taken alongside other provisions set out in P.91, will ensure that each Constable will have the flexibility to decide on what is right for their Parish with regard to their Parish Registrar. Further to this, amendment 19 provides that a notice of office is displayed at the premises used by the Parish Registrar as opposed to at the Registrar's home in the event that they do not operate from home. Amendment 20 makes it an offence for a person to knowingly and voluntarily make a false declaration or provide false information when applying for a person to be approved as the marriage celebrant or for a location to be approved for solemnisation of marriage. Finally, amendment 24 brings forward changes to the Gender Recognition (Jersey) Law 2010. It allows the court to determine what evidence it will accept when considering an application for a gender recognition certificate. The law will no longer require applicants to provide a full U.K. gender recognition certificate. Currently, in order for a person to get a full U.K. certificate, they must have

their ex-spouses consent. No consent, no certificate; thus in the U.K. a husband or wife can veto their spouses right to change gender. This Assembly agreed in principle in 2015 that there should be no spousal veto in Jersey. It is contradictory to provide a gender recognition veto in a system which otherwise recognises that we are free to act regardless of how our spouses wish us to act. We are free to live apart. We are free to apply for divorce. We are free to borrow money, and so forth. I think I have covered the main points therefore I propose amendment 1, excluding the sixth amendment.

Deputy L.M.C. Doublet of St. Saviour:

Could I seek your guidance on something before we open the debate? This is a future interest, I am not quite sure where I stand on this so I wanted to seek your guidance as to whether I need to withdraw. Because of my commitment to humanism I have been asked to embark upon the training to become a humanist celebrant and I have agreed to this. So I wanted to know whether that future interests would require me to withdraw from the debate?

[10:00]

The Bailiff:

Deputy, I regard it as being not being an immediate financial interest and therefore you may stay and you have declared the interest, so Members will know.

Deputy J.A. Martin of St. Helier:

Can I also ask for your guidance and I apologise if I am totally confused? Because I am looking at this legislation and I have just been told by the proposer to ignore part 6, page 73, Article 2, which is the controversial part. I just need for you to explain because I do not think I have ever seen a piece of legislation where I have been told we can discuss this later.

The Bailiff:

The way the running order is going is based on the proposition that the proposer of this amendment could, if he wished, ask the Assembly to deal with each amendment separately. That would be a cumbersome way of doing it, when so many of the amendments are absolutely straightforward and non-controversial. So what he is doing is proposing all the ones which he believes to be non-controversial but leaving over the one which clearly is controversial, which will come up for debate later on. If during the course of the debate on these ones which are thought to be not controversial it is apparent that some are, then no doubt the proposer can be asked - he does not have to agree, it is his proposition - but he can be asked to agree a separate vote on those particular amendments.

Deputy J.A. Martin:

I am sorry, Sir, and I have asked for your guidance but when I see this in the first legislation ... so can I get this right? It is the proposer who is asking we do not discuss it. So when do we come to the vote? Or could the proposer say it is in this, this is the first time we see it, and we discuss the main issue which is part 6 now? So what happens when we come to the vote, are we not going to vote on that part? I just have to be clear. I have not seen this before.

The Bailiff:

The numbering is awfully difficult. But when you say part 6, the controversial part, as I understand is paragraph 6 of the amendment, which is Article 7 of the law as amended if it is adopted. We will come to debate and vote on that later on today. This amendment is dealing with all the other amendments in this document, but not what I call paragraph 6, Article 7, which we will deal with later.

Deputy J.A. Martin:

I am sorry to labour the point but why is it in there then if we are dealing with it in a different part of the amendment? I am very confused. I do not want to ... as you said, it is not controversial, I see something written in a proposition that we are going to deal with in another proposition, and I have never seen this. I need to know that I am not having the wool pulled over my eyes, Sir, thank you.

The Bailiff:

Deputy, you are not having the wool pulled. We need to know what Article 7 is going to look at that and we will not know that until we have debated the amendments. That is why this part is going to be debated later on.

Senator A.K.F. Green:

Sir, I do not know if I can help the Deputy because it is quite ...

The Bailiff:

No, it is a ruling from the Chair. Are these amendments seconded? **[Seconded]** Does any Member wish to speak on any of these amendments?

1.3.2 Connétable C.H. Taylor of St. John:

A clarification on the first order. It says part 2 in the substituted Article after definition licence: "A Parish Assembly means in relation to a Parish the assembly of principals and officers of the Parish." I am just concerned that a Parish Assembly is principals and electors. I understand it has been looked at but I would like a definitive answer.

The Bailiff:

Well that may be a matter for the Solicitor General later on.

Deputy S.Y. Mézec of St. Helier:

I apologise that I might be adding some confusion to this because I have only recently read the line on the guidance that we have been given about the format for this debate, page 17. It says: "Note there can be only one vote on the Article (as amended). It is not possible at this stage to have separate votes on the Articles inserted by Article 2." It may well be the case that many of the paragraphs that are inserted by Article 2 are not non-controversial. I have a particular angle obviously on Article 7, that is going to be the controversial, but Articles 15 and 23 are Articles that I would like to address and, if possible, would like to vote on separately. I am not quite sure how that features in this, whether that is possible or, if it is possible, when that can happen.

The Bailiff:

Because of the way the Standing Orders are drafted and the way the amendment to the law is drafted, one can only vote on the full Articles at a time. If you look to the main proposition, the Amendment No. 4 draft law, Article 1 which we have voted on, Article 2 we are going to come on to vote on at the end is one Article but it does introduce a whole number of different Articles in the substantive law, which is the Marriage and Civil Status Law 2001. The vote, when it comes to it, on whatever Article 2 of this amendment law looks like, will be one vote. There will be lots of votes before we get to that point but there can only be one vote on the whole of Article 2. Now, you say you are concerned by Articles 15 and 23. There are some amendments to those Articles which we will debate and vote on separately, but having finalised those amendments so we know what those Articles look like, it will still be a vote of either you take the whole Article 2 of this draft amendment law or you do not. That will be the position.

Deputy S.Y. Mézec:

Thank you, Sir, that is very helpful. I suppose the only further question to that is when is the most appropriate time to raise objections to those Articles? Article 7 there is going to be debates on amendments so I presume we can raise objections during those debates. Article 23, there are amendments to that one I think as well.

The Bailiff:

There are some amendments to that one.

Deputy S.Y. Mézec:

Yes, so I can raise objections in that debate presumably. But what about Article 15? I want to find the most appropriate time to do so.

The Bailiff:

Article 15 is also the subject of one amendment now, for the specified change to solemnised; maybe you will not find much to talk about on that. But in relation to the others you can certainly speak to the amendments but you can have the opportunity of speaking to any fundamental issues you have with the drafting when we return to the principles after all the amendments have been dealt with. Deputy Tadier, you look as though you want to say something?

Deputy M. Tadier:

Just to double-check. So once the debate has been had on the Corporate Services Panel's amendment, the substantive amendment which relates to Article 7 of this Article 2, will I still be able to raise objections which do not arise from the Corporate Services Panel's amendment after that debate that relates to Article 7?

The Bailiff:

Yes, because if you wish to vote against Article 2, whatever it looks like by the time we have finished, then you will have a chance to speak on that later on. Right, so with that in mind, does anybody wish to speak on this amendment? Very well, Deputy Chief Minister, do you wish to reply to the Connétable of St. John or do you wish to ask the Solicitor to ...

Senator A.K.F. Green:

No, I think the Solicitor General is probably best placed to answer it, but we did ask the question last night and received a response from the Solicitor General. But I think it is probably better he shares it with the Assembly.

Mr. M.H. Temple Q.C., H.M. Solicitor General:

The drafting of Parish Assembly, which is sought to be inserted by the Chief Minister's amendment, is correct in that it refers to 2 things: there are principals and the meaning of principals was expanded by an amendment to the Rates Law in 1975 such that it is expanded to include a person who resides in the Parish and is registered for the Parish as an elector in Parish elections. So effectively a principal is an elector. The second part of the definition refers to officers and the reason for that is that officers are listed out in Article 2 of the 1804 law. There is an, albeit small, possibility that an officer may not reside or be registered in the Parish for elections because, for example, certain members of the Honorary Police have recently been allowed to carry on as members of the Honorary Police, albeit that they have moved outside the Parish. So that is the reason for the 2 parts of the definition and so I confirm that that definition is appropriate and should be inserted into the law.

The Bailiff:

Very well. Connétable, that answers your question and you are happy with that, good. Very well, all Members in favour of adopting these amendments kindly show. The appel is called for, I invite

Members to return to their seats. The vote is on all of the proposed amendments to his own proposition lodged by the Chief Minister on 30th October, except paragraph 6 on page 3, which relates to Article 7, paragraph 2 of the substantive law. I invite the Greffier to open the voting.

POUR: 44		CONTRE: 0		ABSTAIN: 0
Senator A.J.H. Maclean				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				
Deputy S.Y. Mézec (H)				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				

1.4 Draft Marriage and Civil Status (Amendment No. 4) (Jersey) Law 201- (P.91/2017): second amendment (P.91/2017 Amd.(2))

The Bailiff:

That then takes us on in the running order to page 8. We turn now to the amendment of the chairman of the Corporate Services Panel who will be proposing the second amendment to P.91, except for amendment 7 which we are going to come to later. I understand the chairman wants to propose it as amended by paragraph (a) of the second amendment. Do Members have any objection to that? Then please, Greffier, would you read it as amended.

The Greffier of the States:

The amendment is as set out on the amendment paper. [Laughter]

The Bailiff:

Well, let us hope everyone has a copy.

1.4.1 Deputy J.A.N. Le Fondré of St. Lawrence (Chairman, Corporate Services Scrutiny Panel):

One should never start with an apology but I do apologise for this speech because it is going to be longish, because - as we might get a feeling for it - there are rather a lot of amendments involved and this is not focusing on the tolerance clause, *per se*, as people might like to call it. I also do not want to muddy the waters particularly, but in relation to the queries from Deputy Mézec and Deputy Tadier, we vote on what has been referred to as Article 2 which is basically most of what we would call Articles on one vote. Therefore, if Deputy Mézec, for example, has a concern around the quadruple lock - which is 7, 15 and 23 - that will be encapsulated as well as Article 2 which introduces same sex marriage. Therefore, one will not be able to separate the 2; it is either his judgment to make a vote for that because he wants to support same sex marriage, as do I, or whether he wants to vote against it because he objects to the quadruple lock. On 14th November last year we called in the draft law for legislative scrutiny in light of the breadth and depth of the proposed changes. The aim of our review was to examine how effectively the draft law implements the decisions of the States Assembly. It was not to reopen the debate on same sex marriage, and this has remained the case throughout the review. So during the review we have tried to do a detailed line-by-line analysis of the draft law. We issued a call for evidence and received 50 written submissions.

[10:15]

We held 7 public evidence sessions with a range of stakeholders, including the Superintendent Registrar, the Comité des Connétables, religious organisations, equality charities, Ministers and their officials. I would like to thank those who contributed to our review, including the work that the Chief Minister, the Deputy Chief Minister and his staff have done to try and address some of our concerns. What I would also like to do is say thank you for all the responses we have received, both in the 50-plus submissions as part of the Scrutiny process, and also subsequently. There are obviously many that do not agree with one of the proposals, there are also many that do support. I want to thank those who have written to me personally. In terms of our findings, as Members will see, there have been a number of inaccuracies, typos and spelling mistakes that we have also picked up, this is post the amendments we have just approved. We found a number of issues of contention in the law which we felt required more attention, more clarification and greater certainty; particularly on issues of religion which are significantly affected by the draft law. Therefore, as part of our review we have agreed to bring forward a number of amendments which attempt to address these issues and I will be taking Members through these. Before I do so I really want to issue a disclaimer, and the kind of discussion we have just had indicates the issue. This has been a very complex law that makes fundamental changes to our marriage legislation. The difficult questions it raises require very careful

and considered answers. We do not feel that the public and key stakeholders - and possibly even my panel - have had adequate time to provide all the answers that everybody is looking for on this. As the Chief Minister has acknowledged, and in fact the Deputy Chief Minister has acknowledged, the law has certainly been challenging and the word "rushed" has been used. So while we have sought to correct any errors or deficiencies, we do not guarantee the draft law does not contain any more of those. Our amendments attempt to address the ones that we have found and I hope Members will consider them properly and hopefully support them. What I will try to do is try and thin down what I have been given and just work through the actual running order because hopefully that is a little bit clearer. So if we are looking at page 8, the first amendment is very, very minor, essentially part (a) just clarifies the definition of a marriage celebrant because it refers to any person mentioned in certain paragraphs whereas the law refers to people described. They are not described in the references it makes and so from a law drafting perspective they should be mentioned not described. A truly exciting thing in 1(b) is we have inserted a comma, so it is not "marriage birth" it is "marriage, birth". Sorry everyone, I am just trying to make sure I do not lose track between the 2. So at the bottom of page 8, going over to page 9, amendment 2. This is one that certainly Deputy Doublet and the organisation she is connected with did raise with us, and so essentially the wording is we are inserting on page 9 at the very top a new paragraph which is (ba). What it is, is that the role of civil celebrant referenced in this Article is new and we felt it important the correct level of governance around that role is enshrined in the law. We believe that the matters to be taken into account by the Minister, because the Minister is prescribing a scheme here, should include whether a civil celebrant who holds themselves out to represent a particular organisation has the appropriate qualification from that organisation. Trying to put that loosely, if somebody comes along and says: "I can do you a humanist wedding" you want to know that they are affiliated to and qualified with the relevant humanist organisation, not Humanists of Ronez, which has just been set up a week ago. So that is what we are trying to achieve there. In the second part to that which starts paragraph (6): "An authorised civil celebrant must carry out the solemnisation of marriages (a) in compliance with the requirements of this Law and with any guidance ..." basically that is a requirement that people must comply with the guidance issued by the Superintendent Registrar, and that was just really a clarification. You will see that we bring in guidance in one of our amendments later but generally this was the only requirement for them, to comply with guidance. The next one starts getting possibly more controversial, one might say. A point I would make, this is all one part of an amendment, when we get there, there will be separate votes and the idea is that the bit I have just described is one vote and then the bit I am about to describe is a separate vote and I will try to explain procedures shortly. Article 7 as it is written on page 9 in itself just represents a redrafting. It does not change the meaning of the existing Article 7 that is there. So what we are trying to do is just improve it in terms of modifying the language, but we are advised that the wording represents an improvement on that originally presented to the Assembly. I will just say, unfortunately - because of the way it has been drafted - this particular Article cannot be separated out from the overall discussion around what one might call a tolerance clause. That starts on page 10 and that is 7(a). So this Article is introducing what is referred to as a tolerance clause, some people have called it a no compulsion clause. There are several elements to this, one is provision, so that a person who objects on the grounds of religious conviction cannot be compelled to provide goods or service to a marriage ceremony or in any social event or functions associated with and subsequent to a marriage ceremony. It does contain provisions to limit that clause so that it does not apply to the public sector or employees and certain other groups, including officials. Also it makes provision so that religious groups who own certain buildings cannot be compelled to provide those buildings for the purposes of same sex marriage; and I will focus on the buildings in a minute. If this Article is adopted in any shape or form in terms of the 7(a), either with the tolerance clause or without it, an amendment to the Discrimination Law is required and that is a later amendment. But we have been advised that it needs to be taken separately in terms of debating and voting on consequential amendments. Procedurally, to allow a separate vote

on the tolerance clause aspect, this is why we have a separate amendment, which when I finish speaking on these we will then go to dealing with. That will be the focus on the tolerance clause aspect. But what I would like to do is just explain the provision for buildings. On 7(a), which is on page 10 and 11 of the running order, paragraph (1) talks about ... I am just wondering if this going to be too complicated or ...

The Bailiff:

At the moment, if it may help you, Deputy, you are proposing your second amendment and we are going to come on and ask you to propose the amendment to the amendment later.

Deputy J.A.N. Le Fondré:

Yes, but the amendment to the amendment withdraws part of what I am talking about, essentially, so I was advised that I had to talk about the buildings aspect during this part of the debate. The way the tolerance clause works is that paragraph (1) says that no one in paragraph (2) can be held to participate in a same sex marriage. That is, broadly speaking, consistent with what has been happening in 7 anyway. Paragraph (2) gives the list of people and paragraph (3) defines what is meant by "participation". With regard to buildings paragraph (2)(b) which, because of the amendment we have just proposed, will be: "The owner or trustee of a location [not an approved location] in a case whether either the owner or trustee is a religious organisation or the location's primary use relates to the activities of the owner or principal occupier", and Members can see it there: "or to the activities or objects of the trust concerned, as a religious organisation." What this paragraph does - as we were advised and certainly were intending - is capture things such as buildings like church halls which are owned by the church, which fall outside of the curtilage of church grounds. An example might be St. Brelade's Church Hall, which is situated across the road from St. Brelade's Church. It might include buildings that are used as a church hall which are situated outside the curtilage and owned in trust by a religious organisation, not by the religious organisation itself. An example of that would include St. Paul's Centre. Also it would include buildings that are used as a church hall but which are owned by another body such as a Parish. An example of that we believe includes Caldwell Hall in St. Clement, which is situated next to St. Clement's Parish Church by is owned by the Parish. So we received evidence from a number of the religious groups who made submissions to us which suggests that such buildings might not be covered by the existing quadruple lock already set out in the draft law. I will just say, and one will see that there is an amendment lodged by the Deputy Chief Minister which broadly speaking achieves the same as what we are trying to achieve; we will touch on that. But basically this aspect, I think it would be safe to say from all sides of the argument, is generally supported. This is about can church organisations be compelled to use their church halls for uses that would not fit in with their beliefs. Just to give an example, they are already sensitive around things like yoga classes or things which have got a spiritual element to them because that does not fit in with their faiths. They might be sensitive about having a rock band in there depending what the lyrics are. So there is the sensitivity about how they use the church halls already. What we have also tried to make clear is we are not intending to capture hotels or other locations where a same sex couple may want to hold their ceremony or reception. The aim is basically ... I use church halls as the analogy, because at the moment that is not covered under the existing legislation. So as with the rest of the tolerance clause, the idea is not to compel people to participate if they feel they cannot on the basis of their religious convictions. If a religious organisation did want to host a same sex marriage or something, or wedding reception in their church hall, then they are free to do so. So it is about not compelling, it is not about preventing. The aim is to provide a reasonable level of protection, again not to compel. Now, we believe it is a reasonable amendment and I hope Members will support this if they can, even if they do not support the rest of the tolerance clause. I shall touch briefly on the tolerance clause amendment. As I have said, how it works in the debate is that once we have finished talking about these amendments we then move straight on to a debate on the

tolerance clause, by the end of which I suspect my voice will have run out; that debate will be whether to remove it or not. So essentially it is a procedural device, it is all encompassed in Article 7(a); we are then debating whether to take the tolerance clause out of it. It is basically the way to achieve a separate vote. It is very clear it is an important subject for many people on both sides of the argument, and also based on the submissions we have received. It is not uncontroversial and it was not a unanimous decision so panel members will no doubt express their own views on the matter during the debate. However, it is an important matter that the States should debate and it is, therefore, important and that is why we have lodged an amendment to enable this. But basically when we get to our next amendment, if Members support the wider tolerance clause they should vote against the next amendment. If they do not support the wider tolerance clause then they should vote for that amendment because it will take it out. Hopefully that will become clear as we are going through. Now, we then go to page 11. Firstly there is a minor change on grammar, which hopefully is not controversial. We then want to bring in some clarification about religious content. Again, the Chief Minister supports this. There are 2 paragraphs in the actual law which relate to one another. One says - and this is 17(8) in the main law - a civil marriage celebrant must not permit any religious material to be included in a wedding, and that is the starting point. But then in paragraph (9) it says if satisfied that civil marriage celebrant, if it does not contravene what I have just said, must permit any religious content to be included. So what we rather felt is that it looked contradictory and how are people going to interpret that, so what we are basically saying is that the Superintendent Registrar... I can see people frowning at this already and, yes, one can, therefore, understand the kind of discussions we have been having. What we are basically saying is that there needs to be some clarification on there, the Superintendent Registrar should consult as to what is religious content and then issue some guidance. That is it.

[10:30]

It should not be something that we are trying to decide or somebody on the day is trying to decide. There needs to be clarification as to what is or is not religious content for the purpose of those Articles.

Deputy M. Tadier of St. Brelade:

Would the speaker give way? Sorry, who does the Superintendent Registrar consult in order to find that out?

Deputy J.A.N. Le Fondré:

Basically he or she consults the relevant religious organisation, but they can proceed to consult anybody else as well I would guess.

The Bailiff:

The time for questions will be later on.

Deputy J.A.N. Le Fondré:

Page 12 is basically a repetition of what we have just covered but that is to do with conversion ceremonies, and there is also correction of some typos in there at page 13, which is now amendment 5. Right, the issue on this is that Article 23... so Deputy Mézec may have some comments on that error, but this is part of the quadruple lock; again, this is an amendment to try and approve it, it does not remove Article 23. This basically deals with locations where marriages can be solemnised in Jersey and the process for approving those locations. It contains provisions to protect some but not all places of religious worship because it talks about: "The usual places of public religious worship." When we were examining through it this would not, for example, capture chapels and other consecrated buildings that are not a usual place of public or religious worship. Now, that could include private chapels. We originally thought it could include, for example, the chapel at La Hougue

Bie. Now, since we lodged the amendment and went through it, we understand that Hougue Bie is covered because Hougue Bie forms part of the Parish of Grouville in terms of it is part of the Parish church. It is on the website and so it is an Anglican chapel and, therefore, basically through the interactions of Canon Law and those areas, they could not be compelled ... it cannot be used for same sex marriages. What we are looking at is generally about compulsion or not and, as I said, what we are trying to do is to achieve protection, if that is the right word, where appropriate, for areas that are not quite well defined in the law. So the present use of public religious worship is quite restrictive. Now, we will, again, get to an amendment because there is an amendment on this being lodged by the Deputy Chief Minister which, broadly speaking, we are accepting and I think we will have this discussion at that point as to what is being achieved there. Right, I think after that we get to a nice easy one, which is at the bottom of page 13. It is Article 35 and it basically contains some cross-referencing errors. So, if you do not want to approve that it would mean the law would probably not make that much sense in relation to it because essentially Article 35 is not amended but the Articles it refers to have been amended in the original law. I think I shall just say there that this, as we have said, is a very complex law that makes fundamental changes to our marriage legislation. I hope the panel's amendments have gone some way to illustrating the complexity of the issues we have had to deal with. I have gone slightly lighter because hopefully those who did not come to the presentation on, I think it was Monday, felt they already knew the matter. We did cover some aspects on Monday as to some of the details that came through. While we have sought to correct any errors or deficiencies that we have been made aware of we cannot guarantee the draft law does not contain any more. I do hope that you will agree with me that our amendments attempt to address the ones that we have found and that Members will support them. Now, if I am correct, at that point I sit down and I propose the amendment. Somebody needs to second it and then I presume we then commence with our amendment on the tolerance clause. Thank you.

The Bailiff:

Is the amendment seconded? **[Seconded]**

1.5 Draft Marriage and Civil Status (Amendment No. 4) (Jersey) Law 201- (P.91/2017): second amendment (P.91/2017 Amd.(2)) - amendment (P.91/2017 Amd.(2)Amd.)

The Bailiff:

Very well, we now come to, on your running order if you go to page 14, halfway down the page, the second amendment is being proposed and the chairman of the Corporate Services Panel is now going to propose his amendment to the second amendment. I will ask the Greffier to read the amendment.

The Greffier of the States:

Page 4, amendment 2(2) – In the substituted Article 7A – (a) in paragraph (2) – (i) at the end of sub-paragraph (c) after the semi-colon add the word “and”, (ii) at the end of sub-paragraph (d) for the semi-colon substitute a comma and delete the word “and”, and (iii) delete sub-paragraph (e); and (b) delete paragraph (4).

1.5.1 Deputy J.A.N. Le Fondré (Chairman, Corporate Services Scrutiny Panel):

For the avoidance of doubt, what was circulated just earlier today, which is from myself, will show Members the Article basically we are debating and what the consequences would be of this amendment. Basically, this amendment puts in the striking out, if that makes sense, of the paragraphs in this Article, so essentially it deletes the Articles that are marked with a strike-through. Now, this is going to be the most controversial aspect of this whole debate and it is right, therefore, I do talk to it to a degree of length because this is the only time I will have other than summing up. I want to make it clear at the very start that even though the panel is not unanimous on this amendment we are unanimous in our support for what we would call Article 2, which is about the introduction of same

sex marriages, and we have made it very clear from the start of our review that this was the case. The reason I start this way is that there is a real risk that the debate degenerates into a slanging match of people accusing others of racism and homophobia. But I will remind Members that not only did I support the principles of this law and I support what I have referred to as Article 2, but previously when I have been present in the Assembly I have also supported civil partnerships. However, the principal point of this debate is about freedom of speech, freedom of belief and freedom of expression. Freedom of speech can be uncomfortable but it is critical to a democratic society. This is an important subject and it is therefore right that this Assembly should debate it. I suspect certain people's minds are already made up, ears are closed as it were, but I hope we have made people think. I do, however, urge Members: let us try to keep the debate respectful rather than, as did happen in one of the earlier debates, building up images of neo-Nazis and things. To summarise, this is sometimes referred to as a no-compulsion clause or a tolerance clause. It is about enabling someone not to be compelled to participate in same sex marriages should they not wish to as a result of their deeply held religious convictions. In many faiths marriage is defined as being between a man and a woman and I will talk to that later. But for the avoidance of doubt we are advised it does not capture hotels and it specifically does not apply to employees or officials. The Attorney General has given his opinion that it is human rights compliant. Eleven years ago a Minister brought a law to this Assembly and within it there was an Article, which said, among other things, that a person committed an offence if they displayed any sign that was insulting within the hearing or sight of someone likely to be caused distress by the sign. Now, think about that for a moment, because I was one of the first, as an Assistant Minister, to question this because I was concerned about freedom of expression. Think of the miners' strike in the 1980s: "Death to Thatcher." I did not agree with the wording but I absolutely defend the right of someone to say it, and at that point I was rapidly followed by the then Minister for Education who agreed with me. We did not have collective responsibility in those days and the debate rather rapidly fell apart and that proposition was withdrawn. Now, just as an example, somebody said: "Yes, you have made it." But I do not know if anybody saw the *J.E.P. (Jersey Evening Post)* of yesterday, which was the cartoon, which has a devil whispering in my ear saying: "Now can Scrutiny propose a conscience clause, Deputy Le Fondré?" Now, I muttered a couple of things but it is potentially clearly offensive to me and, I would suggest, also to anyone who has emailed in or written in to us in support of a tolerance clause as basically it says that I and they are evil. However, I support their rights to freedom of expression even if I am offended by it. The reason I refer to that is that freedom of speech and freedom of expression can be uncomfortable. It can be upsetting, it can be shocking, but it is important. I want to talk today, as well, about faith, belief and conviction. Now, today most of this Assembly prayed to God. We pray to God for guidance and for prudence, for his blessing and we pray to him in the name of Jesus Christ, and then we said the Lord's Prayer in French. Now, unless anyone is being hypocritical in the Assembly I would assume that those who regularly stay in the Assembly for prayers probably have some level of faith. Many of us, who are not Senators, of course have another connection. Many of the Parishes we represent have a religious connection. The Church of England is embedded within the Parish, as it is in this Assembly in the welcome guise of the Dean. The reason I mention all of that is it seems to me to therefore recognise that religion has a very special place in this Island's society. Yes, it might have declined but it is still strong and - I always have to introduce some numbers into a speech - if there are around 70,000 adults on the Island, just under 40,000 have declared they have a faith, in one of the annual social surveys basically, if you use that, and around half of them are Catholic, if my numbers are correct. That latter figure is statistically much higher than the U.K. As an indication, the 2011 census showed that there were approximately 440 people living as couples in same sex relationships, and I do appreciate that is likely to be higher now and also it does not include individuals who are not in a relationship. Even last year, and probably this year in another country, maybe 3,000 or 4,000 miles away, people are dying because of their faith. A couple of years ago I met a man on holiday. He was with his family and was returning to his home country a couple of days later. He was a Coptic

Christian from Egypt and to be honest I have absolutely no idea how that came into the conversation. But at that point Christian churches in Egypt were being targeted and bombed; I have no idea if that man or his family are still alive today. But to relegate faith to an anachronism is just to completely fail to recognise its strength and what it still means to many thousands of the population on this Island. A fundamental part of the teachings of many faiths is that marriage is defined as being between a man and a woman. By way of example, only by way of example, I shall refer to the Church of England and Canon Law. Now, contrary to some remarks made recently, Canon Law is not just a body of internal rules and regulations governing the organisation. It does apply to members of the church and it also, as I understand it, is an elaborate code of ethics shaping family life and, in this regard, marriage. As we said both in our report and at the presentation on Monday, we showed where it was and where it defines marriage as a union between a man and a woman. But to quote from P.179/2010, when this Assembly approved an update to Canon Law, which is what I have just referred to, Members may wonder why they are being asked to consider this matter. The answer is Jersey's relationship to the Crown. The church is established under the Crown and nothing in the Canons can be amended without the mutual consent, probably at that point, of the Bishop of Winchester, the Dean of Jersey, the Clergy meeting in the Ecclesiastical Court and the Government of the Island. In 1623 that meant the Governor, Bailiff and Jurats; it now means the States of Jersey. Whatever the personal beliefs of individual Members, it is the responsibility of the States as a whole to ensure that the freedoms of the church in Jersey, enshrined in the 1623 Canons, are preserved and enhanced in the amended Canons, which was what was being brought in 2010. It is the view of the Dean, the Ecclesiastical Court, the Island Synod and the Bishop of Winchester that these Canons provide a solid legal framework within which the church can fulfil its ministry, both before God and as a channel of his love to the Island. That is directly from the report that this States approved with the proposition. The reason that I have taken the time on that is to illustrate how important the definition of marriage may be or can be or is to people with a faith. I also remind Members of our oath of office for Senators and Deputies, because the Connétables are slightly different, which says that you will uphold and maintain the laws, privileges, liberties and franchises of Jersey opposing whomsoever may wish to infringe the same. The point here is that religious faith is a powerful thing. In Jersey, it is generally a personal and private matter but that does not weaken its standing.

[10:45]

That does not weaken what it means to many people on this Island. The question for this Assembly is whether it is right, in the name of equality, to force someone to adhere to a doctrine, which we are introducing by State law, which is fundamentally against their religious beliefs, or, as an alternative, to put in a measure which enables them to not be compelled to participate if it goes against their beliefs. If they wish to participate they can. So this is not about not serving someone because they are gay. Anyone who does try to use that as an argument just does not want to engage on this, does not want to understand. I assume everyone in this debate condemns homophobic behaviour. This is about maintaining the right to say no, to not be felt forced to endorse a type of marriage which is fundamentally against their religious beliefs. This has already been given to the clergy. What one is arguing here is why should it not also be given, in certain circumstances, to the followers; to the ones that receive the teachings from the clergy, and I use "the clergy" in the wider sense. I want to quote from an article, the article that was presented to us in one of the submissions we received that was recently circulated to all of us. It is an article that was in the *Guardian* written by a man called Peter Tatchell who is a gay rights activist and campaigner, and was one of the organisers of the first Gay Pride march in London in the early 1970s. At the end of the article what he says is: "I profoundly disagree with Ashers Bakery's opposition to same sex love" - Ashers Bakery is one of the key cases that gets cited a lot about freedom of expression and it is in Northern Ireland - "but believe the discrimination verdict infringes vital freedoms. In my view it is an infringement of freedom to require businesses to aid the promotion of ideas to which they conscientiously object. Discrimination against

people should be unlawful and not against ideas.” So this is the problem in a nutshell. How, in a democratic liberal society, do we ensure that the freedom of speech and expression of one group does not happen at the expense of another? Let us be clear, this is not about seeking to exempt big companies, local supermarkets or larger wedding providers - and I note the open letter from wedding providers certainly. In reality, any significant entity would face a public backlash if they refused to provide for same sex marriage. It is about avoiding someone being prosecuted for following the religious teachings of their church and their strongly held faith. Beliefs which, in certain circumstances, are backed up by longstanding law of the land as approved by this Assembly. Otherwise are we in danger of incriminating the innocent? Let me suggest some scenarios. Imagine a church choir and, say, 4 ladies set up a smaller quartet to extend their singing. Over time they get asked, perhaps by friends, to sing at a couple of wedding receptions or even a wedding ceremony; they are religious. Then someone asks them to sing at a same sex wedding or reception. The situation under the present proposed law will be that they will be guilty of discrimination if they say no because they will be providing a commercial service. It does not matter how nice they are, it does not matter if they suggest someone else. As we have understood it, they can be taken to a tribunal or a court, fined, possibly required to undergo some form of equality training or re-education, if you prefer to call it that. I say that based on experiences in the U.S.A. (United States of America) and the U.K. They are being asked to decide between their deeply held beliefs and what the State is telling them to think. Now, interestingly enough, I had this example in mind and then this email came through which we have received and I think we all received it again yesterday. It was sent to us by a lady: “If a same sex couple with an adopted child came to my services then I would gladly receive them and treat them with the love, compassion and dedication that I show all the families that I work with. However, I am also a singer. Should this same couple ask me to sing at their upcoming wedding, would I be allowed to maturely, kindly and politely say no and then refer them on to someone else who would be better suited to their needs in this instance or would they, or could they sue me or take me to court for discrimination? I have obviously shown by my conduct that I am not a bigot, however, there are certain beliefs that I hold dear that affect the choices I currently have the freedom to make in life. Can this position be respected or am I to be forced to sing with a perceived gun to my head in the name of equality? It may be difficult for some to understand my position but God’s ways saved my marriage, healed my body, give me a love for life and so much more. I have had a very real life-changing experience through the Holy Spirit and have committed my life to follow his ways as a consequence. Can we have scope in our society to allow people to act maturely and say that they are not the best person or the best place for the job in hand because of their conscience without it being taken as hateful? Please may it be so.” When I read that, I must admit I found that that is what one is trying to deal with here. Any church organist, as we have understood it, who is contracted, say, to more than one church, would find themselves forced to participate potentially in a same sex marriage even if it was against their beliefs if one of those churches decided to allow such marriages. That is a future potential. For the avoidance of doubt, it is very likely that the 3 examples I have just given would count as a provision of a commercial service. Then, I do not think any debate on this matter would be complete without mention of cakes, unfortunately, in particular wedding cakes. Again, a similar scenario, someone who makes specialist decorative cakes might specialise in wedding cakes. If, as a matter of their faith, they do not support same sex couples, at present if they politely decline the business they will be taken to a tribunal and/or fined, *et cetera*. This is the type of example that is occurring in other jurisdictions. That was what the Peter Tatchell article referred to. This is where a Catholic baker in Northern Ireland was asked to produce a wedding cake promoting same sex marriage. They refused and were found guilty of discrimination. That case continues to work its way through the court system. This was part of a submission and this did stun me slightly. In the U.S.A. there is a baker who has refused to bake a cake celebrating Satan. It would seem that in the U.S.A. Satanists are a recognised religious group and therefore they were exerting their rights basically. For the avoidance of doubt, the cake will be a commercial good. Those are

the types of scenarios we are trying to deal with. As a guide, in the U.K. there are around 200 inquiries each year now, around the conflicts between discrimination legislation and matters of religious belief. So this is not aimed at big business. I do not like the term but it is aimed at the little guy. We risk saying that they do not matter, that their fundamental beliefs do not matter, that we do not care about them. But even worse, that their faith does not matter and they could be sent, if you use some of the examples from the U.S. - I am not sure about the U.K. - for re-education or re-training if they express their thoughts. I do want to refer to the open letter from Liberate, which we received I think it was yesterday. I utterly agree with them that they have treated this matter with respect. However, I do disagree with something else that they included in their letter. To quote: "Being prevented from acting on deeply-held beliefs by the law of the land is not discrimination. For example, a person might hold a deep belief about the amount of tax the richest 10 per cent of the population should pay. This is not an extreme belief; many people think that the rich do not pay enough tax and believe that passionately and sincerely ..." and then they carry on. I am sorry, as I said Liberate have been very respectful all the way through but I feel that this completely belittles and fails to understand what faith is to many people on this Island. That has been the principle of what I have been trying to demonstrate in the early speech; sometimes it is likened to believing in Santa Clause. Again, same point, the people who have a strong faith feel it will guide how they live their lives; that is not the same as someone saying that people should pay more tax. That is part of this problem. It is now about whether anyone in this Assembly does or does not have a faith, it is about whether we are capable of recognising that many people on this Island do. So, equally, reference has been made that religion ... sorry, that freedom and equality are paramount, and moreover, for people of faith to practice their religious beliefs - and this is the crucial bit - within the bounds of the law should be upheld. That sounds all well and good but what happens when that law changes and conflicts with those religious beliefs because that is effectively what we are doing here. Free speech must apply to peoples' deeply held religious beliefs and the protection of their rights to express those views in peace, and I am one of those speaking out on their behalf. So what happens if nothing is done? My real concern is that not having an opt-out clause, a no compulsion clause, may well garner resentment or other unintended consequences. Now, in case Members miss the point, at a public hearing, just before Christmas, in front of us on this matter, the Roman Catholic Dean stated that the Catholic Church in Jersey would be seeking to remove itself from providing the legal element in any marriage service. That means as a direct result of this legislation, any Catholic couple wanting to have a church wedding will have to have a separate civil marriage first. Now, some people will say that does not matter, it is what happens elsewhere. But it did used to happen here in terms of you could have the one service. Not in itself a big thing but does that not demonstrate the strength of feeling on this? Anecdotally we have had a couple of reports already of individuals withdrawing their service because of the perceived conflict between this law and their beliefs. What I have found fascinating on this is you cannot say who believes in what without asking them. There are different views within the church both for and against. There was the report from the member of the clergy in Guernsey, who is part of the L.G.B.T. (Lesbian, Gay, Bisexual and Transgender) community and also in general synod, and obviously against these proposals. Equally, we received an email from someone also part of that same community, the L.G.B.T. community, in support of our proposals and that was backed up by a conversation I had with someone very recently. We have been receiving lots of messages both in support and against. Now, if it is about beating up the church, well that is a different story. From the most recent article in the *J.E.P.* last Thursday I did not realise that the Church of England in Jersey was such a chequered organisation, but I think I will let the Dean deal with that other to say that it is that type of opinion or article from a public commentator that stops proper debate on this, and, if anything, the purpose of today is to try and at least have that proper debate. Liberate and the church organisations have been very responsible in the build-up to this, no question. Others have not always been. To address one point, one letter we received recently stated the following: "If the law is to allow same sex marriage it should do so completely and without

giving any person or organisation the ability to opt out of that law. If groups or individuals are allowed to discriminate against same sex couples the door will be opened for the argument to be made to allow other types of discrimination to be acceptable as well.” As a theme this has cropped up a number of times, i.e. there should be no discrimination. The problem here is that we do discriminate. That is the extract from the Discrimination Law and all of those, roughly 20 to 25 pages, are the caveats in the Discrimination Law. I will give some examples: we discriminate against transgender people. Now, I appreciate there may be biological complexities here in terms of impact of medication after a period of time but from what I have looked at, and I am not a lawyer, that is not what the law says. The law says that, for example, a man who becomes legally a woman, has all the treatments, has had all the documentation amended including their birth certificates; they are legally a woman for all intents and purposes but they can be discriminated against if it is necessary for fair competition, in sports for example. So that woman cannot take part in, say, competitive track events. Now, I can understand in law there is a good reason for it but there is discrimination even though she is legally a woman. The law specifically allows the Minister to discriminate on racial grounds. Again, when you look at the clause, there are justifiable reasons for this but that is what the law says. We have recently agreed that the people from outside the E.E.A. (European Economic Area) will have to take an English language test. Tell me why that is not discrimination. Perhaps the most peculiar matter, and I know a number of us will be members of these, but in the context of being against discrimination, we allow, in the law, certain clubs to discriminate on the grounds of sex. There are women-only clubs and there are clubs which do not allow women in to what is basically a restaurant because they are women and we are apparently all fine with that because that has been defined in the law; that is discrimination that is allowed. So we are happy to allow a club, which is basically a restaurant, to discriminate on the grounds of sex, which is a protected characteristic, because it is in their constitution. But apparently we are not happy to avoid forcing people to act against their deeply held religious beliefs even when the basis, in one instance, for that belief has been defined in a law passed by this Assembly. Now, I am going to address my next point because I know Senator Green is dying to come in with his normal enthusiasm to tell me why we are so wrong on that matter. So I hope he is listening at this particular point.

[11:00]

We must not discriminate has been his stance in the discussions we have had with him, and I have already outlined where we do discriminate. But Senator Green has proposed this whole set of amendments already which include what will be Articles 7, 15 and 23 and the changes to the Discrimination Law and the schedule. These all, in effect, discriminate. They discriminate against same sex marriages, they give carve-outs to people who charge for their services who have deep religious conviction, namely the clergy in the wider sense. Therefore, what Senator Green is essentially saying is that discrimination is okay if he agrees with it. That is probably slightly unfair and I am sure he will defend that. But think about that, because the no discrimination argument is not consistent, we do already discriminate in law and we are discriminating in this law as well. Now, just for the avoidance of doubt, I do support the carve-out for clergy but make no mistake, it is a set of conscience clauses and it is discriminatory in the wider sense. Now, I have touched on the complexities we, as a panel, have faced. There may be Members who get the general principle of what we are trying to do but might think the amendment is too wide. If this is the case then I really do urge Members to say so and whether something narrower would be acceptable for the sake of argument. This has been a very time-pressurised review for the Chief Minister who only lodged his last amendment yesterday so, it would, in the very least, inform the debate overall. We have had discussions, for example, about whether it should apply just to individuals because the amendment refers to “person” but a person includes a legal entity. But even small operators could use a company. In practice, anybody that is a large business will not wish to opt out as there will undoubtedly be consequences. It is about giving them choice. In my speech I have generally talked about religious

beliefs. As a safeguard, the proposed amendment talks about conviction; that is a higher test we are advised. In addition and in accordance with other existing law, we are advised that the burden of proof for any conscientious objection shall rest on the person claiming to rely on it because we all agree this must not be a means to protect homophobia. So this is not a get out of jail free card, this is about not forcing someone into going against their deeply held religious convictions. But if that was ever tested it would have to demonstrate, to the satisfaction of the court, that they meet the test. Members will be delighted to know I am starting to wind up; I am not quite there yet. In this Assembly we have the ultimate privilege as regards freedom of speech but as soon as we leave this Chamber we lose it. Members of the public do not have our privilege they are dependent on laws to protect their freedoms. What I would like to do, in starting to wrap-up, is quote from an article in the *Independent* newspaper: "Freedom of speech without the freedom to offend is not only a meaningless idea it is a dangerous one and it is quietly gaining ground. If I can frighten you into silence by claiming your ideas upset me then your right to free speech becomes purely theoretical like a right to jump over the moon." This language of offence can suddenly be heard everywhere even among so-called liberals. Under the new unspoken rules of liberal discourse you can win a debate, not by producing a killer argument of fact but by claiming you are offended, ideally by somehow invoking minority or victim status. This is the article: "The day we lose our right to openly mock or offend we can kiss our right to free speech goodbye and without free speech all our other freedoms are under threat because we will not know how to protest when they come under attack." Ideally all parties would respect each other and there would be no conflict on this matter. Those involved on all sides of the argument have been oppressed at different times in history and continue to be oppressed in different jurisdictions even today. But unfortunately there are individuals on both sides who will push matters much further, and even during the period of our review various parties have suffered some form of abuse during very recent times. Two individuals who appeared before us having received verbal abuse on this matter in the last few weeks, 2 individuals, including one panel member, being trolled online as a result of what they had been reported as saying. Comments are sometimes made equating those expressing support for Christian views as being old-fashioned, quaint, Nazis or racist. We have sought to try to understand the various perspectives on these arguments and it has not been easy but in the event the panel felt that a tolerance clause should be debated. Freedom of speech is a basic tenet of our society, it is a balance of competing rights and can be extremely uncomfortable at times but overall that is what strengthens tolerance and understanding over time. If we force people to comply with ideas they do not agree with this can ultimately lead to a greater hidden intolerance and unintended consequences. It does not matter which is the bigger minority in this area. This law is about allowing one minority greater equality, which is a good thing, and this amendment is about allowing a different minority to disagree in certain circumstances; to not be compelled to do something. Now, to cite the Deputy President of the Supreme Court, as detailed in the report P.91, she has publicly stated that the law should protect people's rights to refuse to do things against their belief even if those beliefs clash with equality laws. In a healthy democracy both genuine human rights and the right to express distinct minority opinions should be treasured. This is why we felt it was important to bring this matter to this Assembly. It is not something that could be ignored and it is a sensitive subject but we would be shirking in our duty to others if we did not at the very least debate it. This matter is going to both the U.K. and U.S.A. Supreme Courts and no doubt will continue to do so. This debate will no doubt be passionate but please let us try to keep it measured and respectful. I finish with 2 quotes. I remind members of the quote from Peter Tatchell: "In my view, it is an infringement of freedom to require businesses to aid the promotion of ideas to which they conscientiously object. Discrimination against people should be unlawful but not against ideas." As I said, he was one of the organisers in the early 1970s of the first Gay Pride march in London, and you think about those times. Finally, a famous quote: "I disapprove of what you say but I will defend to the death your right to say it." At that point I make the amendment.

The Bailiff:

Is the amendment seconded? **[Seconded]** Does any Member wish to speak?

Deputy J.A. Martin:

I am not sure if I want to speak yet, I want to give notice to the Solicitor General. I would like some advice after re-studying the written words of the Attorney General through 22, 23 and 24. Am I reading this right, before we get into the debate, that if this tolerance clause was passed, it only has effect to the provider who is the owner, but the provider who is the owner, who may have no tolerance, can compel or instruct their employee to carry out the service? Or it may be an employee who does not agree with the tolerance clause but the employee holds the religious rights or thoughts, that the Deputy has been free to express and apply to those who have strong religious beliefs, but they are only the employee. If I am reading this right - I am asking for legal advice - is there no other law like our Employment Law, J.A.C.S. (Jersey Advisory and Conciliatory Service) that would protect an employee who says no? Because I would like that clarified. If it is short notice obviously the Solicitor General can do it somewhere along the debate but I think we need to know that there will be many people who will not be protected by this, if I am reading it right. So it is just notice. At the moment I do not intend to speak unless you make me or compel me to. **[Laughter]**

The Bailiff:

I will discriminate in your favour on that, Deputy. But who says no to what? What is the question to the Solicitor General?

Deputy J.A. Martin:

Well, the Deputy, in his speech, said it is human rights compliant and the Attorney General has given his comments. When you read 22, 23 and 24 of the Attorney General's comments I want to know if there is something that protects an employee under one of our other laws. It seems to be missing here but I do not know.

The Bailiff:

Protects the employee from what?

Deputy J.A. Martin:

To being compelled to carry out something that is against their deep religious beliefs.

The Bailiff:

I see. Thank you. When you are ready, Solicitor General. Now?

The Solicitor General:

No.

Deputy J.A.N. Le Fondré:

I do not know if I can help on that or not but ...

The Bailiff:

You will have a chance to answer later on. Does any Member wish to speak?

1.5.2 Senator A.K.F. Green:

I would like to start off positively by again thanking the panel for its work. I will be voting, and I urge Members to vote, to accept most of the panel's amendments as set out in their second amendment, except for paragraph (2) of their amendment which relates to their proposed Articles 7 and 7(a). I also urge Members to vote against their fifth amendment which relates to proposed

changes to Article 23. Before I explain why I will vote against them I think it might be helpful if I positively outline my reasons for accepting the other proposed amendments.

The Bailiff:

You are aware, are you not, that we are on the amendment to the amendment we are not on the amendment itself at the moment?

Senator A.K.F. Green:

Yes. The amendment to the amendment. Okay, Sir, I will just come back in a minute, if I may.

The Bailiff:

That is not entirely the purpose of Standing Orders, in fact it is rather against it.

Senator A.K.F. Green:

Okay, Sir, just give me 2 minutes to find my place, please.

Senator A.K.F. Green:

I have obviously got my running order slightly wrong there. I hope I am in the right place now because I think - please correct me if I am wrong - that we are talking about the amendment to the amendment which covers 7 and 7(a)?

The Bailiff:

Yes, 7 and 7(a).

Senator A.K.F. Green:

Okay. The panel referred to 7A as a tolerance clause but I do not see it as a tolerance clause. I would like to call it, trying to be respectful, a no compulsion clause as I think this more accurately reflects the title of the proposed Article 7A and its effect. It is not clear to me how Article 7A, as proposed, could be considered to engender tolerance. For the avoidance of doubt I do not support the panel's no compulsion clause either in its broad form, as set out in amendment 2, or its narrower form that they themselves propose as their amendment to the amendment. However, perhaps being accused of voting tactically, when asked to vote on the amended narrower clause I will - and this might surprise people - I urge Members to do the same. I will vote in favour of the narrower clause to the amendment, not because I support it but because I want to vote tactically to try and ensure that the broader no compulsion clause is defeated. Once the broader clause in its narrower form, if that is accepted by this Assembly, comes forward I will vote against the clause in total. I think that is all I have got to say about it at this stage. I would like to say a little bit more about, picking up on some of Deputy Le Fondré's comments, why I cannot support the compulsion clause. I cannot condone people being, as I see it, subject to discrimination and I am trying to be as respectful as possible in this. I know there are people in our community that believe that marriage can only ever be a union between a man and a woman and I respect their rights to hold that belief. In fact, indeed I will defend their right to hold those beliefs and to speak of those beliefs freely. But that is not the same as providing, in law, a right for them to discriminate against others. Much has been said about the no compulsion clause, that we have been presented with a range of examples as to why it is needed. But let us be very clear, most of those examples are erroneous. Anyone can legitimately and publicly state that they do not believe that same sex marriage is right or wrong; we do not need a compulsion clause for this. A person can wear a crucifix to work; we do not need a no compulsion clause for this. A religious organisation or official can refuse to marry a same sex couple; we do not need to have a new no compulsion clause for this. We have the quadruple lock, as Deputy Le Fondré referred to. A teacher, when talking about same sex marriage, can explain that there are polarised views; we

do not need a no compulsion clause for this. A student can post a blog denouncing same sex marriage and keep their place at university.

[11:15]

So, again, there is no need for a no compulsion clause. There are cases in the U.K. and elsewhere of people who have expressed their personal beliefs and have been wrongly dismissed from their jobs or marginalised in other ways, that is because the law there was poorly interpreted or misunderstood, not because the law is wrong in protecting all of us from discrimination. There is a simple litmus test: apply the proposed no compulsion clause to a black person, to a disabled person, to a woman. Would you accept it then? No. I think Members have told me, very clearly, no, and therefore, I call upon this Assembly to respectfully treat all people equally. To replace the panel's broad clause with the narrow clause then vote against it, throw it out. Thank you.

1.5.3 Deputy S.M. Brée of St. Clement:

The chairman of the Corporate Services Scrutiny Panel mentioned in his speech that the panel were not unanimous, he mentions it in the panel's report as well. I am vice-chairman of that panel. I was the one dissenting voice against the tolerance clause. I spent a lot of yesterday trying to write a speech and ended up with a lot of crumpled paper in a wastepaper bin. So I decided not to write a very clever speech calling on loads of evidence but felt it more important to speak from the heart and from my conscience, and explain the reasons why I fundamentally disagree with the so-called tolerance clause being extended to individuals and businesses. Before I do so I would like just to say I was brought up over here in a household that had very good Christian values. My father belongs to the Church of England, my mother was brought up a Methodist so it was quite a mixture going on. But I do remember 3 values being taught to me: love, tolerance of others and forgiveness. Now, if we look at the tolerance clause, what is at the heart of it? It is all about discrimination and we are suggesting that because a person holds a certain set of religious convictions or beliefs we should enshrine in law their right to discriminate against another section of society, purely on the base of their gender/sexual orientation. Now, that brings us to what is discrimination. It is a great shame that we, as a society, have to bring in discrimination laws because we should all be living together, respecting other people and not discriminating. But unfortunately, that is not human nature. There are groups of people, not only today but throughout history, who have sought to discriminate against another group. So what we, as a States Assembly and a Government, decided to do was to create a protected characteristic of your gender/sexual orientation that protected that group of people from discrimination. That is what it was intended to do, to recognise the failings, if you want, of human nature and to protect a group of people against open and very often violent discrimination. I support that. We should all support that because what other discrimination laws are we looking at? Race. We are talking about bringing in disability discrimination. As I said, it is a great shame that we have to do that but we recognise the problem and we are prepared to deal with it. So what this so-called tolerance clause, brought by the rest of the Corporate Services Scrutiny Panel, seeks to do is to allow one group of people to discriminate openly - and that is the point - openly against another. We know that in this society we live in there is a lot of discrimination still. Perhaps we do not see it, perhaps it is hidden but it exists. Now, at the moment people cannot openly discriminate against a protected characteristic. I respect entirely people's own religious beliefs and convictions and I will fight that they can have their own religious organisations, their own religious beliefs. But we are stepping across a line here which is about discrimination. I think we also have to think very carefully about what society do we want to live in. I have been a firm supporter of same sex marriage right from the word go. When I stood up on the hustings in the first place it was a very topical subject and my argument has always been if 2 people, irrespective of their sex or gender, love each other then they should be afforded exactly the same rights as any other member of the society we live in. The argument has been put that an individual or a business should be allowed to openly discriminate

because they hold certain religious convictions. If you set yourself up as a business and you promote yourself as a business, providing services to marriage ceremonies, receptions or parties to do with marriage, then to be allowed to discriminate against one group of people is wrong. You either say: "I do not do any weddings or receptions" or you say: "I do" because that is what your business is. I am afraid that I disagree with this view that it is okay because it is your religious conviction; it is okay because that is what I believe in. Well, being a student of history all one has to do is look back in history to go: "I believe in this therefore I can do this." We have to protect against any form of discrimination. This law is not trying to compel any religious organisation, any clergymen or any church to perform a same sex marriage, which I have to say I am not entirely happy with but I respect their views. They are protected under this. "The quadruple lock", as it is known, is giving them that protection. What the Corporate Services Scrutiny Panel, or should I say Corporate Services Scrutiny Panel minus me, is trying to do is to say we need to be able to extend that to followers of that religious organisation. So, outside of the church, outside of the protected environment, which this law is providing through the quadruple lock, the tolerance clause is designed to go: "It is all about freedom of speech, freedom of belief, freedom of conviction. I should be able to say and do anything I want because of my religious conviction." Has anybody, like me, thought how absolutely absurd that statement is? Everybody is entitled, by law, to have their own religious beliefs but it is when those spill out and cause discrimination against a minority in our society that we, as a Government, have to step in and go: "No, sorry, that is too far." We get to a stage whereby if we support Deputy Le Fondré, as chairman, and the rest of the Corporate Services Scrutiny Panel in their view that: "Oh, but it is okay because that is my religious conviction, that is my religious belief" I am very concerned that we are nibbling away, chipping away at the floodgate that holds back and protects against discrimination. I urge all Members of this Assembly to put aside their own religious beliefs, their own religious convictions or even their own moral beliefs and moral convictions. We are not here to impose a belief system on any member of this society. We are here to act in the best interests of the whole of society and to protect against open discrimination against a minority who are governed by, or covered, sorry, by this term "protected characteristic." I am very fearful that what we are talking about here and the, I am sure, many valid arguments that will be put forward about freedom of speech, freedom of belief is missing the point. The point is we cannot allow open discrimination against anybody to creep into our daily lives. Therefore, I urge Members to really search their hearts, to really search their conscience and go: "Would I be happy for my son or daughter" who may be gay, they may be, in the future, in a same sex relationship. "Would I be happy going with them to visit the baker" - we will use that example because it keeps coming up - "going to visit the baker who is still in business, who made the wedding cake for my wedding 5 years ago, with my son, going it was such a brilliant cake. Here is my son and his partner I would love you to make a cake for them." Then the man or woman who runs that business going: "No, I refuse to do it because it is a same sex marriage." But that person made a cake for my wedding, which, I hasten to add, was heterosexual. But the point is, are we prepared to allow that to happen? Are we really happy with that situation? I am not and I would hope that most sensible people who believe in love, tolerance and forgiveness, which I believe to be the 3 cornerstones of living a Christian life. Remember, to be a Christian to believe in God, you do not have to go to church. If you believe in those 3 things then you cannot support, I believe, the acceptance of any form of clause that allows open discrimination. Thank you.

[Approbation]

1.5.4 Deputy S.Y. Mézec:

I thought long and hard about how I should tone my remarks in this speech. I have been a supporter of L.G.B.T. rights my whole life and when I was first elected to this Assembly I put my neck on the line by making same sex marriage one of the first things that I sought to bring up in this Chamber.

[11:30]

I think that I have shown quite a reasonable amount of restraint when faced with some of the arguments against in the years following that. We have been asked, in this debate, to keep things respectful. I believe that the way you show respect is by telling the truth even if that truth is upsetting, and I warn Members and the public that some of what I may have to say, some may find upsetting but I will say it anyway because it is what I strongly believe. So let us be clear right from the very start of this debate that we are not debating a tolerance clause we are debating an intolerance clause because that is exactly what it promotes. We are debating rolling back the Anti-Discrimination Law, which we were already decades late in introducing, to allow a minority within a minority to persecute a group which has dealt with quite enough persecution over the centuries. We are debating whether we say to gay people in our community that when it comes to them, uniquely, that they cannot expect the States to protect them as consumers from discrimination because of what they are even though that protection applies to literally everybody else. I ask Members to consider what kind of message this would send out about how we value gay and lesbian people in our society. Imagine if this clause replaced the word “gay” with the words “black” or “Jewish” it would be absolutely unthinkable, yet somehow here we are anyway. There is no moral or legal justification for this clause whatsoever. I am astounded that the Scrutiny Panel has brought it to this Assembly on the flimsiest of grounds that some people out there want to have the right to discriminate so we have to at least have the debate. The vast majority of decent Islanders, and I will add to that the vast majority of decent Christian Islanders, who I have spoken to, are staggered that this has even been brought up here. I am confident that this will be resoundingly defeated in this Assembly today and we will regret the consternation that this will have unnecessarily caused and the bad publicity for the Island that this has already generated. Now, I do not want to get involved in name-calling, and we have been asked to be respectful in this debate, but I think we have to admit that it is difficult given what lies underneath this really. You have to ask yourself the question: what would it be which would motivate somebody to want to go out of their way to treat gay people unfavourably? What is it that really makes somebody want to do that? I am afraid that there can only be one reason. It is the belief that there is something wrong with being gay. Irrespective of what inspires that belief, that deep down is what it really is about. If you did not believe there was something wrong with being gay why would you want to discriminate against them? Some are saying that it is because they do not want to be compelled to act against their conscience. Well, I do not know about you but I always thought that your conscience was the thing inside you that tells you to be good to others and to feel bad when you are unkind to them. It does not tell you to treat others less favourably; that is the exact opposite of what your conscience is meant to do. Since the motivation for this is claimed to be religious I ask, whatever happened to do unto others as you would have them do unto you? This clause promotes the exact opposite behaviour. So, I think that deep down, for some of those who want this right to discriminate, it is because they think that gay relationships are not equal, that their relationships are not valid and some I have spoken to have said that they think gay relationships are unethical. “Unethical” is the word that has been used to me. These people regret the advances that we have made in recent years and what they want to do is hold on to whatever they can to legitimise their view that gay relationships are illegitimate. I am sorry if this upsets people but I think this perspective is sinister, it is weird, and frankly, it is creepy. But what we are asked to do in this debate is have respect for the differences in opinion on this; that is the politically correct line in this argument that we are asked to take. I do not agree with this and I am going to use a comparison to explain why. I am thinking of another group in our society who are treated unfavourably, who are looked down upon by most people in society and who would be limited in their job options because of how they are. I am talking about flat-earthers, people who believe the world is flat. Now these people genuinely exist. They do exist out there, they have their organisations and societies and presumably they hold that view sincerely and honestly. It must be very difficult being a flat-earther because nobody treats you seriously, you are ridiculed in almost every circle and you would be prevented from sharing that perspective you have in schools and the like. That must be very sad and upsetting to be in that

situation. But they are wrong. The world is not flat and we do not have a duty to respect that belief, nor do we have to tolerate it as some sort of legitimate perspective in intellectual discourse and accommodate it by carving all sorts of opt-outs for them. The view is wrong and it is harmful and we do not legislate for them to be protected in this view. I see this as exactly the same. If you believe that there is something unnatural about being gay, you are wrong. If you believe that being gay is a choice, you are wrong. If you believe that there is something unethical about gay relationships, you are wrong. To those who have not quite got the memo on this yet, I am afraid that they are just going to have to get over it sooner or later. For their sake I hope it is sooner rather than later. The right of gay people to live their lives and be happy comes above the right of people to discriminate, to try to impose their religious doctrine on others when they are just wrong. There is a reason why I am so unequivocal about this point and I think this is really important. There is a reason why I am not prepared to say that we should tolerate these views about gay people and it is this: out there in our Island many of our constituents - people potentially of all ages but some of them young - will right now be coming to terms with who they are, they will be discovering that there is something different about the way they are. Some of them will probably be quite scared about coming out and will be struggling with that because they might have intolerant relatives who they believe will make their life hard. They might be worried about being treated unfairly or facing prejudice throughout their life. Of this group of people a disproportionate amount of them will face mental health struggles at some point in their life because of this. Those people do not need this debate, they do not need this fixation on them and questions still being raised about whether they are normal or not. I think the least that they should expect is that their politicians will work to make their lives better, to know that we accept them for who they are and we want them to thrive. They deserve to know that we are on their side and not on the side of people who want to treat them unfairly and make their lives more difficult. That is what this debate really is all about: the sheer amount of energy that has gone into putting a co-ordinated political campaign all for the aim of enshrining discrimination in Island life. Are there not better things to be dedicating yourself to? This is what I find most depressing about all of this. Jersey has, as we know, appalling levels of poverty and this Assembly, and again Members will not like hearing it, but this Assembly has regularly made decisions which were obviously going to exacerbate the problems of poverty. Where were these people then? Why were our email inboxes not packed to the brim full of people motivated to say: "No, we oppose this because of what we believe, about how we believe in equality, about how we believe in loving our neighbours and we believe in striving for a fairer society. What has motivated a self-interested group who are more interested in protecting their club from being forced to join the 21st century than use their political weight for the betterment of the Island?" I think that is such a shame and I hope that when this Assembly deals with this issue, as it will, that these people will have to provide services for gay people, and when forced to do so they will very quickly realise that these people are completely ordinary. There is nothing wrong with them. That experience will make them realise this and in 50 years' time we will look back on this and we will wonder, what was the fuss all about. I ask Members to consign this intolerance clause to the scrap heap where it belongs. Thank you. **[Approbation]**

1.5.5 Deputy K.C. Lewis of St. Saviour:

I was not going to speak on this debate but I am prompted to speak. My colleague on the panel had a momentary lapse in memory. While I will be supporting most of the amendments, I have made it abundantly clear to all panel members I will not be supporting the tolerance clause. I just needed to clarify that. Thank you.

1.5.6 Connétable S.A. Le Sueur-Rennard of St. Saviour:

Sorry to trouble you. I am just a little bit confused because I am hoping that this law is for same sex people and everybody who wants to have ... if it is a general law to cover everything, does that mean that Sharia law, whatever they call it, can be brought in and we cannot do anything against that

because that would alter my vote utterly and completely. This is purely for our community here and same sex marriage and that will ... I want some reassurance that that law, if it does and it is here, that if it was to be raised and if we cannot object to it then I am going to have to think very hard about my next vote. So I need to know that if that law is brought here or somebody does contest the law, they are not going to be held discriminating against, please. Could the Attorney General help me with this one? Sorry, no, he cannot help me with that one either. I am getting ... what is going through this morning, I do not mean to be disrespectful and I have some gay unions and most of my friends are gay - I think it is something to do with the theatre - but they are and I love it. **[Laughter]** No, it is not a laughing matter, they are fabulous and they supported me through a lot of the troubles that I have been through. I have gender reassignment people that I know and love. But this law is worrying me and we are getting so deep that at the end of it I feel like I need a guide dog and a stick.

The Bailiff:

Connétable, if there is a specific question you want to ask the Solicitor General then please do so.

The Connétable of St. Saviour:

Yes, I would like to know, if we are voting on this is it purely for what we are discussing or if someone was to bring in the Sharia law can I say I do not like it? Sorry, if somebody brings in the law or if I object to it am I being intolerant to their beliefs, please?

The Bailiff:

If you object to what?

The Connétable of St. Saviour:

If I object to the Sharia law.

The Bailiff:

The Sharia law.

The Connétable of St. Saviour:

No, I know this is not Sharia law but we are making a discrimination law come through and I need to know if that can be implemented into what is being said.

The Bailiff:

The Solicitor General would no doubt be able to answer that issue. Deputy Tadier.

Deputy M. Tadier:

I want to speak to the amendment 3 as I think that is what we are discussing at the moment as being proposed by the Deputy Chief Minister, to do with the fairly narrow issue of religious premises and clearly ...

The Bailiff:

No, we are not on that.

Deputy M. Tadier:

Can you remind me, Sir?

The Bailiff:

We are on the panel's amendment to its own amendment. Do you wish to speak on that?

Deputy M. Tadier:

Can I put my name back then? I will not speak at the moment but I reserve the right to speak, if that is all right.

1.5.7 The Connétable of St. John:

“Every time a law is made someone somewhere loses a little bit of freedom.” That is not my quote it is a quote from somebody significantly more intelligent than myself. But I think it deserves being repeated. “Every time a law is passed someone somewhere loses some freedom.” One could almost say that this Assembly is here to keep reducing the freedom of people because that is what we do, is create laws. I looked up the Human Rights Law, read it through, and it all seemed quite reasonable.

[11:45]

Every person has a human right to be treated equally, and I agree with that. Every person has a human right to obey their conscience and to follow a religion of their choice, and I agree with that. There lies the difficulty because that, in itself, is a contradiction. How can you follow your own conscience and treat everyone equally? This is where creating laws has created contradictions and has resulted in everyone, every single member of society, losing a little bit of freedom. I hope nobody ever accuses me of being intolerant or in any way discriminatory, because I hope I am not that type of person. I do not intentionally at any time act in a discriminatory manner. I am delighted that at long last a section of our community can enjoy the freedoms of getting married and living life as they wish. I welcome that. Many years ago I remember watching television with my father when Scargill was on. This was at a time when the U.K., when I was at school there, were having compulsory power cuts. Electricity was rationed and 4 hours a day of electricity was all you were allowed because there was no coal to power the power stations and generate that electricity. Arthur Scargill was being questioned: “Why are you holding the country to ransom?” “I have got my rights and I have a right to strike.” My father stood up, pointed at the television and walked out of the room saying: “What about your responsibilities?” This is an extremely important action and I liken it almost to Sir Isaac Newton: “Every force has an equal and opposite reaction.” If you have a human right, you have a human responsibility. How might one define that responsibility? I think the easiest way is: “Love thy neighbour as thyself” or put in a slightly different way: “Respect your neighbour as you wish to be respected yourself.” Some years ago - and I cannot remember the details and I have not been able to find them - a former Constable of St. Helier enforced that everybody walking in town should wear a shirt because men were walking around topless. Again, that was not a matter of intolerance towards men who had just come off the beach, it was tolerance towards everyone else. Treat others as you would wish to be treated yourself. Do not impose yourself in a way that others might find offensive, whether it is wearing a t-shirt, whether it is something you do. We have a right to follow our conscience and I think where we have intolerance is the way in which we put ourselves over. If the shopkeeper - which is the classic example - who is baking a cake shouts out: “No, get out of my shop” that behaviour can never been accepted in any form of society. But if he were to say: “Sorry, with respect, that does offend me” then he gets sued. But he should be allowed to say: “Sorry, I find that offensive, but would you go and see so-and-so?” and put them on to another store, shop. There is of course a very dangerous side to this. What if the shopkeeper says: “Yes, okay, I will bake you a cake” and he fills the cake with pepper or chilli and then gets a brick thrown through his window? We have a danger here of escalating friction within society. I was also taught when I was at school, because there was a big sign on the wall: “You cannot learn or hear when you are talking.” Thank you.

The Bailiff:

Deputy Norton. I am sorry, I thought you were finished.

The Connétable of St. John:

Sorry, I was not finished, I was just ...

The Bailiff:

I thought it was quite an abrupt end.

The Connétable of St. John:

I was thanking those people who were taking notice of the notice that was on the wall when I was at school. I shall be supporting the so-called tolerance clause. The reason for that is because the number of people who have contacted me, not by email, but have taken the trouble to come and talk to me, have asked me to do so. These people are ordinary, everyday folk. As I said at the start of my speech - and I will go back to it - we are here to decide who we are going to discriminate against, because one guaranteed thing that is going to happen today is members of society will be discriminated against. We, as an Assembly, have a simple choice: are we going to discriminate against one group or are we going to discriminate against another who follow their conscience? That is the simple choice that we have today. I shall be supporting those with a conscience and I would ask other Members to think about it and to do the same.

Deputy L.M.C. Doublet:

Could I ask a question of the S.G. (Solicitor General) which relates to that speech?

The Bailiff:

You are able to ask a question of the S.G. about a speech and he will log it with the other questions and no doubt speak later.

Deputy L.M.C. Doublet:

I just wanted to know, because some Members are discussing freedom of thought and belief and freedom of speech. Does the proposed law prohibit anybody from holding any beliefs or from expressing them respectfully while still providing a service? The example that the Connétable just gave of could a business owner say: "I respectfully disagree with the practice of equal marriage, but I am still going to provide you with the wedding cake" is that still allowed under the laws?

Deputy M. Tadier:

I have a question for the Solicitor General, if that is all right. I do not need it answered straight away, but to add to the list. I am sure he will have to answer them at some point, the Solicitor General. It is just to say that if the Corporate Services Scrutiny Panel are successful in their amendment, it seems to be couched insofar as it would only apply to those who turn away business on religious grounds because of religious beliefs, but of course how would we know under the law whether or not somebody has those convictions as a religious belief or as a non-religious moral belief? Is there a difference under the law and could they not simply say: "This is a religious belief" when it might just be a moral belief?

The Bailiff:

Are you ready to deal with all the questions now, Solicitor General?

The Solicitor General:

I can deal, I think, with most of them. As regards Deputy Martin's question in relation to employers and employees, as I understood that, was there anything in the law which would protect an employee from providing goods or services in relation to a same sex or an acquired gender marriage. The answer to that is if the tolerance clause is not passed or the conscience clause is not passed by the Assembly today, as regards any public law right of an employee in those circumstances, they would not be protected, because as the Attorney General's advice has dealt with it, in fact in paragraph 21, for the purposes of the Discrimination (Jersey) Law 2013, that law looks at an employer and an employee differently. The prohibited conduct, which is in Article 22 of the Discrimination (Jersey)

Law, as regards not discriminating on the grounds of goods and services is directed at a person which is a natural or a legal person. That might be a sole trader or it might be a company or it might be a partnership, but when one looks at it in an employer and employee relationship, Article 22 is biting on the contractual relationship with regards to the provision of goods and services or facilities. It is not really looking at it from the point of view of employer and employee. The short answer to Deputy Martin's question is there would not be a protection for an employee who is given a lawful instruction by their employer to provide goods and services - it might be haircuts, it might be cakes - to a same sex or an acquired gender marriage. That is the public law position. There might be some private law rights which have been contractually agreed as between the employer and employee, so it would be open to an employer to have a policy or expressly written into the terms and conditions of the contract of employment as regards what they do in relation to same sex or acquired gender marriages. There is a potential protection there, but that would be a private contractual matter as between employer and employee. As regards the Constable of St. Saviour's question in relation to Sharia law, the law that we are debating today has, in my respectful submission, nothing to do with the introduction of Sharia law in Jersey. Sharia law is a much wider concept than just marriage and this law is dealing with marriage and same sex, acquired gender marriage and various other provisions as regards requirements for registering marriage and so on. This law has got nothing to do with the introduction of Sharia law in Jersey, but if it assists, an Islamic official who is officiating at an Islamic ceremony of marriage would be protected under the quadruple lock provisions, which are in the draft law. I am just looking at Deputy Doublet's question, which was in relation to whether or not it would be open to a person who is providing goods and services, where they are approached by a same sex or acquired gender couple who are getting married, whether it would be open to them to say: "I respectfully disagree with same sex or acquired gender marriage, but I will go ahead and provide the services nevertheless." In my view, there is nothing to stop a supplier of goods and services saying that, providing of course it is couched in respectful language and not in a way that is seen in some way as abusive or could cause offence.

[12:00]

In relation to Deputy Tadier's question, I would respectfully ask him to repeat the question, because I did not get a note of it.

Deputy M. Tadier:

I am happy to do that. Essentially it relates to first of all the effective interpretation of this amendment, were it to go through. Is it the case that this would only apply to people with a religious conscientious objection? If that were the case, what is to stop someone who has a moral obligation but not necessarily a religious conviction and all the potential complications that arise from that?

The Bailiff:

I thought it was how do you prove it. Was that not your question as well?

Deputy M. Tadier:

Essentially, Sir, yes.

The Solicitor General:

The Corporate Services Scrutiny Panel's amendment is couched in terms as referring to religious belief, conviction. If it were to come before a court, the refusal to provide goods or services, it would be a matter of fact for the court to decide on the basis of evidence as to whether or not the objection was based on religious conviction or for some other reason. It would be a question for the court to decide essentially what is a religion. That is a matter of fact for the court to determine. There was a recent case in the U.K. Supreme Court, where a definition was attempted of what is a religion. That may well be of assistance to a Jersey court faced with similar circumstances, but it is essentially a

question of fact to be decided, as this would be a civil matter, on the balance of probabilities. I hope that assists.

Deputy M. Tadier:

A supplementary. When one has defined a list of what a valid religion is, how does one decide whether the person who may have infringed this law is an adherent of that religion, given the fact that, as my colleague in front said, one does not have to go to church to be a Christian?

The Solicitor General:

The burden would be on that person seeking to establish that they were motivated by a religious conviction. They would have to bring evidence concerning the way that they conduct their lives in order to satisfy the court as to whether or not they were in fact motivated by religious convictions or for some other reasons. The person would very likely have to give evidence in the witness box and be cross-examined by the other party in order to establish, as a matter of fact, whether that particular defence is made out.

The Bailiff:

Is that a further question, Deputy Martin, for the Solicitor General, or ...

Deputy J.A. Martin:

Sorry, Sir, I was just waiting.

The Bailiff:

It is not your turn yet, but it will be shortly.

Deputy M.J. Norton of St. Brelade:

Are you sure, Sir?

The Bailiff:

Yes, I think I am quite sure.

1.5.8 Deputy M.J. Norton:

It has been a funny old week, because of the amount of people that have engaged with us by one form or another; unusual, I think. I have been both saddened and outraged by some of the communications that I have received, respectfully done in some cases, not respectfully in others, on both sides of this argument. Some of those people have said: "Yes, but I do have nothing against anybody who is gay, but we should not really give them any rights, should we? I do not agree with them being married. Not that I am discriminating against them, of course." I have been outraged at times; I have been saddened at times. I did see on social media a letter from the Jersey Evangelical Alliance, with their recommendations, thankfully all of which were not brought forward by the Scrutiny Panel and their amendment. I was certainly outraged by some of their suggestions, which ranged into employment and the right not to be able to employ somebody who was gay, which I was absolutely astonished at. I was also heartened and uplifted by some of the messages and communication that I got because they contained love, compassion, caring, all of the things that you would expect from a decent society, be it Christian or otherwise. Overall, I was heartened by the interest and the engagement, as I mentioned, but what of this amendment and what of the damage that it has caused? On the outset of where we are right now, nobody is winning, nobody will win and the damage will go to everyone. The amount of times I have heard people say: "If that is the way the church feels, you know what the church can do. If that is the way Christians believe and behave, then I do not want to be one." I am saddened by that, because there is damage to our churches because of what has been said in the last week. Then there are the concerns this week from those within our L.G.B.T. community, who have

had really genuine concerns that they are being singled out, that they are being made the exception. They have had those concerns all week and they have been worried: deep concerns. They have had damage too. Then there is our Island, as an island, and the damage to our Island from those who have heard that we are even considering debating this. The amount of emails, the amount of social media, the amount of personal messages that I have had from people across the world who have said to me: "What on earth are you thinking of?" I know that Deputy Le Fondré will say it is right that we have this debate. Like the good Connétable of St. Saviour only a couple of days ago, I think what I have to do is look at the glass half full, not half empty, and look at the positives that can come from this debate and from hopefully this decision today, and I emphasise today. We can repair some of that damage. In fact, we can repair pretty much all of that damage if we really want to. Let a message go out that we will not stand with discrimination, let a message go out that we just will not stand for it, that we believe in an inclusive community of equality. It is a pleasure to have followed speeches that covered much of what I was going to say from Deputy Brée, Mézec and others. Let us look for some tolerance, not some intolerance. Let us look for diversity, not to be divided, and let us look for acceptance, not for exceptions. I implore Members to throw out this so-called - ironically called - tolerance clause, because it is ironic, it is nothing but intolerance and not to accept it. Let us get back to repairing and showing the rest of the world what kind of community we really are.

1.5.9 Deputy G.P. Southern of St. Helier:

I rise to speak feeling rather sorry for Deputy Le Fondré, because he has fallen into what I think is one of the classic traps of Scrutiny. When I am running Scrutiny, if we cannot agree on something, we go back to it necessarily time and time again until we find a form of words that we can agree on. Sometimes that is a mere matter of saying: "Have we got the evidence to say we must do this or we should do this or we may do this?" We will go back to it, find the form of words that everybody is happy with and then we know. The key question is: "Do we have the right level of evidence to back this up?" If the answer is yes and we can agree something, that is fine, we go ahead. We do not bring something - I have never brought something - where the panel has been split. If it splits, it suggests you have not done enough work on it. The key to decent Scrutiny work is always, in my case, take the opposition head off and put the Scrutiny head on, where I am solely interested in evidence. Now, poor old Deputy Le Fondré has not just had to take off his opposition head, but he has had to look around his deeply-held convictions, his own belief system, I think, with the result that I do not believe that this proposition should be coming with the backing of a Scrutiny Panel. It should not be a Scrutiny agenda, it should be a Back-Bench agenda where Deputy Le Fondré is pursuing his own personal agenda and it should be in his name and not in the name of Scrutiny, because I think that ultimately brings Scrutiny into some disrespect. I felt sorry for him again as he was introducing this, with his continued reference to Canon Law. For me, that made me think: "Hang on a minute, at one stage, when was it, 400 years, 500 years ago, the church wrote the law. It was the law." Things have changed, Deputy Le Fondré. The church no longer writes the law, we write the law and we have a discrimination law to protect people from what I would call ... it is called a tolerance clause; it is a charter for bigotry is what it is. Having said that, I was thinking: "What is the analogy that I need? What did the church used to do, but it no longer does because it has become more civilised, more humane?" There are all sorts of things we could have picked on: its treatment of women, still lacking in some cases. We have not had a woman Pope yet, I am afraid, although no doubt we will at some stage in the future. I am just about to get on to burning. It used to be that the Catholics used to regularly burn the Church of England people and *vice versa*. For people like me, 400, 500 years ago, stuck in the middle as a devout atheist, I would be likely to be on both the funeral pyres. They would probably still be fighting over it: "That is a Catholic funeral pyre." "No, it is not, it is Church of England." Thankfully we have moved on from those days and I am not threatened by being burnt at the stake. Then I thought: "Yes, but until 50, 60 years ago, gay people could feel exactly that threatened." They were threatened. They would be beaten up on the street, they would

be attacked, they would be condemned, in some cases by the church. Again, we have moved on. I found it deeply ironic that the proposer, Deputy Le Fondré, kept referring to some form of retraining, if that was a threat, the Mao style retraining that we are going to have to do, that might take place in order to resolve this issue. The fact is that what we have here is again an argument that was explored hundreds of years ago. It is Swiftian, is it not? What we are in is an argument, an intense argument, between the Big Enders and the Little Enders. It does not really matter, but what does matter is that this body takes hold of the law and treats its citizens, all of them, in as fair a way as possible.

[12:15]

This tolerance clause is an intolerance clause. It does the exact opposite.

1.5.10 Deputy J.A. Martin:

I thank the Solicitor General for his advice, which confirmed the way I had read this law. As many have said, we have all been contacted across the last few days and weeks about this so-called tolerance law. The more I have read from the people who are urging me to support, it was defending the right of the shopkeeper, where you get your wedding dress and the person who owns the company. I listened again to what Deputy Le Fondré and he said it is small employers who absolutely do not want to give their service because it is to do with a same sex marriage. Then I read the words of the Attorney General. This amendment just gets worse and worse and worse. I have to read out to you part 22. It says: "The effect of these provisions [this is the Attorney General's words] of the 2013 Law is to place the compliance obligation of non-discrimination on the employer and not in those cases the employee. The effect of the panel's draft Article 7(a) of the 2001 Law and new Article 24(a) of the 2013 Law is to remove the compulsion on the provider of the service not to discriminate." This law in itself divides: "Having removed the compulsion on the service provider" the owner, that is my words: "the provider" if we pass this today: "can lawfully instruct their employee to provide or not provide the service which would amount to participating in same sex marriage." This makes it even worse. You go back to the simple argument of the Constable of St. John, where the same sex person goes to the baker and says: "I want a cake." It does not matter which way the owner of the cake shop says he is not going to provide that cake, it does not matter if he says it politely, if he says it rudely. You pass this law today, he can say to any of his employees: "I am not baking this cake. Lawfully, I am not, but you are." As Deputy Le Fondré keeps telling us, and I will quote, because he said it about 5 times and I wrote it down: "Free speech must apply to all those who hold strong religious beliefs." But I imagine not if you are the employee of these companies, a small hairdresser who is going to provide the hair and beauty on the morning of the wedding, the coach driver who is going from the venue to Gorey and back, and he says on the day: "Boss, I cannot drive these people. I have just found out it is a same sex wedding." It could be he might agree with the tolerance clause, he might not. He is the employer and he is taking the money, so he is saying to the employee: "Oh yes, you are." The Solicitor General has already said there is nothing in our other law, roll-up to a judge and say: "I have been providing this service for these people, the hairdressers, for the last 20 years, but on this morning I walk in and I find out it is 2 women getting married and I am not, so I tell my employer I am not and she says: 'You are.'" Because we, if we pass this law, are making that lawful. Maybe they are not all religious who have written to us and said: "Please, please, please support this intolerance law, because you cannot compel people to do what they do not want to do because of their strongly held beliefs." But they are forgetting the majority of society, who are the employees. I cannot believe this law was able to be constructed how it is, with the other laws that I have fought for in the many years. I can look around many years, I have been here quite a few years, the Employment (Jersey) Law and now the Discrimination. I cannot believe that this then even gets smaller, but then Deputy Le Fondré's interpretation is small. What if we found out tomorrow, if we pass this in law in Jersey, that one of the massive chains - I will not say a name, but say a big chemist chain or a big provider - and the

boss of that company wanted to uptake our tolerance law, so everybody in that company cannot provide a service? The way I read this, and literally I bow to the Solicitor General, they could then instruct their employee in a massive chain and would that not look lovely? It does not work anywhere else, but in Jersey this big chain, because the main man or woman or the owner does not agree or holds these strong religious beliefs against same sex marriage, has now told all the employees in that particular branch in Jersey, only Jersey. I can see that on every national newspaper and rightly so. This is the law. It is divisive in itself. It is not acceptable, but when you make what I call a rich man's discrimination law - the owner of a business law - it has no consideration for what the employee must do and it absolutely can compel. It is even worse that the person can say no, but they might say to the manager of their business ... I know I am re-emphasising this, because this is how bad the law is. They may walk away, they go away for the weekend and they will leave everything in charge to the manager, who may still hold those same beliefs. It could be a family business. The owner could be your brother, but they are covered by the law if you bring this in and the manager is not. It is absolutely discrimination in the law as well. For one, when I read it, and it is not my words, this is what the Corporate Services Panel produced to States Members: this does not - and a big capital not - extend to employees of organisations, so you are an employee and you have these beliefs. It does not make sense to me. I could say much more, others have covered other points, but I cannot believe that we would allow something to go through where we would let somebody opt out, the employer to then compel - and the word is "compel" - their employees to do something that they may not. As I say, I disagree with the whole of it, but when you look at where the law could go, the Solicitor General said when he was answering my question, it could be covered. I just want to cover this. It could be covered by an employer/employee agreement that you have, but he is coming from the point, I think, that the employer would be: "I am going to opt out." What if the employees are the people who have the strong belief but the employer does not? The employer is fine. As Deputy Brée says, he is providing a service for weddings and he will provide that service to anyone. You are not going to then get that employee to give you a write-out clause. It just would not work and why should it? This tolerance law clause to me makes this worse, but when you read what the difference is between a business owner and the people they are employing with the same consciences, the same rights, it does not work. To me, I am not going to support it. I would not support it anyway, but when you drill down, it is a device of discriminatory law within a divisive discriminatory law, to give a few rights to a few people, for what reason, I have no idea.

1.5.11 Deputy R.J. Renouf of St. Ouen:

I think the first thing to say is oh, how I wish - and I think many of us would wish - we would have had a calmer debate with much more time to look at these issues. It is a matter of regret to me that the Scrutiny Panel could only begin its work on 25th November and this debate had to take place very rapidly after that, because this is an issue which is being discussed in many jurisdictions and it is an issue which affects large numbers of people. It is highly complex and difficult. What it seems we have seen is that there was an initial consultation process, but then the law drafting work began in earnest and seemed to take an age. That was all done within departmental walls and then suddenly the final draft is released and then people have to respond to what has been fixed and finalised and lodged. Would it not have been better if Scrutiny and the society in general could have got involved sooner to talk about how we make this balance, how we try to accommodate, to what extent could we accommodate differing views in the law drafting process? As a general point, this just shows, I believe, how we must make better our legislative scrutiny and the way we bring these laws of great import. But we are in this situation where tensions are high and the risk is there is a lot of misunderstanding around. I think there is a feeling that the church or some members of churches are being extremist and unnecessarily alarmist, indeed rather bonkers. Why are they insisting on these antiquated rights, in the view of some? But I think we must ask: why might a person of faith not wish to participate in a same sex marriage out of conviction? I think it is because a person of faith

has chosen a framework in which they choose to live their lives. Other people have called it a belief system, but it is not their own, it is nothing they have fabricated for themselves. In the Christian context, it is a framework of belief that has endured for 20 centuries. It is shared with millions of people who are alive today and others who have lived throughout history in the past, and moreover, is shared in every part of the globe. That framework of belief is put together by biblical teaching and theology, but their faith is also a personal experience. It is not just adherence to a set of rules which you are bound to follow, it is a choice, it is a personal experience. Those people of faith have recognised a spiritual dimension in life and they have chosen to respond to that spiritual dimension - their choice, but a choice that has been built upon, that has been available, that has been grown over centuries. Then it has to be acknowledged in the Christian church there are differences and those differences are often very difficult to work through. As a general rule, I think, and in the spirit of humility, the Christian denominations or groupings recognise that no one grouping has the complete entire revelation of all things spiritual. We have to listen to each other, we have to learn and recognise that sometimes faith can be a journey.

[12:30]

It can be a journey for the churches as institutions as well as individuals who progress a faith and that is the reason why some churches and some individuals are able to accept same sex marriage and others are not able to, but all will hold their faith sincerely, because their testimony is that their faith has changed their lives and their framework of belief guides their daily living. In the case of Christian marriage, it is very often fundamental to many believers, because it is the Bible that gives directly Christ's teaching on marriage. Marriage of course is a most intimate and profound and long-lasting relationship. Many Christians will see it as a reflection of God's own relationship with humankind. I believe most Christians will accept that same sex couples should be free to live within loving, positive relationships, but for some people of faith, calling those relationships marriage does genuinely hurt the values that they hold deeply. The situation has arisen that for centuries the States view, the States definition of marriage aligned with the religious and the Christian interpretation of marriage. Very recently that has diverged, so that now the States, our States, legislatures in many other places, are saying that marriage goes beyond the purely Christian view of marriage. Of course legislatures, civil society is free to do that, but let us recognise that that has only recently happened and let us recognise that people who hold sincere convictions can find that difficult, to move at the same sort of speed that others have found they are capable of, and to move in a way that is contrary to their religious belief. It might be said: "Fine, hold your religious beliefs, but keep that view in private." The difficulty is here Christians and people of faith are part of society and they are engaging and many of them are providing a service, but should they be asked to leave their faith behind the door of their homes? I think the difficulty is faith, if it is to be real, has got to pervade all aspects of their life. The Solicitor General, in responding just now, said if you wanted to prove a faith you would have to bring forward evidence of how you live. Their faith would pervade the jobs they do, the businesses they run. The freedom of religion which is granted by the European Court of Human Rights or the European Convention, it is not limited to a freedom to hold a belief, but also the freedom to live your life according to that belief. What we are discussing here today is certain clauses which are limited in application, because they might allow certain people of faith to choose to not participate in a marriage, limited to that, because that marriage genuinely hurts their sincere convictions. The rationale is that perhaps people should not be compelled to provide that service in a way that requires them to act in violation of their deeply-held convictions. That can be seen - and I understand how that can be seen - as discrimination against a same sex couple, but it is easy to rush to that view, I think, or a view that it is homophobic. I think we should consider why these people would choose to do that, because it seems to me the discrimination that exists is not directed towards the people, they are seeking to hold to the values which guide their lives. There is a conflict there, because the people they are engaging withhold other values. What are we to do? Must we enforce a uniformity or is

there a way of holding in tension differing views, genuine views, but differing? They are not the sort of views that might be held by flat-earthers, they are not views that can be rejected as quirky or off-beam or unreasonable. In fact, they are the doctrine of the established church and they are the doctrine of other churches, but they have been widely accepted as the normal views of right-thinking people for generations, up to very recent times. They are still views that are shared by millions of people worldwide and indeed across religions. For those reasons, I think declining to participate in a same sex marriage cannot be well compared with say racial discrimination, because ... no, it cannot be, because there is no recognised belief system that advocates discrimination on the grounds of race. There are not. You think of the Islamic world, which there are British people who are Muslims, there are African people who are Muslims. As far as I am aware, and I am no theologian and I am no great expert on worldwide religions, but you can adhere to a religion wherever you live. There is no recent large body of opinion which says that there should be discrimination on the grounds of race. There are some things that are settled, but when it comes to same sex marriage, let us quite frankly admit that it is controversial. It is the law of the land, that is accepted, but to require people in their conscience to accept it is another thing. If there is a view that people of faith just need to wake up to the modern world, consider that it is only, I think, in the last 6 or 7 years that same sex marriage has been on the mainstream agenda. It was David Cameron, was it not, who suddenly out of the blue one day announced that this was going to be the policy that his Government wanted to pursue. That is fine, he can do that, but there was no public debate about it. There was no doubt debate within a particular community, but there was not a public debate. That occurred afterwards, as the legislation was being put forward. If there is a view that people of faith have got to be ready to abandon their belief and join the mainstream, would it not even be reasonable to give those people time to make a change in their conscience, a change from an established position of centuries of societal thinking? Instead there seems to be an insistence that they must pulverise their conscience in order that we can all move at once to new ways of thinking. Would it be an act of discrimination to decline to participate in same sex marriages? Of course it would be if we choose to legislate that way, but what is the true nature of what is being asked for here? What is being asked for is the facility to be able to differ from your fellow citizens. In a free society, surely that must be right, to express those differing views, and surely we must all be able to respect difference in our common life. We should value and we should protect the freedoms of people to say things and to act according to their beliefs, even if they challenge us or even if they make us uncomfortable. I am reminded of Deputy Tadier's speech yesterday about needing to hear things that are uncomfortable sometimes, but valuing people's rights and freedom to hold those views and act accordingly. Is that not the purpose of systems of law and Government, to take account of tensions between different world views and attempt to arrive at solutions that accept differences in society and still allow society to function well? What may be happening now is that a law may be compelling unwilling people to participate in a procedure which can be seen as one value system dictating to another how they can operate. Is it not right we should strive to achieve some sort of balance or call it tolerance? It is not about agreeing or even accepting the views of people of faith, but ensure there is space for those views. If the choice is made to enforce conformity, that we must all accept the idea of same sex marriage and compel people to act in a way which violates sincerely held views, we can do that, but I think we would be weaker as a society if we did that. Surely, we would be a stronger and a freer society if we could acknowledge there are competing views, competing views of what good is, what is the best way for us to live our lives? I would certainly not, as Deputy Southern has done, say this discussion should never have been brought, it is wrong for Scrutiny to highlight the fact that there are differing views and people are upset at what a law is proposing. That should never be the case. We should be free to discuss uncomfortable views. Thank you to the Scrutiny Panel for allowing us to debate this, but the amendment, it seems to me the best that we have in the woefully short time that is available. There perhaps could have been other ways of thinking this through, of proceeding with this debate. There might have been other solutions and I think there have been. Deputy Martin has spoken about the

employment situation. That has not been considered in the draft law or by Scrutiny, it seems. Scrutiny certainly have not had time to think about that, but it could have been thought of. There are perhaps issues surrounding employment. This is a very limited amendment. It is perhaps an indication, if we were to support it, that this Assembly recognises that there is room for difference and that we must be able to accommodate people who wish to act reasonably, according to their belief, rather than insisting that we all move to share the same world view or else we must all suffer the consequences. I will not be too much longer, I am coming to the end, but I do not want our society in this lovely Island - a peaceful, tolerant, liberal democracy - to move to a situation where people will feel that they are pushed out of public life unless they sign up to a uniformity, they have to believe this, they have to approve the other, they have to act in a certain way, otherwise you cannot take your place in public life.

[12:45]

I would hope there would be some way, and therefore I am going to support this amendment, because it is frankly the best that has come up in the time. But if Members believe this amendment should not be approved, then I hope they will inform the Assembly what protection would they want to give to people who cannot make that change because of sincere convictions? I understand in the U.K. faith is featured in the Equality Act. There are some protections, however inadequate. The Scrutiny report talks about the principle of reasonable accommodation of faith, which has been accepted and incorporated as a principle in some, but there has been, it seems, no time to consider that and I do not know much about it and I regret I have not allowed myself time to look up how we might do things differently. But what protection can we give for sincerely-held religious views? If Members do not believe there should be any protection at all for the way people of faith might wish to live their lives, then I hope they will say precisely why not give that protection and whether the consequences of that matter to them.

The Bailiff:

Senator, I was wondering whether you would call for the adjournment. Senator Ozouf is next in line. I was wondering ...

Senator P.F. Routier:

He had just indicated he had 2 minutes to speak but I do not know whether he is capable of that.

LUNCHEON ADJOURNMENT PROPOSED

Senator P.F.C. Ozouf:

I was going to propose the adjournment, Sir, and I was just going to say 2 things before that, but I am next to speak, am I?

The Bailiff:

You are next to speak, Senator, but I am sure you ...

Senator P.F.C. Ozouf:

Okay, fine. Then I propose the adjournment.

The Bailiff:

The adjournment is proposed. We will reconvene at 2.15 p.m. this afternoon.

[12:47]

LUNCHEON ADJOURNMENT

[14:18]

The Bailiff:

We resume the debate if Members would like to be a little bit quieter on the right-hand side of the Chamber. I call on Senator Ozouf to speak.

1.5.12 Senator P.F.C. Ozouf:

I wish we were not having this particular amendment to debate, an attempt to - in my view - limit the damage on an amendment and I do not think that it would be my hope that we would be having this debate on these amendments at all. Before rising for the luncheon adjournment, I wanted to just put into Members' minds a couple of quotes, which I thought they might want to think about over the luncheon adjournment. It is this week 28 years ago, in 1990, former President F.W. de Clerk in South Africa announced that Nelson Mandela would be released from jail after 27 years in jail for being black. Nelson Mandela was, to many people, a fair-minded and unbelievable individual. I am just going to read 2 quotes that I thought are relevant to this debate and Members' consideration of these arguments. He said some wonderful things, one of them was: "A fundamental concern for others in our individual and community lives would go a long way in making the world the better place we so passionately dreamt of." He said: "Tolerance is forged when people look beyond their own desires." He said: "No one is born in hating another person because of the colour of his skin or his background or his religion; people must learn to hate and, if they can learn to hate, they can be taught to love, for love comes more naturally to human heart than its opposite." I think those are beautiful words. I will say one final: "The greatest glory in living lies, not in never falling, but in rising every time we fall." I say that because so many times in the past centuries the rights of gay people have been dashed, they have fallen. But they have attempted to rise. My fundamental view, which I do not want to speak in every single one of the amendments, is that this Assembly has passed a law, which permits the marriage of 2 people, whether they be of the same sex or not. In my view it is simple that law must be universal and it must be non-discriminatory. Anything else to me would be second class. The amendment that we are talking about is trying to improve a tolerance clause, which in my view is not fair or right. So I should declare of course, as many people will know, the fact that I am the only openly gay Member of this Assembly, so I should declare an interest. I suppose I could take advantage in taking up the rights that this law may give me. I am not a gay vigilante, fundamentalist gay extremist, I am a normal person. I am a politician who happens to be gay. The Deputy of St. Ouen spoke before lunch, spoke that things were moving too quickly. I ask him, and other Members who want to not move quickly, I would say it is slowly, how long has it taken to remove discriminatory laws that discriminated against people like myself? How long has it taken to remove discriminatory laws from our statute books in this jurisdiction and others around the world? I would ask him to consider, and other Members, how many gay people have been jailed, killed or assaulted, for being who they are and having the right to be who they are and to express it. We have evolved a lot in the time that I have been in this Assembly. We have caught up. But today we can make a further step; we can make a step in rejecting this amendment and we can go on to make a step of fundamental fairness. To quote Nelson Mandela: "It always seems impossible until it is done." Today we can make, in my view, what seemed impossible when I entered the States 18 years ago, and for many other gay people, possible. I do not like talking about my private life, but whenever there is a debate on the issues of same sex problems or issues, I feel an obligation to do so, to represent, not only the views of the gay community, but also the views of all those like-minded people who feel that there has been an injustice for people who are gay and they were born that way. If I may say, heterosexual Members do not have to do what I have to do, but I do so with some hesitation, but I do so proudly, because I am proud to be what I am and I know that I have received a lot of support from many people quietly, I have received a lot of abuse, but I have received more support in many of the remarks that I have made. I celebrated my civil partnership in the old library, privileged as your Chambers gave me permission to do so, just as the right would be accorded to a heterosexual couple, or metrosexual couple, to perform a civil marriage; a marriage in the eyes of the

law. We have seen in recent days a huge amount of lobbying; we have seen the unleashing of a visceral debate of which I regret deeply the consequences of. As somebody who was brought up as a Catholic that went to his catechism classes, I was taught that we were all created by God. I was told that the great Christian faiths of the world, Anglican, Catholic, and all the others, were ones that were compassionate and fair. So I knew probably that I was gay when I was 8 or 9 years old, but I was told, like many other people, that I was unworthy. If I dared to explore who I really was, I would be cast out, I would be a sinner, I would probably be somebody who was conducting something illegal. I would ask Members to consider the implications of the legalised discrimination and the millions of people like me around the world, all created by whatever God that is being spoken about in the great religions of the world, as no doubt everybody would accept that we are created by somebody, have been subjected to. Is this something that is hasty? I accept the right of the churches to discriminate against people like me, I accept that. I accept the rights of people to speak and to have their views heard. I am afraid to say also that I have to say that no amount of converting me, therapy, praying, if I may say - and I thank those people who do pray for me and others - will change who and what I am. The States of Jersey and many other legislatures around the world have legislated to change the civil marriage definition. I would ask Members to accept that decision and not to attempt to have the effect of driving a wedge between heterosexual and homosexual, lesbian and other trans people. This Assembly approved in October 2015 a proposition that said to agree the principle of legislation to be brought forward to allow the same sex couples to get married and included certain conditions. There was no tolerance clause in that in-principle decision that was made way back in 2015. We voted on 2nd October 2017 for the principles of a law that said the definition of civil marriage was going to be changed. We have decided that. The debate was commenced and then I do not say that the Scrutiny Panel was not within their rights, I do not criticise them, to scrutinise this legislation, but I would remind Members, with the greatest of respect, that there was an expectation in 2015 that this Civil Marriage Law would have been put in place by 2017. We are months behind and I say we are years behind, to the Deputy of St. Ouen, doing many of the things that other countries have done. It has taken a long time to get here today. Jersey is a self-determining, self-governing, small nation state, a jurisdiction, and we guard our constitutional autonomy. But we have been out of step with the rest of the world. It should be recalled that there have been delays, there is a legitimate expectation for us to do the right and proper thing today in basically legalising same sex marriage in the right way and without the amendments that are, in my view, being put in place. I would remind Members that same sex marriage without such amendments, which we are talking about in this part, have been permitted in England, Scotland and Wales, it was not a hasty decision by the former Prime Minister of the United Kingdom, David Cameron, to do it, it was argued for years that this should happen, but he had the courage to do it and legislate and it has been passed into law and passed by a legislature, as a legislative body like ourselves. The Isle of Man have done it; Guernsey has done it; the Republic of Ireland have done it. I could name all the countries in the world that have done it and they have not included such tolerance, or rather I would say intolerance clauses that we are discussing. I would strongly ask Members, and I warmly thank the work of the officials and the Chief Minister and the Deputy Chief Minister and others who are bringing this law, and I understand how the Deputy Chief Minister is encouraging us to vote in favour of this and then reject the whole of the clause. I cannot bring myself to vote for this amendment or the other amendment. But what he is attempting to do is to limit the damage just in case, and I understand it and I have just heard that the Deputy Chief Minister has changed his mind, when the facts change he changes his mind. Well, whatever it is, he is entitled to make it, and every Member is entitled to take their view, I do not take that against them. We have received such lobbying from good people in religious organisations and I would say to them, when they have beseeched us with their signatures on a piece of paper, when we have received identical emails thanking us for the service to our community, it has all been the same.

[14:30]

I do not quite understand why I am being thanked for my service like everybody else, but did they really think about the consequences of what we are doing in this even narrower amendment? I am not asking religious organisations to marry same sex couples. If the great religions of the world, if the Anglican community wishes to have equal marriage they can opt in. I am not asking them to compel them to do it and to do it in any of their organisations or premises. If some, like the Quakers or the Methodists... I was hugely, hugely honoured that the head of the Methodist congregation attended my civil partnership; he popped into the back, which is what a public event did. That meant a great deal to me. To the Methodists, I understand that is something that they are considering. At the same time, I absolutely say and repeat in arguing in the strongest possible terms against this amendment that I uphold the right of people to have the freedom of speech and the freedom of expression, including the right to express religious views within the law. I regard that as a fundamental human right. We marked the relevance of rights and the importance of this in our commemoration of Holocaust Memorial Day last weekend. During the Nazi occupation of this Island, a number of Islanders lost their lives. They lost their lives and thousands more died in the fight against a regime based upon ideology and superiority, a view perpetrated, the mistaken belief by Hitler they had the right to impose their views on others, that Jews, disabled people, homosexuals, and others, should be treated differently, *Untermensch*, they should be crushed. Freedom and equality are paramount and a great deal has changed since the liberation of Jersey. People are free to practice their faith and their religious beliefs but within the bounds of the law that should be upheld. The law that we are discussing is a law to permit a man and a woman and a man or man, a woman and a woman to marry, and these proposed amendments clearly will result in a minority group being treated differently. I thought the concept of this law was to provide fairness and equity within our society for anybody to wish to get married. It would be somewhat ironic if this clause were to be allowed to exclude some elements of equity and to allow situations where people can still discriminate against same sex couples. In essence, legislating discrimination of a group in an Equality Law, it is completely nonsensical to me. Parliaments pass laws around the world and the respect for the rule of law is the basis and very heart of our democratic society. If the States of Jersey pass a law to permit something or to prevent something else, the discrimination of men, women, people of colour, age, they cannot then have those rights subordinated and an opt-out clause apply. I fully accept someone with certain religious views might not agree with that principle, however I do not accept that they have the right to impose their beliefs on others and prevent others from having the full access within certain services, and we will come to the commercial services bit later. Discrimination, which I think this is, and it sends out a message of discrimination, is a slippery slope and this is where it starts. I do not wish to be in any way inflammatory, but that is what happened in Germany; it started with the Jews and it carried on. Where will this end? Will we then have opt-outs, I have seen the real Monty of the full anti-tolerance clause, which the Evangelical Alliance wanted, I was frightened by that. I know that is not what is before us, but I think we must look at the origins of what was being represented. Are we going to then be passing this and then having amendments later to say: "Well, it is the anniversary of a same sex couple's marriage; they cannot have a room in the inn. They cannot have their opportunity to celebrate the anniversary, their tenth anniversary of their civil partnership, or their first or fifth or whatever." Are we going to start extending this to civil partnerships or those of us who might agree to convert our civil partnership into a marriage? Where will this end? I rarely say this in debates that one thing will lead to another, but this is one example where effectively this is a slippery slope and we should not go there. I believe that this amendment - all of it, the slightly improved version that I still cannot live with - I think it will reinforce also perceptions about Jersey. I think it will reinforce the pejorative regrettable perceptions of the old Jersey way, which more often than not gave an impression, not universally accepted or intended, that some people mattered more in Jersey than others. I was not here yesterday for the debate on the child abuse inquiry but we know what we mean, do we not, that all was not right. Moreover, all was not right that some people's views were not heard. They were treated as

second-class citizens. Why are we creating a second-class citizen? Why are we subordinating the reluctance? Why are we subordinating the rights of gay people to marry and to have equality of treatment under the law? Jersey's Chief Minister, in his immediate days after the child abuse investigation, he said words that described what he wanted, as we want it, and he said it is not him but he was speaking on behalf of the Island in a political sense, as he should. He spoke of the need to be broadminded, open-minded, unprejudiced, unbiased, understanding, tolerant, liberal, kind, humane, thoughtful, compassionate, caring, loving, decent, responsive, thoughtful, kind and proper, respectful and understanding. Sir, I hope you do not mind if I also quote something that you said in a recent speech maybe 3 years ago, you said: "To me, the Jersey way means doing something competently, with integrity, fairly, with compassion, and on behalf of all Islanders to the extent that I can I reclaim that expression and I encourage you all to use it within its proper meaning and to be forthright in challenging those who do not." I do not wish to ask you to enter into this political debate, Sir, it is for us to take those words and to interpret them and to have a political debate from them. But, in my view, the test that you put of the Jersey way and the words that the Chief Minister spoke... and I look at this amendment, does it pass that test of what should be the Jersey way of today and tomorrow? In my view, it does not. How can we possibly demonstrate to the international community, the world does not end at St. Ouen's beach, it does not end on our shores. We live in a global community where there have been debates about many of these issues in other places. We can do things differently but we can also learn from other places and we can do the right thing. I express the sincere hope that the visceral debate that has happened with this amendment and the others that does create inequality and a difference are going to be comprehensively rejected. I think to enshrine anything in any way that is discriminatory would not be good for Jersey. It would shame me as a Jerseyman, and I hope that a majority of Members will reject the amendment, in numbers. I do so in saying that, with the greatest of respect to those religious organisations and people who are of faith and who believe fundamentally, I would ask them to respect the rule of law as the number one. I was asked in one exchange with a member of the public: "Are you putting the cart before the horse?" when I spoke about a number of other Bible passages and the interpretation that could make. For me, the horse is probably the civil law and the cart is what follows it. I have to say that I am not imposing the civil law on our religious communities. There must be a delicate... and if somebody has such views, which I do not agree with, they are prejudiced views, views that are based upon the sexual act or whatever it is that is the problem to some religious people about gay marriage, then surely they can find a way of saying that in a tolerant and non-inflammatory way. I know this is not about this amendment, but I want nothing to have any sign outside somewhere, which is not a religious place, or a business that says: "No gays allowed here", just as I get back to the start of my remarks that went to a world that had: "No blacks here" in apartheid South Africa. The world has moved on. We have learned, we evolve, we understand more and we understand that gay people are born and they are who they are and we should allow them to be who they are. I am one of them; I am privileged to be elected at the moment and I will make my remarks and I have my right to speak. But I hope that Members understand the feeling of the gay community, having suffered decades of intolerance, of abuse, and the message that this sends out. It is hurtful and it is not right and it is not fair and I hope Members reject this amendment and the whole of the amendment that has been put forward. I thank Members for their attention. **[Approbation]**

1.5.13 Senator P.F. Routier:

Last weekend there was an opportunity to go to the museum and see an exhibition of some crosses that were put into quilts, which were used before the war, before the holocaust, which identified that the German community, the regime at the time, did not value people with disabilities within their community. That was the start of my weekend. I then went on to the holocaust memorial to lay a wreath on behalf of people with learning disabilities and their families and it was a great privilege to be able to do that, a very moving thing to be able to do. But among the other people who laid wreaths

were obviously the Governor and Deputy Bailiff, the Chief Minister, and many others, but there was also representatives of the gay community who were all laying wreaths because they had been discriminated against during the holocaust. From there, I went home to read the Disability Discrimination Law, which is being brought forward, which I am so pleased is coming forward. That was a really uplifting thing to be able to read. So that was something we can look forward to being debated at a later stage. Then I went and picked up these amendments and I thought I was in another world. I really thought what on earth are we debating something like this for, it really just does not stack-up at all. I have to say that I am a little bit surprised that the Scrutiny Panel have been able to come forward with this because I understand that members of their panel are not supporting it, so how they have achieved that I am not sure, but obviously some Members are feeling quite strongly about it. The chairman, I think in some of his comments that he has made in the lead-up to this debate, has said that we should have the debate; he is just bringing it forward because we have the debate. But I would have hoped, if someone was to bring forward a proposition or an amendment, they would have the courage of their convictions to say: "I really support this", which is not happening from what I understand. It is not even too late for perhaps the Deputy to reconsider, to either withdraw this amendment, or even he might want to abstain, or even vote against, there are all those options available for him if he is not really fully supportive of it. Last year I was given the great privilege of speaking in this Assembly on Liberation Day and during that speech I spoke about the importance of tolerance in our community.

[14:45]

That to me is something which is very, very important. We need to all think about how we live alongside other people in our community. It is something which I think Jersey in general has a very good track record of. This debate we are having today is, to my mind, a bit of a backward step. We should not really be having this debate. I cannot support this, as some people said, intolerance clause because it is an intolerance clause, I just cannot cope with it. But, in saying all that, I really hope and I pray that our whole Island community can recover from this debate. We need to heal among ourselves, among our community, because there has been some division in the last weeks leading to this debate and that is so unfortunate because we are better than that. We should be in a place where we can work together and we accept other people's views and we can share each other's lives. I hope that we can work together and celebrate the fact that we love each other. **[Approbation]**

1.5.14 Deputy M. Tadier:

Earlier, when Deputy Le Fondré talked about people being called homophobes and racists, obviously we are not talking about racism today, and I was reminded of the Father Ted episode. It is one of the funnier episodes of Father Ted, although to be fair they are all excellent, this one is probably within the top few, and it is the one where Father Ted finds himself in a spot of bother with some recent arrivals who have come to the otherwise ethnically homogenous Craggy Island, up until that point, and he finds himself having to defend himself saying that he is not a racist because he gets into all sorts of innocent mischief. It essentially finishes off with him sitting in the bar having to buy a round of drinks for all the people that he has offended in one way or the other, explaining: "I am a priest, not a fascist. Fascists dress in black and go around telling people what to do." His face drops of course at his realisation, while he mutters the next words; "Whereas priests ..." There is an awkward pause and then people shout: "Drinks" and of course they save face for him and they just raise a glass. There was also talk of conscience and this amendment put forward by the Scrutiny Panel has been called sometimes a tolerance clause, which I think is a classic misnomer, it is of course the opposite of that. It is asking for intolerance. The first thing that we do when truth is at stake is that it becomes double-speak, so because we cannot call it what it is, and we are asking for a bigotry clause, we want to repeal the Discrimination Law and the protective characteristics, we obviously cannot say that because it is repugnant to most ordinary-thinking people, so we have to use double-speak and call it

a tolerance clause. It is also being called a conscience clause. I have been giving some thought to what it is about this conscience, and people have talked about it saying it is not your conscience that teaches you to be prejudicial and to show discrimination to whatever minority group or whatever characteristics in our society. It is in fact unfortunate because this is being portrayed as something which is central to the Christian faith: "This is my faith; I therefore believe that only men and women should be able to get married and therefore I do not want to take part in any service in any way or other." That is not to do with your conscience because that is more to do with the fact that in your particular brand of religion the person who stands at the front of the church week in, week out, in the pulpit is telling you this kind of thing and therefore you end up believing it, by and large. If you go to a different church - and we have been lobbied by different organisations where the individual in the pulpit says: "I do not have a problem with gay marriage" - you will probably have no problem with it yourself. That is certainly the case in St. Brelade where I know that we were contacted. I think it is fine to talk about this publicly, it is no secret that the vicar of St. Brelade's church is quite an open individual; he is tolerant, he has a great church there, not just in terms of its location and its venue, which is very popular for weddings, second only I think to the town church, but it is also a great welcoming congregation as well. I do not think he would have any problem renting his church hall out to different groups or even for a celebration of a civil partnership or a same sex marriage. In fact I know that to be the truth. That is good for the Parish, it is good for his congregation and it is ultimately good for the Island. It boils down to the fact that, if you are a believer of any kind, you choose your particular brand of Christianity, you cannot hide your prejudices behind something else saying: "This is because of my religion". Now there is a problem here of course because Government historically, and the law makers, have to take some responsibility because for decades, and for centuries if you like, Government has not only discouraged homosexuality but said that it is illegal to be a gay person in society. So not only were they not afforded the same rights, they were actively discriminated against in the law. Of course we have got to the point today where we are having to reverse this, as a Government we are having to put in reverse discrimination, if you like, to make sure that these individuals are now protected. We only need to look to popular culture to think of some recent films, or perhaps they are not the most recent, but 3 films, which certainly stuck out to me and helped inform me when it comes to equality issues, were one biopic of Oscar Wilde, I think which starred Stephen Fry; another one was Milk, which described the life of Harvey Milk - I think he was the first gay man in America to take a public office in San Francisco; and the story of Alan Turing, the great war hero in a sense, the great patriot, who helped break the Enigma code. That film was called the Imitation Game and a very clever title because of course it is talking about 2 different things, on the one hand it is talking about having to imitate this code, break it to try to think how the Nazi's were thinking and break the code, but of course it is more than that, it is talking about his life as having to live it in secret, as somebody who is so valuable to the society and without this individual arguably you could say we might not have won the war, or the war certainly would have gone on and who knows how many lives were saved because of that individual and the group of individuals around him doing that work. Yet what kind of demise did these 3 individuals come to, despite their genius and despite the fact that they were at the cutting edge. They died in very unfortunate circumstances, very lonely in many ways. We look at Oscar Wilde; he ended up dying in Paris as a pauper I think in very ignominious circumstances. Alan Turing was essentially driven mad by the state, which he had worked for and which he had been so loyal to in cracking that code. Harvey Milk I think ended up being shot, possibly by a religious extremist, but somebody who had a big problem with homosexuality and possibly some kind of political rivalry with him, somebody who is no doubt unhinged. These are all decades ago and yet we are still having to fight the same arguments today. We know that gay men do get beaten up in the streets, it might not be as public as it was in the past, but they still have to deal with that. Where discrimination can be allowed to be put into action and where it can go unchallenged, there will be negative consequences for that. So when we are trying to balance up these alleged rights on one side, balance them with others, we know that there is not

really a balancing act to be had here. We know that of course there are Christians throughout the world who are being persecuted, there are non-religious minorities who are persecuted, and there are other religious minorities who are persecuted. That is still unfortunately a dark side of the human condition that we will always need to grapple with. But we are dealing with what we can deal with here today. What is often forgotten of course is that the women in the lesbian community, historically they are not necessarily as easy to identify because they were of course marginalised in their own way. They were probably burned, not for being lesbians, but for being witches and feminists and people who tried to rock the boat, people who were intelligent, who did not fit the boxes. How many women, even in Jersey throughout the centuries, were killed in one way or the other, that were burned? There are no memorials to those, and the women are often the ones that we forget about. So there is I think an intellectual argument to be had - an academic argument - about the balance of freedoms. It is unfortunate that it has to come at a time, not when we are debating the Discrimination Law years ago, about where the balance lies, but when we are introducing something that is completely distinct about gay marriage, because it tends to suggest ... and what we have seen from the correspondence is that it only focuses on one small subset and it is because, let us face it, it is because of homophobia. It is because of homophobia. It is because certain people in the Christian tradition choose to interpret certain words in the scriptures to allow them to be homophobic. Others do not choose to do that and that is the interesting point. Now let me give you a quote from the good book, I am on thin ice here, I seem to get into trouble whenever I try to quote, but if we are allowed to pray then presumably we are allowed to quote the gospels. I will do it in English if Members do not mind. It is the words that were attributed to Jesus in Matthew 10:34 onwards. He says: "Do not assume that I have come to bring peace to the earth. That is what you might have been told when I was born", he comes to bring peace on the earth, but he says: "Do not assume that, I have not come to bring peace but a sword for I have come to turn a man against his father, a daughter against her mother, a daughter-in-law against her mother-in-law. A man's enemies will be the members of his own household." I am not sure what to make of that. Interesting that is not we are normally told. People talk about Islam quite a lot and we have had a reference to Sharia law that came out of the blue, I am not sure why we are discussing Sharia law. But there is a risk today that of course we are introducing a Christian version of Sharia law so perhaps it was right that the Constable brought it up. Because if we are saying that Christian law has to subsume and be superior to the law of the land then that is a dangerous precedent, as indeed people also say about Sharia law. Now of course what a Christian listening in the gallery might say is that: "Oh, but, Deputy, you have taken that verse out of context. What Jesus really meant was x, y and z", and they would have lots of cross-references and they would point to another verse where Jesus said something different or an Apostle later on said something else. But of course the point is you can use the scriptures to justify whichever position you want to. When the Deputy of St. Owen stood up and said: "This is a very narrow issue; we are not talking about racism here. It would not be okay to put a clause into the law about racism." Well who says that? What if your racism is legitimately based and underpinned by your religious convictions? What? Surely there cannot be any religions or people who purport to be religious out there who are also racists? Well, let us get to the point, you can be homophobic and a Christian. You can also be a Christian without being homophobic. As I said, you do not have to believe that same sex marriage is a sin; you do not have to believe that homosexuality is a sin. You choose that as an individual. Similarly, there are people in the world who believe in white supremacy and who somehow marry that with a Christian belief and you go on to a website, there is website called kinsmanredeemer.com, you type in the words "mixed race marriages religion" and you come to, I am not even going to quote it, it is such an appalling diatribe if I were to read it. They take quotes from the Old Testament saying: "Adam and Eve were both white", even though we know that humanity originated in Africa, is what we are told, and good luck if you are the first humans on the planet and you are born in a very tropical zone or if you are wandering around the desert later on and you have white skin, blue eyes and blond hair, I do not think you are going to survive very long there,

but apparently we are told by this religion that the whites are the superior race and that as soon as there was a sin that was committed and as soon as Cain committed a sin against his brother Abel, that is where the corruption of the gene pool came in, and that is what they are preaching as a religion. These are Christians.

[15:00]

A constituent of mine, Tony Bellows, who produces very good blogs and who is well known in the community under the “Tony the Prof” website, he points to a KKK supporter in the US who is also a Baptist and he has no problem with that, he is a Baptist in his own mind and he is also a white supremacist and he thinks that mixed-race weddings are wrong. So what we should be doing under Deputy Le Fondré’s amendment is, not simply singling out sexuality, if you are a homosexual, we should also be providing freedom of speech and freedom of conscience for anyone in our society who thinks it is wrong to provide a marriage venue for a black and a white person or a Chinese person and a non-Asian person. So, by that token, a white supremacist who owns a hotel, because of his Christian beliefs, when the mixed-race couple comes up to the premises and says: “Can I have this for a function?” “Yes, of course you can.” “By the way, where can we put the flowers and the champagne?” “Hang on a minute, what is this?” “This is a wedding reception for myself and my future to be husband.” “Oh, sorry, I cannot do that because I do not agree in mixed race weddings.” Is that where we are going? Because we have to go that way, it is not just simply there is a risk that this might happen, it logically follows; it is the logical and rational corollary that you cannot just single out people’s beliefs in that respect. Now of course you can take quotes out of context and that is why I was really puzzled when I saw this individual as a gay person saying: “I found this quote in the Old Testament, it is really great.” I said: “What is it?” He says: “Well it says in the Old Testament, if a man lies with another man he shall be stoned.” I was saying: “Yes, but that is terrible, is it not, it is basically saying you should be put to death if you sleep with another man.” He says: “That is not how I interpret it; basically it says that homosexuality is alright and it is also alright to smoke cannabis.” **[Laughter]** So kill 2 birds with one stone. Maybe there will be a denomination of Christianity, which expounds those theories, and certainly any denomination I think in Jersey, if the idea is to become so liberal that you want more people to join your church, then if you put forward policies like that in a more centrist fashion you are more likely to get more young people joining the membership. Now, the argument about the cake is right up the Constable of St. John’s street of course, he likes the food analogies. So we have to endorse this so-called conscience clause because if we do not and somebody says: “Can I have a cake please?” “Yes, I can do you a cake.” “Can you write on the cake?” “Yes, I can do that. What do you want written on the cake?” “The cake needs to say: ‘Support gay marriage’.” “Sorry, I cannot do that.” “Why not?” “It just goes against my conscience.” “Why?” “Because I am a Christian.” “Okay, fair enough. Well, can you do it anyway?” He thinks: “All right, no, I will have to do it because otherwise I will get fined £50. But what I am going to do is I am going to stick pepper in his cake”, because apparently that is what Christians do. If they have to make a cake for somebody supporting something they do not believe in, they put pepper in their cake. Now that is not the worst thing in the world, but it certainly is nothing to be sneezed at in terms of it might cause some upset. I thought it might get a bigger laugh than that. But that is not freedom of speech. If you want to, you can say: “Look, I will make the cake for you”, I mean who operates on those kind of levels in the transaction, somebody comes into your shop and says: “What is this cake for? Is it for a marriage?” Where does it all end? But the point is you are allowed to have freedom of speech and you are allowed to have freedom of ideas to the extent where your ideas do not translate into discriminatory actions. This brings me on to the point that not all beliefs are equally valid. So this is where tolerance can become slightly ludicrous if we just accept tolerance. There was a very good email sent around by someone who I think emailed everyone, who said: “Look, there is a limit to tolerance when tolerance itself comes to tolerating the intolerant, we have to not tolerate that”. So we as a society should not tolerate intolerance otherwise

it becomes all meaningless. Not all beliefs are equally valid, so it is perfectly fine for somebody to think that the earth is flat, it is perfectly fine so long as that belief system does not start to impact negatively on someone else. But I do not want that person who believes that the earth is flat to start designing aircraft or rockets that I have to sit in or that people have to sit in because, ultimately, they will not work, you will not be safe. Similarly, I do not want people who have these beliefs, which are basically not valid or that they are not valid when they are held up to scrutiny that they should dictate how we as legislators legislate. We have had the argument from the Deputy of St. Ouen that these are just transitional arguments and it is almost slightly patronising, it is saying that these individuals are like troglodytes, they have not yet come out of the cave in terms of their belief system and that they need more time to catch up. But, as has been pointed out already, they have had centuries to catch up and it is only now that we are starting to take discrimination seriously. It was not so long ago - and I do not want to misquote people, people always say their words are taken out of context - where Glenn Hoddle, the former England football manager, got into a spot of hot water because he made comments about disabled people, saying that disabled people are essentially being punished for previous lives; that they got it wrong and that their lot in this life was that they had to suffer some kind of disability. Now, someone like that might say: "That is my Christian belief" or: "That is my religious belief" and clearly it is in his case, and of course people like Deputy Le Fondré would stand up and defend his right to have that kind of idea. But when that starts having a negative impact on other people, when you say: "Well I am not going to let you have accommodation at my hotel because I think that you are sinful as a disabled person, albeit a sin that is from a previous life", again that is cutting into the Discrimination Law. The very reason that we put these characteristics, these protected characteristics, in place is because there is discrimination. There was not always a law to do with murder, but there was a point surely at which there was the first murder occurred on the planet and that there was no law about murder. So people realised we have to start legislating if we want to stop this kind of thing happening. In a sense, it is because of the murderers, if there were no murderers out there then we would not need a murder law. If it was not for the fact that there are racists and homophobes and bigots out there, we would not need these laws. So in a sense it is because of the very reason that there are people out there who are prepared to not provide services to these individuals simply on the basis of their sexuality and simply because of the idea that they do not agree with same sex marriage that they would seek to discriminate against them. It is because of those people that we have to have that law; that is the paradox. If it was not for these people we would not need the law in the first place. There is a question about how the law is enforced. I think we all accept it is a general principle that there are laws in society and there are serious laws, which very few people would disagree with, and there are laws, which are not necessarily enforced with the same vigour. So it may well be that an individual in society will maintain basic law and order but they might do more than 40 miles an hour on Victoria Avenue. There is no point in doing more than 40 miles an hour (m.p.h.) on Victoria Avenue because you will not get anywhere any quicker because we have traffic lights there. I think you need to do about 70 m.p.h. on the Avenue for it to make any difference, I am told. But in my clapped-out old car I do not think I would ever get there even if I were to wish to break the law, which I would not of course. There are other laws to do with cycling on the pavement and people might think that is a silly law and people still cycle on the pavement and, if you do not agree with it, you do not have to obey the law. That remains the case for anyone with any particular belief. If you want to break the Discrimination Law you can do that and if you get caught you have to face the consequences of it. So if you think that your religious law is higher than terrestrial law, than the law of Jersey, then that is a matter for your conscience, between you and your God, and if it is really that much of an issue then maybe you have to decide which course of action you take. What I am interested in is how this plays out in reality because in reality it is not going to be much of an issue for the cake makers or the people who run businesses because most people in the world and in this Island manage to separate their business life from their belief systems. So a hotelier who might be a Christian or a Jehovah's Witness... and I was thinking about this; if you are

a Jehovah's Witness cake seller, and I can talk about them and I hope I will not offend them - but I know that if I do offend them I will not be losing any votes - but they are in quite a difficult position if they were a cake seller because they do not celebrate birthdays, they do not celebrate Christmas, they do not celebrate Easter, but I do not even know if there are Jehovah's Witness cake bakers out there. There either are none at all or they just manage to compartmentalise because surely you would not get very far in this world if you did not sell birthday cakes, Christmas cakes, mince pies, hot cross buns, and Easter cakes. As a baker you would probably be out of business, so they either just do not go there or they manage to deal with it. Similarly, in the U.K. and in Jersey, how many corner shops are run by people of faith, including those who might include the Islam tradition? I know from my experience living abroad and living with Muslims in some cases that they do not drink, but they do not have any problem selling drink to people, they do not say: "I cannot condone your act of imbibing because that might affect my chances of getting into Paradise", no, they just deal with it because they manage to separate these issues. I wonder what brand of religion it is that whips these things up, that obsesses with people's sexuality. I have to ask the likes of the Evangelical Alliance and the Freedom Church who single out these particular issues why they spend so much energy obsessing about people's private lives when, on a week-to-week basis in this Assembly, we are debating standard of living, we are debating in some ways life and death issues for people, about poverty, about all sorts of things that fundamentally and concretely affect their lives, yet we do not hear a peep out of them. Yet we know that other churches - I will not name them to save their blushes - do very good work and they do engage with Scrutiny and they do engage politically and they do great work in the community. As had been said before, there is a risk that people will start voting with their feet when it comes to these things, but we are not here to deconstruct religions and have a very theological debate. I think those are the salient points. I have struggled to a certain extent with this and I have looked at Peter Tatchell's comments in the *Guardian* article, and I think that ultimately, while I have great respect for Peter Tatchell and he is somebody that I used to watch when I was growing up on things like Question Time, his conclusions are ultimately not right because he talks about questions about: "Well where does this stop? Will a Muslim printer be obliged to publish cartoons of Mohamed or a Jewish one be required to publish the words of a holocaust denier or gay bakers accept orders for cakes with homophobic slurs?" There are 2 reasons why that argument is somewhat flawed: the first is that homophobia is not a central plank of Christianity. As far as I understand it, and maybe the Dean will speak later, there are some very basic tenets of Christianity and there will be parallel ones for other religions, and that is essentially that you have to believe in some form in Jesus Christ, you may or may not believe that he was the son of God and that he died some kind of - I hope I get this word right - propitiatory death in order to make a sacrifice for the sins of the world. Probably nowadays you can get away with a lot more watered-down beliefs and still be a Christian. So nothing to do with homosexuality in that and, if you want freedom of speech, put a poster up in your shop. If you are a Christian, with all the quotes that Jesus said about homosexuality and gay people and just put that on your wall, and it would be a very cheap poster because it would be blank, because Jesus did not say anything about homosexuality. He did say a lot about how you treat your neighbour, about how you look after the poor, the orphans and the widows, and that is where I suggest the Christian community's focus would be better spent.

[15:15]

1.5.15 The Very Reverend M.R. Keirle, B.A., Dean of Jersey:

That is rather timely in the queue. It gives me great pleasure to agree with Deputy Tadier on at least 3 things that he said. Firstly, I do not agree with putting pepper in cakes. Secondly, it is very easy to take scripture out of context; very easy. Thirdly, I would affirm the good work that is also done at St. Brelade by the rector Mark Bond there. [**Approbation**] There are other things that I do agree with as well. It is with some trepidation that I stand up here. If Deputy Southern felt that he had a bit of a target on him; that he might be burned at the stake from both the Catholics and Anglicans in

a joint ecumenical effort, I feel that I too have a target painted upon me. As a teenager, I, like many others of my generation, found myself buying a copy of Pink Floyd's iconic album, *The Dark Side of the Moon*. You all know the prism and the light that goes through. On that L.P. - that is a long-player for those who do not know what that is, for the younger Members here - is a song entitled *Us and Them*. I had not thought about that song for years until I found myself standing on the Somme battlefield on the 100th anniversary of the start of the battle with a group of men from my former church standing in the middle of no-man's land. I was asked by the group if I would give an off-the-cuff reflection on why we were there and what we were there for. The thing that popped into my head immediately was the song from Pink Floyd, *Us and Them*. So I spoke about *Us and Them* and I asked them to walk with me over to the British lines and I asked them who was us and who was them? We then walked across no-man's land, no more than 150 metres, to the German lines, and I asked again: "From this perspective, who is us and who is them?" *Us and them* is the language of separation; it is the language of hostility; it is the language of entrenched positions in every sense of the word. The language of division is rife in our world at the moment: "Build the wall. Separate. Divide." Yet one of the most memorable moments that we recall from the Great War was in Christmas 1914 when soldiers came out of their trenches and met in no-man's land, albeit for just a few moments, and simply to acknowledge their shared humanity, to listen and to speak to one another in a respectful way and, if we are led to believe, they even had a game of football together. But they went back to their polarised positions, us and them. I am sure we would all agree, and I am no exception to this, that judging by our inboxes and our telephone calls that we have received and the media exposure, this has been an extraordinarily emotive subject with feelings running deep. Only yesterday we were reminded in this Assembly that we need to listen to the inconvenient voices in our society and that includes those with whom we may profoundly disagree. But it is in the crucible of that uncomfortable place of free speech and of listening to those inconvenient voices that we shape the way ahead. By and large, I am grateful to Members for the manner in which the majority of this debate has been held. What we have been looking at are intensely complex issues and the simplest thing that we can do is to fire off a salvo from our side of the trench to cause as much impact as we can, rather than coming out into that more dangerous place, and yet perhaps more creative place, of no-man's land where no one wants to be, in order to kick the issues around a little bit and wrestle with our consciences over issues like human sexuality and the place of faith in the public sphere, the protection and balancing of rights of one group who may profoundly disagree with another. Today is not about us and them. But it is a constant temptation to make it so and I think every now and again we have slipped back into those trenches and fired off the guns and no one hears anything because of the noise. We may have come with minds already made up, with caricatures already in place, with long-held views that will not budge, and it is the easiest thing of all to create a parody of somebody else's position and then to attack the very caricature that we ourselves have created. So I have been very pleased when people have stood up and come into no-man's land in this debate and been willing to listen to each other and debate our common humanity together. Since we first debated this in the autumn of 2017, and I note Deputy Renouf's comments on timing, and Senator Ozouf's comments on timing too, I have not come across a single person who wants to stand in the way of same sex couples celebrating their love for each other in a marriage recognised by law - not one - and I have spent a great deal of time with people of faith and people of none. But the question that we have all been wrestling with today is what happens when the sincerely-held views of one group impact upon the lives of another, and we have had several submissions and speeches trying to unpack the complexity of not compelling an individual or a group to promote something with which they profoundly disagree without it discriminating against another person. These are really, really difficult issues. I know that some people fear that the loaded gun of litigation may be held to their heads because of their sincerely-held views and they may cite a tolerance clause, or whatever you want to call it, where protection is given to groups or individuals without the law identifying it as discrimination and they will say there is precedent for that. Others will cite that there is not another

jurisdiction that has managed the legislation to find a *via media* and therefore this should be rejected. There may be some who feel that a reasonable accommodation is the way forward where no one is compelled to act against their views, taken out of the line of fire, of course that greatly depends on your definition of “reasonable”. Of course there will be those who feel that this is deeply inappropriate and it is not becoming of an equal, tolerant and just, society and that, simply put, this is all about discrimination. What we do now in the next few minutes and how you vote will decide where the balance point is in all of that. I am not here at all to try to sway the debate in any particular direction or give my own views on what I believe is the way ahead. Those of you who have been kind enough to ask me privately, I have told you my views. I represent all faiths and none and not just the established church. The views that people have taken the time to share with me have not all come from Christians and they have covered a spectrum of views from one end of this debate to the other. So I find myself on a knife edge at this point. It is not a comfortable place to be but that is the nature of freedom of speech and debate. But as the one faith representative in this Assembly, I have listened carefully to this debate and I have admired the passion and the measured approach of some who feel greatly that this is a discrimination. I have tried to put myself into the shoes of others whose world view is completely different to my own and I do not seek to impose my view on others. We are not a theocracy and, unlike Father Ted, I may wear black in this Assembly occasionally, but I do not seek to compel my views upon others. But I am happy to buy a round of drinks if it will help. **[Laughter]** So where do I look for the way forward? Inevitably I look to my faith, as I do for the whole of my life. I am a person who tries and often fails to live within that framework that Deputy Renouf spoke about. Inevitably, for me as a Christian - a Christ one - I look to the person of Jesus, as Deputy Tadier said earlier, for the template of that framework. So what did he say? He said quite a lot, but he said 2 really important things, he said the 2 most important commandments were to love the lord your God with all your heart and soul and mind and strength, and then he said to love your neighbour as you love yourself. They override everything. When I am asked about this complex and nuanced issue of competing belief systems, my response is: “Love the lord your God with all your heart and soul and strength and mind and love your neighbour as yourself”. I also agree with Deputy Tadier that this has been the wrong place for this debate and that a separate debate on a bill of rights, if you like, in the Discrimination Law would have been the most appropriate place. There is current provision for race and for gender, for sexuality, and shortly we hope and pray for disability. But there is no provision for those of religious belief and that is a conversation for another time. If Jesus could love and forgive the person who smashed the nails into his hands, whether you believe in propitiation or not, then loving my neighbour as I love myself I think is not too much to ask. **[Approbation]**

1.5.16 Senator S.C. Ferguson:

Oh dear, I am sorry that I am following the Dean, that was a *tour de force*. I just have a few things to say. There is a lot been said about a cake and the refusal to bake a cake; what has not been said is that it was the message that was wanted to be put on the cake to which the baker objected. He was quite happy making a cake, but he thought that the message that was to be put on it was inappropriate. I cannot tell anybody what it was unfortunately, but that is the basic story. The Senator appears to know. But the one theme that is coming through solidly through the whole of the debate is whether or not we should compel people to adopt one opinion against their own opinions and it is that I think that really bothers me because I do not take kindly myself to anybody telling me what to think. That is just one of those things. I have been incredibly sad that some of the emails and correspondence I have had from those involved with the debate about the tolerance clause or the conscience clause or the amendment are probably the most vehement. I have had a number of emails, which have been really quite threatening and abusive, which is not pleasant. We are not here to judge. We are here to decide on legislation, which is to be applied fairly to all the population. As far as my inbox goes, for every anti email I have received, I have received a pro email, it is balanced. So what are we meant

to do, compel people to act in a manner contrary to their strongly-held religious convictions? Do we only allow one set of opinions? I must say I am somewhat taken aback by the way this has been blown up when the introduction of the morning-after pill in 2010, which also might have been expected to have caused a political furore, particularly in the religious arena, and it was just signed into use in the Island and occasioned no objections whatsoever. I have been elected to represent all the people of the Island, including those who did not vote for me and who do not agree with me. This includes everybody at the extremes, those who are staunch members of Liberate and those who are staunch members of the religious institutions.

[15:30]

As was said in one of our Scrutiny hearings, why should removing discrimination against one section of the community then allow discrimination against another section of the community? Are we to curb freedom of speech and freedom of religious expression? I think it was George Washington who said: "If the freedom of speech is taken away then, dumb and silent, we may be led like sheep to the slaughter." Evan Burke says: "Your representative owes you, not his industry only, but his judgment, and he betrays instead of serving you if he sacrifices it to your opinion." I presume he was using "he" in the sort of general sense and he was not wilfully ignoring the other 50 per cent of the population who would answer to the pronoun "she". I was conversing with a colleague recently who said: "I think that the debate has been framed emotively and simplistically in terms of being either in favour of discrimination or against." It has been said this debate is somewhat pitting the church against the L.G.B.T.Q. community. As ever, the situation is more complicated and framing it in those terms is I think unhelpful. The problem is the compulsion element. If there is behaviour to which I do object, to what extent must I be compelled to put that aside? There is an argument that can be made for an opt-out clause and it is on the basis that this concerns the behaviour of individuals, over which people do have a choice, rather than physical or demographic attitudes, such as race, gender, nationality. The infamous case of the bakery in Ireland forced to support gay marriage was disingenuous at best, a deliberate attempt to bring about confrontation rather than seeking to educate or inform. It helps no one merely to entrench further 2 sides of an argument without seeking common ground, understanding or respect for another's position. We have to accept that there are contrary views, which can be held, that are founded with good grace, and that message is, I fear, being lost in a tide of political correctness. This, as I say, is a God-fearing gentleman I know. I support the opt-out tolerance conscience clause, whichever you say, because I do not like the idea of compulsion: "You must follow the party line and think this way". Speaking as a member of the most discriminated-against section, 50 per cent of the population, over the last several millennia, I do think I have an ability to speak about this and comment on it and I would prefer to have an opt-out provision.

1.5.17 Deputy S.M. Wickenden of St. Helier:

I have to start by saying how disappointing this all is. What a mess. Even the law, it is written with all its mistakes, its grammar mistakes, it has referencing mistakes, there are the amendments that have come in to try to correct it all. I will use the phrase a dog's dinner. Not good enough by anyone's standards, to be honest. If it was not for the fact that the L.G.B.T. community have waited long enough for this law, I would say scrap the whole lot, write it properly and bring it back to this Assembly. But we cannot. It has been too long. We have had 3½ years to get this going, since the debate that was brought forward by Deputy Mézec in June 2014, and this is what we get in 3½ years: it is disappointing; very, very disappointing. It is good to follow the Dean. I think he did a fantastic speech and he is a great man, I do really believe, and a tough act to follow. I will try. He talks about the idea of looking at the issue from the other point of view and I have tried and I do thank everyone for their emails. But one thing I do not seem to be able to understand, because nobody has made it clear, what in Christian teaching would prohibit a believer from partaking in a same sex marriage?

There are strong religious beliefs, but I do not know what part of scripture or Christianity stops you from doing that. I tried to look through everything, I found in the Old Testament Leviticus 20:13: “If a man lies with a male, as with a woman, both of them have committed an abomination and they shall surely be put to death, their blood is upon them.” Clearly that is the Old Testament that was 1500 BC, the 5 scripts of the 5 scrolls, the old Hebrew. So we get into the New Testament and I still cannot find anything that really clearly defines what the problem is here and to me modern Christianity is about love and tolerance, it is about love thy neighbour, it is about being as tolerant as you can. So this idea of hiding behind a strongly religious view, without explaining what that is, is hate and intolerance. You are hiding behind your religion for your bigotry. I am sorry; that is as far as I can see it because nobody has made a case on the other side. Nobody has told me what in Christianity stops or prohibits you from going down this point. Of course we have the Canon Law and I have an issue with parts of this because of the Canon Law. The Canon Law says: “Marriage is between a man and a woman for the purpose of having children”, or such like. But in here we have acquired gender from being exempt, it does not say marriage is between a person born as a man and born as a woman, for the purpose of anything, it says: “A man and a woman”. Now, a gender-acquired person is legally the gender that they have chosen, so why in a law are we then exempting them? That is discrimination. That does not fit the rhetoric or the argument at all. I would like an explanation maybe from the Deputy about why that is being removed or by the Chief Minister, because it does not seem to make sense. Again, I am still at this point where I do not understand where in Christianity, in a faith that is about love and tolerance, there is a problem here. Nobody has pointed anything out in a scripture or anything. In modern Christianity, this should not be a problem. We also need some clarification on what we are voting on here, because we have people who are in favour of what is called the tolerance clause that are saying they are going to support this amendment, but I believe if you support this amendment it removes the clause entirely. Then we have people saying they do not support it, but what it does. So what is happening here, I think it has to be made clear, is this amendment we are debating right now is to remove the tolerance clause out of the amendment, so then when we get on to debating an amendment next it will either, depending on how we vote here, have the tolerance clause in or it will not. So I am going to be in favour of removing the tolerance clause because I have not yet heard an argument. I think it is discriminatory; there is no place in our laws to discriminate; that is not the direction of travel we should be going into, so I will be supporting the removal of the tolerance clause.

1.5.18 Deputy R. Labey of St. Helier:

I agree with Deputy Wickenden, it was an excellent contribution from the Dean and of course he is right; in fact there was nothing one could take issue with, with his speech, which is a remarkable feat on a subject like this, so he is a very clever man. He is of course right that we must listen to inconvenient voices but, as a response, we do not necessarily have to bring a proposition to this House on what they say. I just wonder who are all these service providers banging down Scrutiny’s door saying: “We have to have these clauses”, where are they and who are they? As far as I can see, we do not have anyone. We have people acting on their behalf who report hearsay or conversations that have been had. That, I am afraid, does not count. If people are not prepared to put their name to something, to lobby for something, we cannot just go on hearsay. The Dean says we must avoid the ‘us and them’, and of course he is right, but it is slightly easy for him to say that because it is always the L.G.B.T. people who are the them. It is always them who are the them and, you know, they have to suffer. You are even constructing here a quadruple lock to keep them out of churches, to keep “them” out of churches, and even to the extension of the church halls across the way. I think it absolutely ridiculous. I was thinking on my way to the States this morning of the occasions where I have witnessed first-hand, been in the same room as discrimination. I remember that Sikh kid on the bus, I remember that Muslim lady on the bus, I remember that black guy on the Tube, and I remember being there and I remember seeing it and I am shivering at the thought of it now, it is an ugly, ugly

thing to see. When you see somebody discriminated against in the form of racial abuse, it is a horrible grotesque thing to witness what it does to that person. You can see it in their physicality, you can see it in their face, and it is a horrible thing to see. Do you know what is even more ugly to me, it was the sort of gentrified rarefied ambience, atmosphere of a perfectly nice half-full restaurant and seeing a gay couple turned away. It was the worst thing to witness; those poor people, they were just destroyed. Destroyed. I am afraid, with the greatest of respect to the Deputy of St. Ouen, this will impact in a similar way to people, face to face, interfacing with a service provider, who they do not necessarily know has these convictions, they are unsuspecting, they might not even be from Jersey, they might be visiting and have come to have their wedding here. The greatest, most joyous, wonderful day of their life and they rock up to a shop and they are told: “We do not serve your type here because of this conviction or that conviction”. It is a nasty, deeply unpleasant, damaging, destroying thing to do to people and we should not be condoning it and we should be avoiding that at all costs. When people talk about freedom of choice, it is all about freedom; well freedom of speech, we do not have freedom of speech anymore, we have to be careful with our speech, we cannot preach hate because it is damaging and dangerous and destroying, so we do not have that. It is all very well to say it is freedom of choice, but what about the freedom of gay couples to be able to have the same service as everybody else from the community? What about that freedom? Freedom not to be discriminated against. I cannot help feeling we are going to be here again in another couple of years. The Dean is in a terribly difficult situation, as church leaders are in the Anglican church, because of course we know in some ways they are being held to ransom by the African bishops and by the evangelical right and for fear of schism the poor Archbishop of Canterbury is continually trying to keep the whole church together.

The Bailiff:

Let us try to keep it on the amendment.

Deputy R. Labey:

Yes. So why did I make that point? Well just that the cavalry are coming. I say to the Dean, the cavalry are coming, the Hereford Diocese has voted to allow gay weddings, the Scottish Episcopalian church, which is as I understand the Church of England in Scotland, is conducting gay weddings already and they have had them in St. Mary’s Cathedral. So the Archbishop of Canterbury has said: “I am going to look at this again and we will report back in 2020”, takes 3 years to do it. But it is unthinkable that the Church of England will not change its stance on this, so my point I suppose was that we should not be spending too long on this because we will all have to be here changing it again. I have a feeling Deputy Le Fondré and perhaps the Deputy of St. Ouen are not going to change their minds.

[15:45]

I thought that maybe the Constable of St. John was not beyond salvation and that I could try to persuade him not to vote in the way he has said he will by just saying that when people come to make representations to you with this sort of viewpoint about the so-called tolerance clause, you sit them down and you explain to them about discrimination and you explain to them about love and love between 2 men or 2 women is not a lesser kind of love than that love between a man and a woman, and love trumps all. We should get rid of this nasty little amendment as soon as possible.

[Approbation]

1.5.19 Connétable P.B. Le Sueur of Trinity:

I only intended to speak once during this whole debate and I will keep it brief. In 2015, when we debated the principles of this law, I voted against the adoption of same sex marriage legislation. I did this, not from a strongly held religious belief, but on a moral principle that to me marriage is a union between one man and one woman. Since then, and during the run-up to this debate, I have

reflected long and hard on this decision and I have come to the conclusion that I was wrong. I would take this opportunity, if back in 2015 I offended anyone by the making of that choice in that vote, then I apologise. I reflected that, as a proud family man, I have 5 grandchildren and if in time to come one of those grandchildren came to me and said: “Granddad, this is my life-long partner, I want to get married to this person”, and they were of the same sex, or the same gender, and they decided that they wanted to commit to a monogamous loving and lasting relationship, what right have I to object to that and how would they feel if I showed that my emotions were that I thought it was wrong. I would not. It may be inside, but externally I would love them and love their partner in exactly the same way as I would love my own grandchild. **[Approbation]** For me, the important word that has been stressed today is not marriage, it is love. I have no problem when a couple decide, whatever gender they are, that they decide they want to have a long and lasting relationship. Like other Members, I received an unprecedented number of representations on the subject of this clause, and, as others have said, most of them have used exactly the same form of words. I have to say that I am deeply uncomfortable with the introduction of this conscience clause, for all the valid reasons that have been outlined by previous speakers, together with the fact that we can find no other jurisdiction where this provision in law has been introduced, and quite rightly so. It will end up being seen as socially divisive and it will ultimately end up being tested in the courts and I am sure that will happen and there will be no real winners. So, in conclusion, I would just add that I am relatively comfortable with the remainder of the changes introduced in this new Marriage and Civil Status Law, I think that streamlining the process, giving couples greater choice of location of their ceremony, are all positive steps. But if there is just one slight concern, it is about the inclusion of some religious content in civil ceremonies; it should either be definitely in or definitely out and not left to someone’s discretion as personnel and opinions change. That is all I have to say, thank you, other than to close by saying I am a relatively simple soul and I would really appreciate some guidance as to how I should be voting to ensure that I do not condone this conscience clause. **[Approbation]**

1.5.20 Deputy D. Johnson of St. Mary:

I clearly see this problem, such as it is, more simply than most other Members. If I may go back to the time when the first principles were debated, I was concerned beforehand as to the level of confrontation that might be seen in the Chamber at that time. The fact that there was not, and I think I am right in saying that, was I believe largely due to the opening address by the Chief Minister who made it quite clear that what Members were discussing was a civil situation and we should vote whatever our religious beliefs were. That came to pass. Most Members voted in favour of same sex marriage, as I did, without reference to any religious beliefs we have, which were put to one side. The conflict, such as it is, is therefore between the state of a civil situation and religious beliefs on the other and this is not a unique situation. There are other laws where the civil situation does not sit cheek by jowl with the religious. I think of divorce where I know that people of many faiths simply do not accept it. They accept it as a civil function but would not go to church to witness a remarriage between a divorcee and someone else and that is not part of what we are discussing today; that is their belief and we should respect that. So we have the situation where in principle we have agreed same sex marriage. We have also agreed that churches need not participate in that. So, in the absence of a clause such as the tolerance clause, we have this curious, if not almost contradictory, situation of churches being allowed not to marry same sex couples, but their very flock do not have the same privilege, they are being compelled to do something against their religious belief and that is a problem. Yes, I fully agree that it would be nice if we could find an accommodation but that is not going to happen today. The Members favouring or not favouring the conscience clause talk liberally about discrimination. I am afraid I do not see it in that light, it is so very limited, it is limited to participation in a marriage that day for such a short time, it is not general discrimination. Certainly I agree with Deputy Labey, I would be appalled if a gay couple were expelled from a club and matters like that. We are not in that debate today; we are looking at forcing people against their wish, against

their religious convictions, as the law says, or as the amendment says, to carry something out, which their church is not obliged to do. That seems to be relatively reasonable to me and for that reason I will be voting in favour of the clause.

1.5.21 Senator I.J. Gorst:

I made a school boy error at lunch time and I did so by saying to the Dean that during my speech today I was perhaps intending, unusually for me, to quote scripture, and I will come back to that shortly. The school boy error was that he was intending to quote the very same scripture that I had picked. I agreed with him then that it might be more appropriate for the representative of faith in this Assembly to speak first. Little did I know, when I suggested that to him, that not only was he going to have stolen my scriptural verse, he was also going to have stolen many of my other points. But, nonetheless, I hope that Members today will forgive me if I am a little more personal in my comments than I might normally be in this Assembly. Where to start? This is about a conscience, tolerance, non-compulsion clause, but I need to go back slightly further than that because I was first asked in an amendment to Deputy Mézec's in-principle proposal to do a review and to consult with the public and that was undertaken, we brought that forward and in principle this Assembly agreed that we would amend legislation to give effect to same sex marriage. During that consultation process, I met with members of the church and other religions to ascertain their views. Members may recall that at a very similar time our sister Island, a good political friend of mine was suggesting that they should be following the civil union route and I made that suggestion to the church community here in Jersey. That would not be one rule for one and one for another, it would be the wholesale change of how we got married or brought together, had that contract under the law. I remind Members of that because, had we taken that route, and our colleagues in Guernsey did not take that route either, the church community there very firmly - perhaps it was even our current Dean - very firmly made their view known to their then Chief Minister, as they did to me here. But I remind Members of that because we would not be here today thinking about this clause had we taken that particular route, and it is for others I think to say why we took the route that we did and why for the church the sacrament of marriage is so important. But I do remember, and Members may be fascinated by this, a columnist who has written again today in the *Jersey Evening Post*, who gets a lot of criticism for his columns, was in favour of taking that route. I say that because I am reminded of it by the comments of Deputy Labey about the difficulty that the hierarchy of the Church of England is having in keeping differing persuasions and views on these matters together and the constant conversation and dialogue that they are having and that particular clergyman said: "If we do not do it now, we will ultimately have to do it if the church does not want to accept gay marriage in the future, we will have to do it down the line". I make those points because I think a history lesson and where things may end up ... I see you are looking over your glasses at me with a wry smile, I am not predicting the future. What I am saying, like Deputy Labey was saying, that these issues will be constantly in conversation and in dialogue because there is not a unanimous view of either church organisations, denominations, or Christians within those organisations. So what these amendments to the law are all about is equality, is about promoting marriage. I am a great promoter and believer in marriage, life long, ideally, long-term relationships are the building blocks of all coherent communities. So encouraging people to make that commitment to each other I think is a positive thing. As others have said, I am sorry, and it is a great sadness to me, not today, I think it has been so far a very well-managed and in the large part orderly and respectful debate, but outside of this Assembly it is a sadness to me that it has become divisive. I say that because the politics of division, the politics of opposition, is easy. Building walls, throwing stones, that is easy. But building bridges, as the Dean would say, going into no-man's land, is much more difficult. But I believe that all leaders are called to build bridges and we, whether we like it or not, are the leaders of our community because the public have put us here. Therefore we should not forget that one of those responsibilities is to build bridges.

[16:00]

Unfortunately, things have been said over the last probably only 2 weeks or so; they say a week is a long time in politics, it certainly seemed a long time with all the representations that we have had. But since this clause has been lodged, things have been said, which have not been building bridges but have been building walls through our community. I do want to address some of the things, which have been said about the Jersey Evangelical Alliance, because the characterisation of those individuals and those churches, as they have been characterised, is not one that I recognise from knowing some of those individuals. We should not forget our history in part of western democracy, Christian believers in our western culture have been responsible for starting schools, social services, labour movements, health care, and many, many other areas of our lives. Members and church members of the Jersey Evangelical Alliance do, as Deputy Tadier was saying of other churches, excellent work in our community. They provide food banks; they provide mother and toddlers groups; they provide places for people who are lonely to go; they go out on to the streets, into our community on a Friday and Saturday night and are just there for people who might need someone to listen to them. So I do not recognise that characterisation of those either churches or individuals. I want to then say, for my part, I can understand entirely why the Dean quoted from the scripture that he did. Deputy Tadier is renowned for quoting scripture in this Assembly, we know his history, but he does really seem to enjoy it. Unfortunately, I think he tends to quote it mostly in anger. He is shaking his head, but I think those who have listened to him know that is the case. But we read that Jesus was asked: "Teacher, which is the greatest commandment in the law?" and he replied: "Love the lord your God with all your heart and with all your soul and with all your mind. This is the first and greatest commandment. And the second is like it; love your neighbour as yourself. All the law and the prophets hang on these 2 commandments." I could talk about the first commandment.

The Bailiff:

Not relevantly.

Senator I.J. Gorst:

I think I could, but I am not going to. I do not want to meet your wrath. For me, living in such a beautiful place as I do, it is absolutely logical and common sense to believe in the existence of God, but I leave it there for fear of you chastising me. The second is love your neighbour as yourself, because during some of these debates, outside of this Assembly, being a Christian has been characterised as being bigoted, as being holier than thou. But for me faith is absolutely the reverse. Why is this relevant to the conscience clause? It is because we know that members of the J.E.A. (Jersey Evangelical Alliance) appeared before the Scrutiny Panel; I have met with them as part of the consultation as well, and they articulated a concern about this law because of what they had seen elsewhere; what they had seen happening in the United Kingdom, what they had seen happening in America as well. Is that a legitimate fear? They will say that when you look elsewhere perhaps it is. Others today have said they do not think it is. My question would be, if it is a legitimate fear, would and does the conscience clause, as brought forward, eliminate that risk? Does it mean that people with strongly held religious views will mean they do not find themselves in front of a tribunal or even in front of yourself because of that belief? I have come to the conclusion, having thought about it and considered it in great depth, that it does not eliminate it. What it rather does - and I think it was Deputy Martin that suggested it as well - first of all it creates differentials between the sole trader and a business owner and employees and the protection that they might have for their belief, but more importantly for me it is about a trial of belief because we would be creating the situation where those of strong religious view would, as others have said, say: "I am not going to provide that cake, I am not going to provide those flowers, I am not going to provide that photography, I am not going to sing at that ceremony or at that after party or at that anniversary, however many years down the line." How are they going to prove that they do so because of their strongly held religious views? We would be putting into law, and others have talked about discrimination, but we would be putting into

law the ability for a trial of one's faith. We only need to look at European history and British history to know how incredibly damaging and unsuccessful that has been in the past between the 2 major denominations. How would the court be able to judge when one Christian believes something totally different about equal marriage to another, when one church denomination believes something different. Again, as Deputy Labey said about the Church of Scotland. We know that the Methodist church continues to think about these things as well. How would we judge why one was making that decision? We could only do so with a trial of one's faith and I do not think that the concern that those have raised with the Scrutiny Panel would be addressed by this amendment, but we would potentially be creating rather an even larger problem. I am grateful to all of those who have contacted me, some in writing, some in person, and I know, because I know from the last election when I said then that I supported equal marriage that members of the public will not vote for me because of my position. At the last election I was even asked, if I take that view on equal marriage, am I in favour of keeping the Dean and the prayers in the Assembly? I do not want to disappoint Members, but I am in favour of keeping the Dean and prayers in the Assembly. I know that even I have been contacted by some people who in the past have signed my nomination paper. I was challenged yesterday on this matter in what I thought was quite a pertinent way. As Chief Minister, I have always, as Members would expect, put the Island's broadest interests first. That has meant I have done some unpopular things. I know it has also meant that some people have not understood why I have done what I have done. I was asked by someone yesterday: "That is fine", they did not call me Chief Minister, they used my Christian name: "That is fine, we understand then why you are taking the view that you are, but how will you feel if the day that you wake up after you are no longer Chief Minister; will you regret it?" I have thought about that for the last however many hours I have had, 24 hours, and I do not think that I will, because this is a job that this Assembly has put me into; that 3 and a bit years ago Islanders voted for me to do. Not because I have taken very easy decisions or popular decisions, but I have considered carefully what the right decision was and should be for any given point. So I want to remind ourselves, as I think other Members have done, that this law is bringing equality for members of our community that have, throughout their lives, some of them, suffered bullying, suffered rejection and suffered so much more that those of us who are not part of that community may never fully truly understand. Sometimes we, as a Government, certainly those of us who associate with a church, have not acted in the way that we should have done and I am sorry that is the case. It is true, there is a website they say for everyone, one of the people who have written to me during the course of the last 10 days has pointed out to me a website, which is called: "Accepting Evangelicals". I am not sure whether it is a website that one needs to go to and they take you away or it is because evangelicals can be accepting, and of course it is the latter. The Dean mentioned something, as did Deputy Tadier, in their speech about Discrimination Law and referencing the United Kingdom Equality Act. We have made really great progress in our Discrimination Law and, as Senator Routier said, we will shortly be bringing forward disability discrimination. But we do not have anything in that Act around religious belief or non-belief as they do in the U.K. Act. So I do not think, having considered it, the clause that the Scrutiny Panel is putting forward works. I think we are far better to consider and come together as a community because that is so important after this debate, to consider what changes may be appropriate in our equivalent of the Equality Act.

[16:15]

The decision will be made today. I think it will be the decision that I thought it would be many months ago when I was speaking to members of the faith community when they first started mentioning this clause. It has been, outside of this Assembly, a really difficult and divisive debate and I hope that every Member of this Assembly, as we move forward, will seek, with their words and their actions, to heal those wounds. I ask also, and I know that they will be keen to do so, that members of the Jersey Evangelical Alliance seek to reach out to be a part in the future of that healing as well.

1.5.22 Deputy A.E. Pryke of Trinity:

I shall be brief because I am pleased to follow the Chief Minister. I would like to think that I am a very simple soul who, over the years in my nursing profession - about 40-odd years - have seen all walks of life cared for, supported, all different types of families, non-families, through the good times of perhaps lesbians giving birth, the most joyous occasion, to seeing families on their deathbed sharing that love and being able to express that love. At the beginning of my career especially some lesbians and gay couples were not able to share that love; they were forced out of the room, the house, the ward, or whatever, by the other family, and at that important time not being able to say goodbye to their loved one, even if they had been in a relationship for many, many years. So, yes, I have, as I said, a very simple way of looking at life and I would like to think that this Island cares for each other, supports each other, and I would like to think, especially after this debate, can be united. I just think this amendment sadly is divisive. Part of all my Christian life, I have been brought up and even now profess my faith and, as the Dean and the Chief Minister have said, mostly the second commandment, love your neighbour as yourself. I, especially during my nursing career, when at times it has been extremely difficult to cope with some of the family and what you see as part of life, but just love your neighbour, and if there is anything that we can do afterwards to bring the Island together after this then I hope we can. Yes, there is a grown-up debate to have about whether Christians of faith should allow their buildings to be used for marriages. From my point of view, I think, if somebody professes their love, whether they are 2 of the same sex or man and wife or whatever, I would like to think that the church would welcome them. I, also with my Constable, also think if my grandchildren were in that situation, yes, I would support them 120 per cent because that is a mother's love. So I said I would be short; I just hope that we can move on from this, can move on together, but churches do need to have a grown-up conversation within their churches and so that we can all move forward together. I hope that people will vote against this amendment.

Deputy L.M.C. Doublet:

Can I just clarify that we are still just on the amendment to the second amendment of P.91?

The Bailiff:

It is a very good question but I am hopeful that, because Members have spoken so widely on both the amendment to the amendment and the amendment itself that we will have a very quick debate on the next part. [Approbation]

Deputy L.M.C. Doublet:

I was going to save what I wanted to say for the main amendment.

The Bailiff:

No, go for it now. [Laughter]

1.5.23 Deputy L.M.C. Doublet:

I do just want to begin by just speaking to this amendment to the amendment because I think there is a risk perhaps of this amendment getting a bit lost and I am not very political myself, despite the job that I am in, but I am told that often Members might put in a halfway measure so that the larger part of what they are bringing forward is rejected and they are hoping for a concession. I am just wondering if that is what is happening here. When I look at the report attached to this amendment, it quite cleverly states: "This amendment removes the second part of the tolerance clause and thereby allows Members to vote separately on both elements." Then it is telling us how we should vote: "Therefore, if a Member supports the tolerance clause in its entirety, they should vote against this amendment." The final statement on the report is: "If a Member does not support a tolerance clause in respect of persons who object to same sex marriage on the grounds of religious conviction, they

should vote for this amendment.” But there is another sentence missing. You do not have to vote for this amendment if you disagree with the entirety of the tolerance clause and it has taken me a while to get my head around that. So, if you do not think that buildings owned by church, by religious bodies, if you do not think there should be discrimination allowed there, then vote against this. I am going to vote against this purely because I think a lot of the buildings, such as church halls, are not just purely attached to the church and used by the religious community, they are part of our Parishes and used by all parishioners, irrespective of their religion and also maintained via ratepayers’ money. So I do believe that even same sex couples who may not be allowed to get married in the church, if they are part of that Parish and they have a link to that particular building, *et cetera*, I think that they should be permitted to use those buildings and so I am going to be voting against this amendment. So basically anybody who does not agree with any type of discrimination I think should vote against all of these amendments. I will sit down. I may speak again later, I am sorry, but I will try to keep it brief if I do. But I may not need to because everybody has I think covered most of what I wanted to say.

1.5.24 Connétable A.S. Crowcroft of St. Helier:

I have had quite a bit of experience of discrimination during my life but I am not going to trouble Members with it because I think we have already had quite a lot of personal stories of that nature. I just want to respond to a couple of genuine questions I think that have come out of the debate that I do not think have been answered. The Deputy of St. Ouen, in his thoughtful speech, was asking at the end about what protection people have whose religious beliefs make them unwilling or make it difficult for them to provide certain services for same sex weddings. I may be taking an overtly simplistic view of this, but it does seem to me that, if you provide a service for the public that is paid for, you cannot discriminate against people on any grounds, you cannot discriminate on grounds of their gender, their nationality, or indeed their sexual orientation. It does seem to me that ... I have been in business myself and you do not go into business if your beliefs or morals or prejudices, whatever you call them, are going to prevent you from providing services to the public because you surely know that. Certainly most young people today who one knows who are going into business, it probably would not occur to them to deny a same sex marriage their service. But I, like other Members, have been contacted by people who are really concerned about having to provide services and, like other Members, I find that extremely sad because the world has moved on and I think people who want to remain in business, clearly if they want to remain competitive, but if they want to be legal and this law goes through unamended, they are going to have to change their ways. On the subject of changing one’s ways, it has been interesting listening to Members who have been inclined to equivocate in this debate. We had one Member who was talking about “compelling people to adopt one opinion against their own as if the 2 opinions are of equal value”, and of course they are not. If I can quote the Dean, the Dean talked about “competing belief systems”. That suggests that they are of equal value and I do not believe, certainly if you are in business, if your belief system says: “I will not serve a gay couple in a wedding situation” that opinion, I believe it is untenable, but it certainly is not equal to the decision that you will provide your services to anybody regardless of their background. Again, when the Chief Minister spoke about building bridges, I was thinking building bridges to what and between what? Because one of these positions, it seems to me, is untenable and we cannot build a bridge out into the abyss. But perhaps for me the solution to this issue that arose during the debate, it was sparked off by something on social media. I read a commentator on social media who said he was ashamed to be Jersey because this debate was coming to the States of Jersey and other Members have repeated that today that they do not believe this should have come to the States debate. I had a certain amount of sympathy for that until for me what was the most moving speech of the day, was from my fellow Constable in Trinity who stood up and said that he had changed his mind and he was wrong when he opposed the principle of gay marriage and he had listened to the people who had contacted him and he had thought about his children and his

grandchildren and he changed his views. I remember being enormously embarrassed when I was at university and I was invited to lunch and I was deeply Christian at that time and I was expounding at the lunch table how homosexuality - let us call it correctly, it is homosexuality - was wrong because it was biologically wrong and I was the son of a biologist and I was explaining it. Somewhere during my explanation I realised with that awful feeling, wishing the ground would open up, that I was talking to a group of gay people. I have never forgotten it and of course I learned, I now understand and fully endorse, I did not have any problem with anyone's sexual orientation at all. So I am really pleased to have heard the Constable of Trinity talking about his moment of realisation and I hope that, as a result of this debate, other Members, not only in this Assembly, but in the Island, will realise that it really does not matter, if a couple are getting married and they love each other, then let us give them all the services they need to celebrate their happy day. Quite honestly, whether you are icing a cake - I gather it is the icing and not the baking that is important - whether you are icing a cake, whether you are printing a wedding programme, whether you are singing a song or indeed writing an epithalamium, as I did last year for a civil partnership, you do so with great joy and you support that couple and you hope that their relationship will be long lasting. So I urge Members to throw out this amendment, it does not have a place, I believe, in our Island, and I think we should simply kick it out and approve the law.

1.5.25 Deputy J.M. Maçon of St. Saviour:

A lot has been said today and I do not want to repeat things that have been said. One point that I would like to begin with however is to thank the organisation Liberate for the work that they have done in forming this Law. **[Approbation]** In particular, their C.E.O. (Chief Executive Officer) who works in an honorary capacity who has worked incredibly hard in contributing to the formation of this law and other laws I am sure when they are to be considered, as well as the work that they do within the wider community. When I was considering the clause that has been put before us, I got around to thinking to Liberation Day and the speeches that are given on that day every year, which talk about the Island, remembering what has occurred within its history and how it embraces itself as being a tolerant, open, welcoming community. I got to thinking, if this clause went through, during that speech it would be an awful situation to say: "We are an open, tolerant, welcoming community unless you are gay". That is not a position I think Jersey wants to have within its reputation.

[16:30]

Again, when this amendment was lodged by the Corporate Services Scrutiny Panel, again many media outlets did cling on to this and, again, the damage I think it would do to our international reputation to adopt the clause that is being put before us would be bad. We know Brexit is occurring and we know that we will be looking to do more work with our Commonwealth neighbours and countries. May I just remind Members that in 36 of the 52 Commonwealth nations it is still illegal to be homosexual or in some cases transgender, so I think it is important that we can turn around to those countries to show how Jersey, among other countries, is leading the way in L.G.B.T. rights. By chucking out what is clearly an intolerance clause is certainly a way in which we can demonstrate how that is. As has been said for my generation, this really does not seem to be an issue and we have had that through the various propositions that have surrounded this. So I do pose the question to Members, when they look back and reflect on today, ask themselves what side of history do they want to be on. I know exactly where I am going to be. Finally, there is a point about the law in its entirety that what we were hoping to do is have many days of celebration coming out of this particular law to bring much happiness and joy to members of our community. As it has been said, it should be about love. Now, I am not great poet, but there is written in a place called Corinthians, which does talk about love, and it says to us: "Love is patient, love is kind, it does not envy, it does not boast, it is not proud. It does not dishonour others. It is not self-seeking. It is not easily angered. It keeps no records of wrong. Love does not delight in evils but rejoices with truth. It always protects,

always trusts, always hopes, always perseveres. Love never fails.” I hope that Members of this Assembly, in sensing the mood of the Assembly, we will have a day where we will throw out this intolerance clause and have a day where we can all say love wins.

1.5.26 Deputy S.G. Luce of St. Martin:

Being the Minister for the Environment, I have found out quite quickly that you cannot please everyone. Indeed, I see it as my goal to keep everyone equally unhappy. [Laughter] If I can achieve that I regard it as some sort of a success and I fear today that to start off with I may continue in a similar vein in keeping everyone unhappy because today I do not see a best option in front of me; I see a least worst option. I say that because I believe I would wish to live in the society that Deputy Brée spoke about this morning, a society that is more loving, more tolerant, and more forgiving. In Planning, some of you may know that we have something called the General Development Order, which is something called permitted development, and one of my goals is to relax permitted development, and I have done so during my time as Minister. But in relaxing the law and allowing people to do more without permission there are consequences and those people who live alongside those who do more without permission have to be tolerant. The Constable of St. John mentioned law changes this morning and it has always been my view that we have to invent laws for 5 per cent of the population only because generally speaking the other 95 per cent are tolerant and forgiving and not law breaking. Deputy Brée and I share one thing because we have struggled to write our words down in the last 48 hours. I really could not see a way to start to write the speech that I am giving now. But 2 things have continued to resonate in my mind as I have thought about this debate and as we approached this day. The first one was an uncle of mine who, during the 2nd World War, was a conscientious objector. I will just let that sink in for a minute while Members think about conscientious objecting. But when I go on to tell you that uncle of mine joined the Medical Corps in the Navy and served in the Navy protecting boats in convoys across the North Atlantic and was awarded for his bravery, and I say to you he followed his conscience but found a way to help for the greater good. I hope you may see where I am getting at. The other thing that I think has possibly even more occupied my thought process is something which I saw in the *Jersey Evening Post* 2 or 3 weeks ago and more recently on television. It is again in the 2nd World War, it is the telecasts, the news reels of discrimination that happened all across Europe during that time and closer to home, in the *Post*, the photos of local Islanders who protected people who were being discriminated against and lost their lives because of that. I say to Members, as much as I do not see a best option in front of me and as much as I may have spoken in the Council of Ministers some weeks ago more favourably towards Deputy Le Fondré, I am changing and continue to change my mind and I cannot vote in favour of any conscience clause or any form of discrimination.

The Bailiff:

Does any other Member wish to speak? If not then I call on Deputy Le Fondré to reply.

1.5.27 Deputy J.A.N. Le Fondré:

I will start with Deputy Maçon, because I agree with him. I am hoping that something that will come out positively from this whole thing is that we will be allowing same sex marriages to come through. That has to be a positive consequence of the law that we are putting through and I think I have made it very clear and the panel have made it very clear that we support that, so I agree entirely with what Deputy Maçon in that aspect was saying. It has been a good debate, it has been a tough debate, but that is what we are here for. But we did feel, and it was a majority position of the panel, that we needed to have that debate because, yes, it has been painful, slightly cathartic maybe, but maybe it also helps in a way to start getting the understanding on both sides of the argument and then help people understand where everybody comes from. Because people, in the submissions that we received and in the hearings we had, it did become clear that an element of our community - and

Senator Ferguson has covered that - did not feel that their voice was being heard in this debate and that has at the very least allowed that voice to be heard, and that is part of the job that we do. Now, I am going to try to address some of the remarks, I think they probably do need to be clarified for the record as well. I am going to start with the Chief Minister. He talks about was it a legitimate fear? We would argue that the clause reduces the risk, there is never no risk. But just one point to remind him of that the differentials between employer and employee and the request to opt the employees out came out of the discussion we had with him and his officers in his department, because originally we did not have that in. So I will just make that point, it was because we were going for a narrow clause. Just as an aside, this is me as a layman; there is already a conscience clause, for example, in the Abortion Law. That has been there for quite some time and so in terms of how you test, is there a conscience or not, that is there and certainly in the U.K., as far as I understood, that has been tested and the onus is on the person to demonstrate whether they have a faith or not. Let us go back to the beginning. Only because it is interesting in terms, I am not going to cover everybody's points people will be delighted to know, but there is something, if I can find it now, the Deputy Chief Minister talked about no one will be stopped from wearing a crucifix going to work. I suddenly thought that may be the case now but the only reason it has become the case is because of something that is called the El Vida case v. British Airways, which went through the U.K. courts and got rejected all the way along the line and it had to eventually go up to the European Court of Human Rights where it was upheld. I cannot remember the exact year but it is relatively recently. So it kind of misses the point that these warm comforting words were given in these types of debates in the U.K., and I will give an example from Hansard in the House of Commons on 5th February 2013. This was by the Secretary of State who was introducing the Bill: "The introduction of equal right marriage will not marginalise those who believe that marriage should be between a man and a woman. That is clearly a mainstream view." These are her words: "But neither will it continue to marginalise those who believe that marriage can and should also be between a man and a man or a woman and a woman. We will not allow one belief to exist extant to the other. No misguided sense of political correctness will be allowed to impinge on that. It will be deeply divisive if in righting a wrong for some we created a wrong for others." The example is given: "No teacher will be required to promote or endorse views that go against their beliefs." As I said in my speech some time ago, since the law came in there are about 200 enquiries a year that are the conflict between the Discrimination Law and religious belief. So, in other words, the warm comforting words did not match the reality; the El Vida case is an example. I am going to try to whiz through some of those, I have talked about we were going to try to keep it narrow. I agree with Deputy Brée. Deputy Brée, as we all know, is a very strong character with very strong views on certain things and we all agree it is a shame we need a Discrimination Law, but unfortunately that is not the reality at the margins. 90 per cent of the time none of this would be needed. But it is interesting when you talk to people about discrimination they say: "There must be no discrimination on this area." Then when you start getting their views, for example, on religious equality or perhaps other laws or perhaps Muslims and things like that, sometimes their views are somewhat different to what has been publicly expressed. Deputy Mézec did miss the point quite a lot, the whole point is this distinction and this difficulty between marriage and the definition of marriage. It is not about stopping a gay person going to a restaurant and eating. The one point I think I would make, which I pick up from the Chief Minister, is a lot of the religious organisations do a lot of work, particularly in relation to poverty and mental illness and I think that should be recognised. For Deputy Doublet, now a couple of things: one is in the example she asked about to the Solicitor General where she said: "Can someone not apply to say that is still private goods?" Of course they can, but what they cannot do is not provide the goods, because that would be discriminatory, and unfortunately I shall give an example in slightly more detail. In relation to this amendment, given her views, on this particular next vote she should be voting pour because that is effectively voting against the tolerance clause, if that helps. The Deputy of St. Ouen spoke very passionately about certain things and certainly talked about mostly enforcing conformity. Senator

Ozouf talked about we should not discriminate, we should not have opt-out clauses. I do not pick on him because it is Senator Ozouf, this is a theme that has come through and I do want to quote, if I can, from an aspect of the law, if I can find it. Here we go. So we are not going to discriminate, okay, no discrimination whatsoever because it is abhorrent in whatever we do. Part 2, exceptions for prohibited acts, this is from the Discrimination (Jersey) Law 2013: "Race. Acts done pursuant to States policy or Ministerial Decision, an act of discrimination is not prohibited by this law so far as it relates to the protected characteristic of race if it is done pursuant to a policy adopted by the States or by Ministerial Decision where the implementation of that policy or decision applies criteria based upon a person's place or birth or length of residency in Jersey for the purposes of promoting employment or other opportunities or providing access to facilities or services." So just to be a purist that is one example of discrimination built in to this law.

[16:45]

I do not disagree with it because it is about population control but that is directly ... no, the argument that has been coming forward is we must not discriminate. There are 20 pages of discrimination in there and they are all for different reasons. Now, I would also make the point as far as I have understood it, civil partnerships are not considered as marriage and obviously I did vote for civil partnerships in the first place. We are imposing civil law; there is no question about that and the issue around that is the boundaries between the law that was in place and people being in business and how those boundaries are now going to change and what the impacts are. I did agree with the comments from Deputy Wickenden in his first observations about what we should be doing. I did, for Deputy Labey of St. Helier, quote some particular examples. Unfortunately for length of speech I will give one more. I agree entirely with the comments that the Connétable of Trinity made and I agree and have kind of the same thoughts in the back of my mind sometimes on this type of thing. Now, what I am going to say, number one, we talked about... so picking up for example from what Deputy Martin talked about, and other people have talked about what happens in other jurisdictions. This is when one gets into... and I think the Deputy of St. Ouen talked about it as well, we have made a recommendation in our report, which talks about reasonable accommodation. Interestingly enough - and this is a difficult concept - what we were told (1) it was not in the scope of our review in terms of being all at the scope of this law to bring any amendments; and (2) just by way of illustration, reasonable accommodation originally comes out from the United States Civil Rights Act 1968 in reference to discrimination on the grounds of religious practice. Apparently one of those, one example is where a member of a particular religion holds beliefs that prevent him or her from working on a certain day, the employer should seek ways to accommodate that employee. That is from Canada. From New Zealand there is a Human Rights Act 1993, Article 28, where: "Religious or ethical belief requires its adherents to follow a particular practice an employer must accommodate the practice so long as any adjustment of the employer's activities required to accommodate the practice does not unreasonably disrupt the employer's activities." Now the point is that is different to what we are talking about, but it is in the same kind of area, and it depends what approach one wants to take. That is something where we think there needs to be something which would address this issue about the employee if that is where people want to go. But it is, and in terms of statute, the only statute for something - which is a lot more severe than anything we are proposing - is I think in the state of Mississippi; however it was going to be in the U.K. proposed Bill of Rights before whichever election it was when things went slightly wrong, therefore it got dropped. Obviously, it is not in Northern Ireland because they have not yet adopted same sex marriage, for example. Now, the practicalities are, which is where we were coming from... is this type of example, which is from a Colorado baker, and I will just read briefly from an article on it, which was sent to me, and I thought it was useful: "Phillips has been a Christian for 35 years. He closes his shop on Sundays, helps employees with personal needs outside of work, and declines to make cakes with offensive, vulgar or profane messages. He cordially refuses to make cakes that celebrate events and ideas that violate

his beliefs, including Halloween, which costs him significant revenue, anti-American or anti-family themes like divorce, atheism, racism or indecency. On a particular date at a freedom rally he apparently mentioned that of a time when he turned down a request for an anti-same sex marriage cake because it was hateful.” Now, what then happened is he was asked to make a same sex marriage cake and the thing was he got taken through the whole court process, it is still going through up to the Supreme Court, but the consequences for him initially were: “Take remedial measures including comprehensive staff training, alteration to the companies’ policies to ensure compliance with Colorado Anti-Discrimination Act, file quarterly compliance reports for 2 years describing the remedial measures to be taken to comply with it, and documenting all patrons who are denied service and the reasons for the denial.” I think there is a fine in there as well somewhere. That is the real examples that are coming through in the sphere one is talking about. In the ideal world, we would not be needing this. Interestingly enough, I was interested by the comment from the Connétable of St. Helier about if you run business you do not have conscience or something, and I just came across a quote: “It is important to remember that just because someone decides to run a business or provide a certain service that they do not as a result give up their civil, social or human rights. While a customer does have a legal right not to be discriminated against, so too does a service provider and, in this opinion anyway, enjoys a legal right to freedom of thought, conscience and religion.” I will just put that into context because otherwise it implies that business does not have morals or it does not come into the equation. That may not be what the Connétable is trying to imply. I have talked about the Hansard. Some people suggest, well all that happens is that you just say you are busy or you just cannot do the job, but basically you are encouraging people to be dishonest and of course if you then get caught out you then end up in the discrimination territory. What was interesting, just to back up in terms of perhaps more informed opinions perhaps, is to quote Baroness Hale, who is the Deputy President of the Supreme Court, who has in the past suggested... and this is a quote from a newspaper article: “A conscience clause protecting Christians and others whose beliefs on issues such as homosexuality and where they clash with their jobs should be considered to help resolve disputes over religious freedom.” Because she is saying she is not convinced yet that the law has found a way to strike a reasonable balance. It still has to work out how best to accommodate people’s rights to follow their beliefs while protecting others from discrimination and in that particular article it says: “The story has just begun.” What is interesting is then she cites the example of Canada, and that is the original accommodation clause: “Where those who refuse to provide a service, such as hiring a room for a same sex wedding, must take reasonable steps to provide an alternative.” Now, it depends on people’s views, but I am just putting that alternative thing out there because that was what our job was to do. I make the point again in terms of people who have said that discrimination should not happen; that faith effectively does not matter, well basically it has to comply with the boundaries of the law. The point I make is that what we are saying to certain people in that case is that we can discriminate, as I said, for places where you can eat lunch, you can decide there that you can discriminate, whether it is a man or a woman that goes in and eats, and that is important because that is in the law, but you cannot discriminate in terms of people’s views on the teachings from their deeply-held religious convictions. So the arguments from the people saying: “We must not discriminate”, there are a whole range of complexities or perhaps contradictions that I think it was Deputy Labey who did refer to, when he touched on the quadruple lock, because that is discrimination and that is a conscience clause. This is just to pick up on something that is anticipating future arguments on future debates that Deputy Doublet touched on, which is about the church buildings. The issue, as I have understood it, is that ... so if basically this aspect of Article 7A is deleted, which one anticipates from the mood of the Assembly it will be, what it leaves in is the issue around church halls and things like that. The difficulty within all that lot is there are inconsistencies across Jersey as to how church halls are presently treated and what we are trying to do there is to remove those inconsistencies from the point of view of where there is a contradiction that a church or religious organisation is not compelled to provide certain services. Now the contradictions are, if you have a

church hall within the curtilage of a church, that has one level of protection already in the legislation we are facing.

The Bailiff:

I do not think this arises on your amendment.

Deputy J.A.N. Le Fondré:

It is a question that Deputy Doublet referred to and is a consequence of the removal of the intolerance clause and what is left. What happens in that if a church hall is outside the curtilage of the church - so it is across the road - it will not have that same protection under the present legislation. All we are trying to do is bring the level up to a certain point where, yes, if people want to allow any use they want, they can. But if they have a problem there is a consistency, so they are not compelled to allow that use to happen. At the moment, within the present legislation, under some buildings there will be a protection and under others there will not be because they are across the road from the church. That is the reason we have come from it and that is because, in certain cases, there is a sensitivity in certain areas as to how those halls are used. That is it. But it is a point that, if one does not have something like that, there will be inconsistent treatment for similar buildings across the Island according to where they are located. I hope that helps matters; maybe that has not. Right, I am going to try to wrap up and just say ... **[Approbation]** Thank you. It has been difficult; we have known that, we thought it was important to have this debate. It has been tough, no question. It would have been better to have this debate a year ago or something so we understand where we are all coming from and perhaps come to a compromise position or something. I do thank everybody for their input, even the ones where I have possibly disagreed with what has been said, but that is part of the job. If Scrutiny had not brought the review in, there would be a whole range of inconsistencies in the law. This is one of them. We will get to the others shortly. On that note I do remind Members of the Peter Tatchell quote that in his view it was an infringement of freedom to require businesses to aid the promotion of ideas to which they conscientiously object. Discrimination against people, which for example would be racist, should be unlawful, but not against ideas. I make no apology as well for saying so and repeating I disapprove of what you say but I defend to the death your right to say it. Now, in terms of the vote, I remind Members, if they want to retain a no-compulsion clause, then they should vote against this amendment, whereas if they do not want such a clause then they should vote for it, because this amendment is to withdraw what has been referred to as the tolerance clause out of our amendment. So if you want to withdraw it you vote for this amendment.

Senator P.F.C. Ozouf:

Point of order, Sir. May I raise a point of order? Deputy Le Fondré is encouraging Members to vote in a certain way, we vote how we wish, but could I confirm my right and other Members' rights to vote against this and vote against the underlying principles of it as well?

The Bailiff:

As you said in your speech earlier, Senator, you are entitled to vote against both this and the principal amendment.

Senator P.F.C. Ozouf:

So, in voting against it, we are not giving any indication that we support the keeping of a tolerance clause, as Deputy Le Fondré is advising us to do. We have that right to say that, do we?

The Bailiff:

You have the right to vote on both as you wish.

Deputy J.A.N. Le Fondré:

I was just trying to clarify for some people who have asked me what the consequence of voting which way was. People can vote whichever way they like. On that, can I call for the appel?

The Connétable of St. Saviour:

My learned friend behind me, we have had difficulty hearing everything that Deputy Le Fondré has been saying, so would it be possible for you to tell us exactly how the voting is going and what will happen if we vote one way and vote the other please? **[Laughter]**

The Bailiff:

Absolutely not, Connétable, absolutely not. You must decide for yourself how you are going to vote, but you can vote for the amendments or against them and you must work out what the effect of that is. Sorry, I cannot help you on that.

Deputy J.A.N. Le Fondré:

Is it worth me repeating what I said?

The Bailiff:

No, it is not, Deputy. You set it out in your report in any event, your views, so those views will either be accepted or not as the case may be. I will invite Members to return to their seats and the vote is on the amendment to the second amendment and I ask the Greffier to open the voting.

Deputy J.M. Maçon:

Sorry, for clarity, if I do not want the tolerance clause I vote pour?

The Bailiff:

If you do not want the tolerance clause you will certainly end up voting against the amendment when it is there whatever happens on this one. That is the answer to that.

Senator L.J. Farnham:

For the avoidance of doubt, if we vote contre to everything we get the right result.

The Bailiff:

I do not agree whether the “right result”, you cannot expect me to endorse that, but if you vote contre to everything you do not have a tolerance clause; that is true. Now I invite the Greffier to open the voting.

POUR: 2		CONTRE: 44		ABSTAIN: 0
Connétable of St. John		Senator P.F. Routier		
Deputy S.M. Bree (C)		Senator P.F.C. Ozouf		
		Senator I.J. Gorst		
		Senator L.J. Farnham		
		Senator P.M. Bailhache		
		Senator A.K.F. Green		
		Senator S.C. Ferguson		
		Connétable of St. Helier		
		Connétable of St. Clement		
		Connétable of St. Peter		
		Connétable of St. Lawrence		
		Connétable of St. Ouen		
		Connétable of St. Brelade		
		Connétable of St. Martin		
		Connétable of St. Saviour		

	Connétable of Grouville		
	Connétable of Trinity		
	Deputy J.A. Martin (H)		
	Deputy G.P. Southern (H)		
	Deputy of Grouville		
	Deputy J.A. Hilton (H)		
	Deputy J.A.N. Le Fondré (L)		
	Deputy of Trinity		
	Deputy K.C. Lewis (S)		
	Deputy M. Tadier (B)		
	Deputy E.J. Noel (L)		
	Deputy of St. John		
	Deputy M.R. Higgins (H)		
	Deputy J.M. Maçon (S)		
	Deputy S.J. Pinel (C)		
	Deputy of St. Martin		
	Deputy R.G. Bryans (H)		
	Deputy of St. Peter		
	Deputy R.J. Rondel (H)		
	Deputy S.Y. Mézec (H)		
	Deputy A.D. Lewis (H)		
	Deputy of St. Ouen		
	Deputy L.M.C. Doublet (S)		
	Deputy R. Labey (H)		
	Deputy S.M. Wickenden (H)		
	Deputy M.J. Norton (B)		
	Deputy T.A. McDonald (S)		
	Deputy of St. Mary		
	Deputy G.J. Truscott (B)		

[17:00]

1.6 Draft Marriage and Civil Status (Amendment No. 4) (Jersey) Law 201- (P.91/2017): second amendment (P.91/2017 Amd.(2)) – third amendment (P.91/2017 Amd.(2)Amd.(3))

The Bailiff:

We now come to the Chief Minister’s third amendment to the second amendment. Do you wish to proceed with that, Deputy Chief Minister?

Senator A.K.F. Green:

Yes, Sir, because the Scrutiny Panel’s proposition will widen the areas that marriages cannot take place, but it is too wide, so I do wish to proceed with it, but I do not think we need to take too long on it.

The Bailiff:

Can I just ask you this, because if you look at the amendment, the word “place” appears in 2 different places? Would I be right in thinking you assume that the amendment should read, in the substituted paragraph 6B, for the words “a place”, on the second occasion it appears, substitute the words “an extraordinary place”?

Senator A.K.F. Green:

That would be correct.

The Bailiff:

I think otherwise the amendment does not make very much sense. I take it there is no objection from Members if we amend the amendment in such a way? So I will ask the Greffier to read the amendment as I have just described.

The Deputy Greffier of the States:

Page 6, amendment 5 – (1) In paragraph (a), in the substituted paragraph (6)(b) for the words “a place” substitute the words “an extraordinary place”. (2) In paragraph (b), for the word “paragraph” before the em dash substitute the word “paragraphs”, and – (a) in the substituted paragraph (13) – (i) after the word “may,” insert the words “subject to paragraph (13A) and”, (ii) in sub-paragraph (b) for the words “a place” substitute the words “an extraordinary place”, and (iii) after the substituted paragraph (13) insert the following paragraph – “(13A) The Minister may not certify a location as an extraordinary place of public religious worship unless – (a) the owner or trustee of the location has given written consent to such certification; and (b) the Minister, having consulted the principal occupiers or users of the location, considers it reasonable to do so.” (3) After paragraph (b) insert the following paragraphs – “(c) in paragraph (14) for the words ‘place of public religious worship’ substitute the words ‘usual place of public religious worship or extraordinary place of public religious worship’; (d) for paragraph (15)(a) substitute the following sub-paragraph – ‘(a) shall be deemed to have been certified under paragraph (13)(a) as a place of usual public religious worship of the religious organization in favour of whom it was registered;’.”

The Bailiff:

Before you start, did I understand, chairman, you said that your panel would accept this amendment?

Deputy J.A.N. Le Fondré:

Yes, Sir.

1.6.1 Senator A.K.F. Green (Deputy Chief Minister - rapporteur):

That is good; I will just try to think how I could shorten it not to waste the Assembly’s time.

The Bailiff:

You could invite any Member to speak on it if they feel they need to.

Senator A.K.F. Green:

I am happy to do that, invite any Member to speak on it and then I will answer their questions.

The Bailiff:

Is the amendment seconded? **[Seconded]** Does any Member wish to speak?

1.6.2 Deputy M. Tadier:

Sorry, I had to take a moment’s break there. I understand to a certain extent why the Council of Ministers or the Chief Minister has brought forward this amendment at a late moment, it is to try to be conciliatory because the Deputy Chief Minister just said it; that he thinks that the proposals of the Scrutiny Panel go too far and therefore, in talking about curtilage of church properties and what constitutes their halls, *et cetera*, and therefore trying to offer a compromise. My concern is that it muddies the waters. We have just spent the whole day debating about discrimination and this puts in discrimination clauses for an institution above what is already in the law for clergymen and religious organisations. It extends it to that very grey area, which brings into question the whole definition of what churches are for. The fundamental question that needs to be asked here is are churches or other religious buildings and organisations, are they principally and fundamentally spiritual organisations or are they commercial enterprises? When we start looking at buildings, albeit

whose ancillary use is put to the community, no doubt often with some kind of revenue stream in there, in order to get money in to presumably do whatever they need to as a religious organisation, it becomes problematic when we allow them to start discriminating in their business transactions rather than in their day-to-day spiritual, pastoral care. So, if they have a hall that is attached to a church or is not physically attached to the church or is owned by a trust but ultimately benefits the church and they can start saying: “We are quite happy to have the Institute of Directors in here but we are not going to have the Fabian Society, were they to exist in Jersey. We are quite happy to have the hall used by the Scouts but we do not want it to be used by another organisation. We are quite happy for a heterosexual couple to use our hall, even if they are not members of our church, but we are not going to rent it out to same sex couples who want to celebrate their events in our hall.” That is discrimination and that is what the Chief Minister, in trying to be conciliatory, is allowing here and that is what they have spent and we have spent the last few hours debating against. So we do not need to support this. I think, if there were a risk that the Corporate Services Scrutiny Panel’s amendment were to go through, and I think that would be bad for Jersey, then it might well be that we could accept the Chief Minister’s amendment here because it would mean it would be the lesser of 2 evils. But what we can do is we can reject the Chief Minister’s amendment and we can also reject that of the Scrutiny Panel’s amendment and let us stick to our principles here. It is right that they put this in; sometimes in politics you need to play tactics and you need to make sure that you have a belt and braces approach. But I think we know where this direction of travel is going today, it is going to set open a can of worms; it is exactly the same kind of problems that we have been seeing and trying to fight against. It is not right. We need to reject this and in fact it would be helpful of the Deputy Chief Minister might consider withdrawing this.

The Bailiff:

Deputy Le Fondré, it may help Members to know if you are going to ask for voting on the 7 paragraphs of your main proposition, main amendment, in one go or separately?

Deputy J.A.N. Le Fondré:

No, Sir, we are assuming it will be separate.

The Bailiff:

If they are going to be separate then I just inform Members there will be an ability to have the debate when we return to the debate on the second amendment, which we have only left for the purposes of these amendments to the amendment. So we will have a debate on the substantive provisions later on. This at the moment is only a debate on the amendment of the Deputy Chief Minister.

1.6.3 Senator P.F.C. Ozouf:

Very, very quickly, if I may just replace one word, which I agree with the sentiments that Deputy Tadier expressed; I do not think the Chief Minister and Deputy Chief Minister are being conciliatory; I think they are preventing and engaging in damage limitation just in case the underlying proposition were to have been adopted, if I may respectfully say. For that reason I will be voting like I did the last one because I do not want any intolerance clause in it, I will be voting against this, but I do absolutely respect the fact that the Deputy Chief Minister and the Chief Minister have attempted to limit the damage should we enter into the nightmare zone, in my view.

1.6.4 Deputy J.A.N. Le Fondré:

It might help here, and I take Members back to the presentation we did on Monday. We are now out of the territory of what one might call a tolerance clause. This is about the issues concerning churches and chapels. I will just make sure I am being correct here, because the definition under the quadruple lock was about “usual places of public religious worship” and that causes a problem, for example, under Church of England Law. I am using the Church of England as an example; it might apply to

other churches as well. Where to use under present Church of England Canon Law to enable, if a minister or member of the clergy allowed a same sex wedding to take place on consecrated ground, i.e. in a church for example, they would lose their licence. They would be sacked, no question, they have no choice. So the difficulty that came out when we were talking about this is this usual place of public religious worship. The example that we were using, although it has now been covered, but this is an analogy, is Hougue Bie. Hougue Bie originally, when we were talking it through, we were advised that would not be counted as a usual place of religious worship, so that was the original advice. Therefore you would have this conflict between that it is part of the Church of England, it is consecrated ground, it was re-consecrated in something like 1932, and it is part of the Parish Church of Grouville and they administer it. So it is to avoid those now because it is Anglican it is covered, so basically it is to avoid those type of conflicts arising. I would say that we had a number of discussions with the Chief Minister on this and this is not a damage limitation exercise as far as I have understood it. They did feel that the wording could be improved, which is what they are doing. We were mainly leaving it in the hands of the Minister to determine the circumstances because flexibility is required. What they have inserted has to be keeping it simple, or trying to, there have to be discussions with the owner as well. Because I emphasise Hougue Bie is an analogy because there are specific reasons why it is protected, but in Hougue Bie as an example, it is not owned by the church, it is owned by Jersey Heritage, but it is administered by the Anglican church.

Deputy M.J. Norton:

Would you mind giving way just for a second, Hougue Bie is owned by the Société, not by Jersey Heritage. I thought I would just clear that up for you.

Deputy J.A.N. Le Fondré:

I do apologise. We were assuming it was Jersey Heritage. The point is, it is not owned by the Church of England but it is a Church of England site, as an example, and it was not necessarily, at the point we were receiving the advice, a usual place of religious worship and would not be therefore protected under Article 23. That does cause some conflicts within the churches because if, because it is administered by the Church of England, a same sex couple came along and said: "We want to get married there", the only person can give licences to it is the Church of England and if they did try to issue a licence they would be sacked. So this is trying to take it to basically extend the protection. Now, I will say, as I said, Hougue Bie specifically, for complicated reasons, has a protection, but it is those type of analogies where it is not a usual place of religious worship, this is to allow the flexibility within the gift of the Minister and the gift of the owner to ensure that you do not get these conflicts arising when it is consecrated ground basically.

Deputy G.P. Southern:

Just through you, Sir, can I just confirm that this is the Chief Minister's amendment and not the Council of Ministers, so there is no collective responsibility on this issue?

Senator A.K.F. Green:

I can answer that one. It is a free vote on these issues.

The Bailiff:

Does any other Member wish to speak? If not, I call on the Deputy Chief Minister to reply.

1.6.5 Senator A.K.F. Green:

Senator Ozouf summed it up. This is something with a heavy heart really that I bring because what we are trying to do is damage limitation on the amendment of the panel's. In trying to protect the occasionally used or historic places of worship, the panel have taken that an absolute prohibition extends to any place of public religious worship certified by the Minister. The problem being that,

while the Minister is not required to certify any place, they could potentially certify places such as Bonne Nuit Bay where we know that there is the annual and occasional public religious worship. If the Scrutiny Panel’s proposition was accepted unamended that would not be possible for same sex marriages to take place at Bonne Nuit Bay.

[17:15]

Furthermore, the panel’s amendments have no checks or balances other than the ever-present requirement on the Minister to have regard to all circumstances of the matter. In order to ensure that the panel’s amendments are proportionate and reflect the in-principle decisions of this Assembly regarding the protection for religious organisations, I propose that Article 23 is further amended, and amended to allow that the Minister may certify places, thus prohibiting them from being approved for same sex marriage, but only - and it is discriminatory I accept that - on the consent of the owner or trustee and only having consulted the principal occupiers or users of the location. This is important because the owner of an historic or occasionally used place of worship may not wish to be prevented from hosting same sex marriage; they may wish to be able to facilitate that. Similarly, the principal users, who may be members of the public, may object to such a prohibition. Furthermore, I propose that the term “extraordinary places of public worship” is introduced to help distinguish from the “usual places of public religious worship”. The panel cite the need to ensure that places such as Hougue Bie are exempt from the requirement. I believe that Hougue Bie is already exempt because it falls under the management... it may belong to Société, but it falls under the management of Grouville church. The panel’s amendment as set out to the second amendment needs to be amended so that it is proportionate. It is damage limitation. I therefore propose the third amendment to the second amendment. I ask Members to vote for this and if they are not comfortable with the extending the places where prohibition takes place to reject it in the main amendment.

The Bailiff:

The appel is called for. I invite Members to return to their seats. The vote is on the third amendment of the Chief Minister to the panel’s amendment and I ask the Greffier to open the voting.

POUR: 28	CONTRE: 16	ABSTAIN: 1
Senator P.F. Routier	Senator L.J. Farnham	Senator P.F.C. Ozouf
Senator I.J. Gorst	Senator P.M. Bailhache	
Senator A.K.F. Green	Connétable of St. Brelade	
Senator S.C. Ferguson	Connétable of St. Saviour	
Connétable of St. Helier	Connétable of Trinity	
Connétable of St. Clement	Deputy J.A. Martin (H)	
Connétable of St. Peter	Deputy G.P. Southern (H)	
Connétable of St. Lawrence	Deputy M. Tadier (B)	
Connétable of St. Ouen	Deputy R.J. Rondel (H)	
Connétable of St. Martin	Deputy S.Y. Mézec (H)	
Connétable of Grouville	Deputy L.M.C. Doublet (S)	
Connétable of St. John	Deputy R. Labey (H)	
Deputy of Grouville	Deputy S.M. Wickenden (H)	
Deputy J.A. Hilton (H)	Deputy M.J. Norton (B)	
Deputy J.A.N. Le Fondré (L)	Deputy T.A. McDonald (S)	
Deputy of Trinity	Deputy G.J. Truscott (B)	
Deputy K.C. Lewis (S)		
Deputy E.J. Noel (L)		
Deputy of St. John		
Deputy M.R. Higgins (H)		
Deputy J.M. Maçon (S)		
Deputy S.J. Pinel (C)		

Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy of St. Ouen				
Deputy S.M. Bree (C)				
Deputy of St. Mary				

1.7 Draft Marriage and Civil Status (Amendment No. 4) (Jersey) Law 201- (P.91/2017): second amendment (P.91/2017 Amd.(2)) - as amended

The Bailiff:

That now deals with the amendments to the second amendment and we now return to the debate on the second amendment, which was proposed by the panel. I have you down, Deputy Chief Minister, as wanting to speak first on this.

1.7.1 Senator A.K.F. Green:

I started the speech much earlier in the day before you rightly pointed out that I was in the wrong place. I will try to keep it brief because I think we have covered a lot of this. I and my colleagues, I hope, are going to accept most of the panel's amendments with the exception of paragraph 2 of their second amendment, which relates to the Article 7 that we spent so much time talking about today. We have already rejected the amendment outright and I urge Members to continue with that and reject Article 7, and their fifth amendment, which relates to the proposed changes to Article 23 that we have just been talking about. I am just trying to cut out as much as I can so that ... I think, because I am comfortable, unless Members want me to talk a lot longer, I am comfortable with the panel's amendments apart from the 2 that I have mentioned and that is the Article 7 and Article 23. I have not got much more to say; I think I would be keeping Members here unnecessarily.

Deputy J.A.N. Le Fondré:

Can I seek a point of clarification from the last speaker, because I had understood, and could the Chief Minister be listening to this if possible, I had understood that Article 23, the amendment that we are doing to it was being accepted by the Chief Minister on this? In other words, following the amendment that this is the anomaly on the church locations, and perhaps somebody could clarify that because that was my very clear understanding that the only one the Chief Minister had a particular problem with was the 7 and 7A Articles; the Article 23, which has just been amended by the Chief Minister, or the Deputy Chief Minister, in its amended form was being accepted.

Senator A.K.F. Green:

As I said earlier on, when somebody asked, it is a free vote, I have given my view.

The Bailiff:

I think what the Deputy is asking, and perhaps it would be helpful for Members to know, is, despite the fact you have successfully obtained an amendment to Article 23, are you encouraging Members to vote in favour of it or against it?

Senator A.K.F. Green:

I would like to say, I used to be confused, now I am not sure. **[Laughter]** Personally I think some Members would want me to suggest that the Assembly votes for it, but personally I was happy with the law as it was drafted, so I would encourage people to vote against it.

The Bailiff:

That is clear. Does any other Member wish to speak? The debate is on the second amendment of the panel. If nobody else wishes to speak ...

Deputy L.M.C. Doublet:

Is this the main amendment that contains the tolerance clause?

The Bailiff:

Yes.

Deputy L.M.C. Doublet:

It is? Can I just very briefly say something?

The Bailiff:

Of course.

1.7.2 Deputy L.M.C. Doublet:

So this part here contains the tolerance clause. I just wanted to address the main reasons why people might want the tolerance clause because I think at some point throughout the day we have been arguing for the same things, for acceptance and love and community, and I just wanted to put myself in the shoes of somebody who does hold strong religious convictions that they believe that marriage is between a man and a woman because I am trying to empathise with the people who have those beliefs. I was brought up as a Catholic so I have been part of a religious community and I understand that people hold those views sincerely and perhaps do not mean any harm by them and genuinely want to carry out their businesses, and this is a difficult choice for them. So firstly we have been told this is about freedom of belief. I do not believe we need this tolerance clause because we are not telling anybody to change their beliefs. Any human being, anyone on our Island, can believe anything that they like; even if it is something that is against the law, they can believe that in their heads, they can have those thoughts in their own minds and we cannot change anybody's thoughts. So I do not think that if we do not have a tolerance clause that there is not freedom of belief. Freedom of belief will endure even without this tolerance clause. Secondly, we have been told this is about freedom of speech. The Solicitor General has clarified that freedom of speech will also still endure. We do not need this tolerance clause because business owners, if they do hold those beliefs, they are perfectly able to respectfully say to same sex couples who come to them: "This is the belief that I hold", we are perfectly able to have those conversations and be respectful of each other. That is not being prohibited so I do not think we need a tolerance clause because that will still be allowed; that freedom of speech. I would sincerely hope that it would not get to the third thing that we have been talking about, not compelling people. I would sincerely hope that business owners who do hold those religious beliefs where they do not agree with same sex marriage, I would hope that they would continue, if they want to continue that belief and even state it respectfully that they would make the choice to still offer that service and that nobody would be compelling them. I think that even those on our Island who do hold that belief and would believe and say it, I think that they will find it in their hearts to still offer that service. I would have faith in the humanity of those people that they would still do that and I do not think people will be compelled. But nobody is compelling anybody; even without this tolerance clause, business owners do not have to offer that service. There is always an option, the Constable of St. Helier touched on this, it would be really, really sad if somebody felt they had to close their business down because they did not want to serve certain sections of society, but that option is there. I really hope that it does not come to that, but I do not think we need a tolerance clause because, as I have said, it does not affect people's freedom of belief, it does not affect freedom of speech, and we are not compelling anybody to do anything.

1.7.3 Senator P.F.C. Ozouf:

I do not think I am alone in being slightly concerned that I am not sure what we are debating and what we are going to be voting for. I see a number of Members. I wonder whether you would be kind enough to give us some guidance. I am sorry that we have not been as diligent, we have an excellent running order, but I do think Members are ... I am unclear as to what I am to speak on. I think it is the whole of the amendment number 2 now as amended.

The Bailiff:

We are looking at P.91, amendment 2, the second amendment, as amended by first of all the panel's own amendment, which was proposed in the first place, and secondly, by the Chief Minister's amendment to Article 23.

Senator P.F.C. Ozouf:

So may I just confirm, we are going to be voting on whether or not there should be the ability for the opt-out here?

The Bailiff:

Do you mean what is being called the tolerance clause?

Senator P.F.C. Ozouf:

Yes, we are voting on that?

The Bailiff:

Yes, we are voting on that now.

Senator P.F.C. Ozouf:

Yes, we are voting on that. Yes, I think that some Members were not absolutely clear on that. There are lots of votes of the sub-bits of it, but we are going to be voting on that clause.

The Bailiff:

Senator, that is paragraph 2 of this amendment.

Senator P.F.C. Ozouf:

That is what I believed. I was going to speak ...

Deputy A.D. Lewis of St. Helier:

If I could I just ask for clarification as well. The Deputy has just spoken quite a lot about the goods and services aspects of the tolerance clause. My understanding is that the Article that was amended a moment ago by Deputy Le Fondré's amendment and from Corporate Services discounted the goods and services aspect. That is what I have in front of me here under Article 7A, and which you distributed to all Members and crossed out the elements concerning goods and services.

Deputy J.A.N. Le Fondré:

Can I answer that, Sir?

The Bailiff:

Only if you are going to say what I was going to say. The amendment, which was the second amendment, you can see it at the foot, P.91, amendment 2 amendment, lodged by the Corporate Services Scrutiny Panel, has been rejected. So that does not stand; that has gone. What you are left with is the second amendment as first drafted, subject essentially to the Chief Minister's amendment to paragraph 5, which deals with Article 23.

Deputy A.D. Lewis:

So that just includes the elements concerning buildings?

The Bailiff:

No. Well, paragraph 5, Article 23, concerns buildings, but the rest of it does not. Obviously you are shaking your head. We were taking it in sections, you said?

Deputy J.A.N. Le Fondré:

We are doing separate votes.

The Bailiff:

So when we reach paragraph 5 you are concerned there with buildings; that is correct.

Deputy J.A.N. Le Fondré:

Right, Sir, paragraph 5, which is what I will call refers to Article 23, you are correct; that is to do with buildings. However, what I think Deputy Andrew Lewis is talking about was amendment 2, which has 3 aspects to it, one is some changes and the humanist aspect, which will be a separate vote, and then 7 and 7A are lumped together. 7A is now as originally drafted, as originally proposed. That was the point. The amendment was to reduce it in size. That amendment was rejected so it is now as drafted. That was Senator Ozouf's gain, he wishes to vote against 7A, I believe, in its entirety, and he says he does not care whether it was amended or not, so the Assembly voted not to amend 7A, I will not dare to presume how people are going to be voting, but what they have to do, when we get to 7 and 7A in the running order, is determine whether they vote for or against what is in effect the wider tolerance clause. There is a further proposition by the Chief Minister, which introduces a new 7A after this set of votes. So the amendment that we will be voting on in 7A terms is what is written in the Order Paper, it has not been changed.

Senator P.F.C. Ozouf:

I am absolutely clear what I am voting on or what I am going to be speaking on these and there are a number of part votes of the amendment but effectively what Deputy Le Fondré has done and my vote against one of the amendments was to reject.

[17:30]

Deputy Le Fondré rejected his own amendment, which indicates that he wanted to have the full amendment, which we now have, and we now have the full intolerance clause before us. We have the full intolerance before us, let us be clear about that, because it has not been watered-down, so we can have the debate because we have rejected the attempts at letting it be less damaging. So we are dealing with the full intolerance clause and that is why I spoke in a measured way, and I will be measured, but I will not be measured in my absolute ... and I see Deputy Le Fondré remonstrating, but we have Members who are perfectly entitled to express their views, but we have Members who have effectively demonstrated by their voting in the way that they have explained is that they wanted the full version of the intolerance clause, the watered-down version was dumped, so we are having the full version now. Let us be clear, we are going to have individual votes, which we are going to accept some of them, but my opposition is on the intolerance in its maximum effect, which will cause the damage, because it will be able to give that ability to say: "No gays here." That is what it says and that is what I believe will happen. I know that people and the Deputy of St. Ouen and other good people that say, no, they do not believe that will happen, but that is the effect in my view that he is going to be legislating. We are legislating for discrimination and the quote that I was going to use from Nelson Mandela is: "If you want to make peace with your enemy you have to work with your enemy and then he becomes your partner." Well, there is no enemy here, but the enemy is, for me, an intolerance clause that allows this. We have tried to work, Members of this Assembly have tried to debate, and we have had some excellent remarks and some excellent speeches, but effectively I do

not want to be a partner with something that is going to put in an intolerance clause. I do not want that. That is the thing that I think is so insidious, I think it sends out absolutely the wrong message of intolerance and it will legislate, it will permit people to discriminate, as a number of eloquent speeches have been made in the amendments. I am absolutely against this, I think it is, as a number of Members have said, the consequences of this. Deputy Labey in his remarks spoke about the real issue of the hurt that people who are discriminated against. I stand here as being somebody who is an openly gay man who will see, and Deputy Tadier also spoke of the lesbian community who also perhaps are some of the most discriminated against: "No lesbians here", that is what it is going to be: "No lesbians here, no trans here." It is offensive; it is not right, it is 2018, the world has moved on. If I may say to those Members who hold religious beliefs that we are here debating a law, which is the civil law of Jersey. We are not amending the religious law of Jersey; we are asking our religious communities to respect the civil law of Jersey and not to be permitted to opt out of the civil law. Senator Ferguson in her remarks earlier said she wants the right to opt out of something. You cannot opt out of the civil law to pay your taxes, to pay social security contributions, if you do not like the way that social security is allocated or you have to pay. I cannot have a conscience clause that I do not want to pay my taxes because it might be paying for some service that I do not agree with, supporting the Church of England, I do not have a problem with that, but you cannot opt out. The civil law is the law of this Island, the law of the land, you cannot have the opt out. If I may say, I think some of the arguments that have been advanced by the Evangelical Alliance in some of the letters that I have received in opposing some of these issues have caused me a great deal of concern. If I may say, while again there are some strange alliances, Mr. Peter Tatchell has been quoted and, if I may say so, the justification is that Peter Tatchell would think this is okay. I am afraid to say that I have not contacted Mr. Tatchell but, having listened to him, and I disagree fundamentally with some of his political views, but respect absolutely his lifelong work in raising the awareness for the L.G.B.T. community. I cannot believe for one moment that Mr. Tatchell... and I cannot speak for him, but the case that has been raised, it was not about the cake, it was about what was being written on it, and he wanted to effectively say that there is a freedom to express views. It has been taken completely out of context and for the Religious Evangelical Alliance to use somebody who they absolutely admonish in his views, he has done outrageous things to some people like doing a citizen's arrest on Robert Mugabe and other people for he is absolutely ... I mean he is on the extremist wing of the gay rights community, which I absolutely respect. But to try to twist his words to suggest that he would be in favour of anything that would be discriminatory I think is risible and I think this is a mark of some of the debates and some of the representations that we have received. We have received heart-pulling emotional language, turning things on its head, and we have received, from this Corporate Services Scrutiny Panel chair, we have had sand thrown up in our eyes to try to confuse us as to the fundamentals of what this is about. I object, for the advancement of the argument, of somebody who is a gay man, who has spent his entire life arguing against discrimination, to twist their words in the way that I believe that they have been done, I hope I am not breaching Standing Orders, in saying that, but I believe the words have been mangled and they have been twisted and taken out of context. I believe it is absolutely wrong and time will tell whether or not it is possible to get Mr. Tatchell's views, but the fact is that no person in my position that understands discrimination and wants equality in the eyes of the civil law and to be universally applied as all other laws of this Island are, there is no opt out for other things, it is not possible. Everybody is equal. We are equal under the eyes of the law; equal. There should be no opt out, there should be no right to discriminate and this is what this is about. It is perverse; it is unbelievable that we are having a vote for marriage equality, which is the very opposite. It is turning the whole argument on its head, but it is cleverly done, like the debates that have been advanced in so many Parliaments around the world at this time. It is equivalent to the attempt to water-down civil partnerships at the time so that you could marry your sister. They are very clever these debates, they pull at your heartstrings, they dress something up as if it is something that is not what it is. This, it is what it is, it is an intolerance clause,

it is an opt out from the civil law of Jersey. It provides an opt out, no other opt out is available in other laws and, I am afraid to say, I say to the Deputy of St. Ouen, I say to the other people who I respect their religious views, please enjoy your religious views, please pray for us, please do the good things that the great faith communities of the world do and the great Christian tradition, love thy neighbour and everything, but please do not ask me and others to give those people to give you an opt out from the civil law of Jersey. We are not changing religious law; we are changing civil law, and this clause in its intolerance and the message that will be going out. I was delighted with the overwhelming votes earlier and now maybe I should just sit down and let us get on with the vote. But I have to say it. **[Approbation]** I hope that is not encouragement for me to not be saying this, but it is intolerance and I hope Members vote in overwhelming numbers. The world is looking at us; that is not a threat, but they are looking at us to see whether or not we are that tolerant society, whether we are the new Jersey modern way: tolerant, liberal, understanding and respectful. I urge Members to vote down this intolerance clause that we should never have had this debate of. I hope that Members who have advanced the view for this will apologise for the hurt, for the visceral debate that they have started, to which the Assistant Chief Minister spoke about the need for healing that is going to be needed as a result of this. If you start a debate like this, evil is never very far away, it is never very far away, and one must guard against it. I hear Deputy Labey nodding in agreement. Art forms and other ways of expression. One must guard against dark things happening. They start slowly and they grow and this is something that starts in an ever so innocuous way but it will end up in a bad place; that I have no doubt at all. As a gay man who will see other people suffer the indignity of: “No gays here. No lesbians here.” They will have the right to say it; they will have the right to ask it, and it is not right and it has no place on the statute book of Jersey and I hope Members vote against it. **[Approbation]**

The Bailiff:

The time is 5.40 p.m., I am assuming that Members would like to complete this debate tonight. That seems to reflect the views. Perhaps I can say this before we go on and I call on the next speaker, but because it is 5.40 p.m. and because these are controversial matters, because we have been debating them all day and feelings are likely to run high, can I suggest that there is a special obligation on Members to be careful in the language, which they use. I understand completely why the expression “tolerance clause” has been used, I understand completely why the expression “intolerance clause” has been used, but they are both quite emotive and I wonder whether we can somehow get away from the use of that language if we can. Because, in the context of whatever comes out of the ultimate debate, having something that heals, it would be good to keep the divisions as lacking in personal attacks as possible.

Senator P.F.C. Ozouf:

Can I just say, if I erred I apologise?

The Bailiff:

No, absolutely not, Senator. It has been called by the panel a tolerance clause, you are absolutely entitled to call it an intolerance clause.

Senator P.F.C. Ozouf:

We have received thousands of emails asking us to vote for a tolerance clause. I accept absolutely your rightful guidance.

The Bailiff:

I meant absolutely no criticism of you at all. The Deputy of St. Ouen.

1.7.4 The Deputy of St. Ouen:

I spoke this morning and I will not speak too long now but I am grateful to have another opportunity to speak again. I retain the concerns that I tried to express and communicate this morning but I have been in turmoil, my mind has been in turmoil for some days. I had hoped that after formulating my views this morning it might settle down, but it is still in turmoil. I have to inform Members that I will be voting contrary to the way I might have indicated this morning. In other words, I think I should yield my viewpoint to be gracious towards those others, the “them” if I am “us”, and to try to avoid division, because it is so hurtful to see such division. **[Approbation]** So my viewpoint will yield for those purposes and I think perhaps this is something that should be done by the Christian church on this issue but it will be for churches to work out their position. I am grateful to the many people who spoke and have contributed to my turmoil. But I still retain my concerns, I still retain my concerns about the viewpoints of faith being marginalised and we must find a way, I hope Members would support that, to ensure that those who do want to express the viewpoints from their faith will have as equal a right to all others to participate in this society. So I am grateful to so many people today. **[Approbation]**

[17:45]

1.7.5 Deputy M. Tadier:

I appreciated the words of Constable of St. Helier when he said, contrary to other people who say I think it is a shame that we are even here debating this today, I do not think that is the right approach to take because I think, first of all, whether or not we agree with the arguments, and many of us have deeply held views, but nonetheless have taken a chance to reflect on those views and where the balances lie, it is much better for these arguments to be coming out in public and for people to be lobbying us publicly and not anonymously for the most part as well, rather than these issue be driven underground. This very debate today, as we have seen in a couple of speakers, in itself does help move on the argument. Although that may not be quickly enough for many of us, it nonetheless is progress. So this debate today reminds me of the saying perhaps ‘no pain, no gain.’ To contextualise where I think we need to go and why we might have just got it wrong in the way we look at this, there was a quote earlier, and I think it helps to contextualise even this amendment from the Scrutiny Panel. It is one way of looking at it; it was suggested that even the Catholic church has been forced by this political correctness “gone mad” you could put as an extra appendage, that they themselves are starting to say: “Maybe we will not even do marriage, we will just have our own ceremony in the church and leave marriage to the state”. It has been suggested that may be them throwing their toys out of the pram, but I do not think that is the case at all. I think that what it shows is a very considered approach from a very big and worldwide organisation about the role of the state and the role of the faith community in that. I do not think, from what I know of them, they would be doing that. Rather, it would be them saying: “We recognise there is a limit and a demarcation between what the state does and what we as a religious organisation offer”. Deputy Doublet is not the only one in the Assembly to have family members and patronage, which is of a Catholic origin. I remember it being said to me, perhaps I can quote a member of my family but I will leave her anonymous to save her blushes potentially, and she would say to me when I was younger: “It does not really matter about those 2 because they are not really married anyway because they got married in a Registry Office, what really counts for me as a Catholic is the marriage in the church.” So I, as a Catholic, while I find that has a certain amount of legal basis, for me what is important is the blessing that you receive in the church, for me that is the real marriage and that is the marriage in the eyes of God. That is something that works perfectly well in other countries; it is something that works very well, for example, in France. France is ostensibly a secular society when it comes to the state, but they still have a thriving religious community, be it Catholics, and you know, we have all been to France, nowadays you might not get a bar in every small French village, you might not even get a tobacconist, which is open, but you will probably still get the church, I do not know whether they are well attended, but there are lots of churches throughout France and there are lots of people who will come

out to support their religious convictions. But they do appreciate that there is a separation between church and state. It is a shame that we did not grasp the opportunity in reviewing the whole of the Marriage Law and not just focusing on same sex, about the demarcation between the churches and the state. If we say there is only one type of marriage, you do not need to go down the route of having civil partnerships, and then on top of civil partnerships producing another kind of marriage, which is called same sex marriage, which is supposed to mirror heterosexual marriage, but which we know does not quite do it yet. It could have been very much simplified to say we are the ones who marry people and then if you want to go off and do something either before or after that is fine, and the 2 can live quite happily. That is why I am concerned, and incidentally I want to speak very much in favour of the first amendment, (1)(b), I think absolutely we do need a comma in between “marriage” and “birth”. It is a bit of a strange amendment, is it passive aggressive to put that amendment in? What you normally would do is simply phone up the person for the original one and say: “By the way, there is a comma missing, can you just do a reissue?” I do not think you need to engage with the Law Draftsman to add a comma, but maybe, hats off, it shows that they have been doing their punctuation homework, so well done to the Scrutiny Panel on that one. Now let us talk to the detail of it. I am concerned in general about Article 2, page 82, which is on page 4 of their amendment, which comes under Article 3. It gets very confusing. It talks about a marriage ceremony and what is and is not allowed and this is where I think there is a problem first of all with the amendment and there is also a problem with the initial Law. I ask the question: what about the couple in all this? What about what the couple wants? When we start putting all these sorts of restrictions in about what you can and cannot have during a civil marriage ceremony, it becomes very problematic. The Chief Minister bringing forward this law has missed a trick, he should have been much more permissive and say: “You can have whatever you want. If you want to have a hymn in the Registry Office, you have a hymn. If you want to have somebody singing Kumbaya that is fine as well. If you want to keep it completely secular that is fine as well.” Apparently, you can get Jedi as a religion nowadays, I am not sure if that has been officially recognised, completely ludicrous of course because it is all made up, but nonetheless it is a religion and some people believe in that kind of thing. But, fair enough, you live by the light sabre; you die by the light sabre. I am even more concerned when the Scrutiny Panel have put in: “And to consult with representatives in Jersey of religious organisations as may be appropriate.” So we are saying now the churches get to decide what you can and cannot have in a civil ceremony, it becomes completely ludicrous. Which particular organisation do you go to? So you have a celebrant who is presumably now not allowed to use their own discretion when they are faced with something: “Oh, I have to find out whether or not this poem is religious”, and where do you go with that? What happens if it is a Celtic poem, which may be slightly religious, but it is more pagan than it is religious and, I hope I did not offend anyone, I cannot see the gallery when I speak, that is why I speak without fear or favour. We are opening up a minefield here and it has to be about putting the couple at the centre of it. Just by way of example, we also need to consider the parallels with what happens at the end of your life. I would not like to think that when I expire and there is some kind of ceremony, if there is, that there would be any religious content in that. That is just my personal opinion. Someone said: “Would you like us to sing a hymn or say prayers at your funeral”, and I would say: “Certainly not over my dead body.” Of course I will not be there so in a sense it is futile. But the only place you can have a service in Jersey, as far as I know, civilly, so if you do not want to go to a church, is at the crematorium. It says here, when you get married you are not allowed to have any kind of religious iconography there, but you go to the crematorium there is a big cross on the wall. Now, are you allowed to ask for that cross to be sealed up? I do not think so. One would no doubt be treated in a hostile manner if you did ask for that. But we are saying that you cannot, we are prescribing what you can and cannot have, so if somebody does have a particular religious belief, but they just do not like the way that the established church is moving at the moment, why should they not be able to erect a temporary cross at the Registry Office for the purposes of acknowledging their faith, as long as the celebrant is happy to do it and as long as the couple are

happy for it to be done, why are we legislating in a prescriptive way what can and cannot take place during the marriage? So I really think that we have made this overly complicated. I will leave the comments there on that particular issue because I think a lot of this debate would not need to be happening and I think in possibly 10 or 20 years' time a lot of this should just rectify itself anyway. But it is about putting the couple at the centre of what goes on, whether they be same sex or different-sex.

1.7.6 Deputy G.P. Southern:

I speak briefly at this stage. Having read the comments that came via emails, *et cetera*, especially from the Evangelical Alliance, I was moved to see this as a charter quite frankly for bigotry. It was an excuse for discrimination. What we have seen today is strong feelings on either side of this argument, but we have only heard a very selective picture produced by Deputy Le Fondré on one side. This amendment I think must be thrown out because it is about allowing, giving permission to a group of people to discriminate. I think it is high time that we stopped walking around a set of beliefs, which permit discrimination, and challenge them head on. I return, having said that, to the words of the Dean, very simply: "Love thy neighbour as thyself", and that ought to be our key element in this vote.

1.7.7 Senator S.C. Ferguson:

I think I am in the middle of no-man's land at the moment, shot at by everybody. We have moved on from love, I think we are on to: "Render unto Caesar the things which are Caesar's and to God the things which are God's." The aim of the earlier amendment was to allow a full debate on tolerance, conscience clause, because we have half the population wanting one thing, we have the other half wanting another, and we need, as representatives of these people, to have a sensible intelligent debate. It has verged occasionally into sort of hyperglycaemic, I think. But on the whole it has remained respectful and helpful, but I also ought to remind Members that, as Deputy Tadier said, there are other amendments in this Article, on this particular part of the debate, which we shall be voting on, like the one about the religious content or the forbidding of religious content in a civil marriage. Now, we looked at it and said: "The superintendent is not qualified to talk about that", because not everybody wants a religious content in their Registry Office or wherever, their civil wedding. There is no point in having a setup where you have a totally non-religious official. I do not know anything about the superintendent's religious affiliations, but her particular role is as a civil servant and therefore it is not fair to expect a ruling on religious content purely from a civil servant, it should come from the religious officials who should be consulted. But all these other amendments are in this particular amendment as well, so, yes, we are asking for a separate vote on 7 and 7A, but you need to remember the amendments that we are also voting on, which I think the Chief Minister has accepted. So I just wanted to remind people.

[18:00]

1.7.8 Deputy A.D. Lewis:

I have slightly changed my view since we last debated this issue, a little like the Deputy of St. Ouen. I was particularly swayed by the Constable of Trinity who made a short but passionate speech, which really did it for me. But the thing that concerned me when we began this debate was the issue of discrimination on goods and service provision, and I think everybody that has spoken has spoken about that aspect very eloquently and it is wide open to discrimination. Without an amendment to the Discrimination Law at the same time, which I think is what should have happened, the order of events should have been a review of the Discrimination Law before we had this debate, but we are where we are. The goods and services aspect of this amendment is, I am sorry, I could not support, it opens the door for discrimination. I am quite sure that many would respect religious thoughts of people and would not abuse it, but without the Discrimination Law changed people could and that is

unacceptable. However, I await with great interest the Chief Minister's amendment because I am concerned about the use of buildings and that the clergy are being put in a difficult position under Canon Law of conducting ceremonies in buildings that they own either through trusts or through church. So I wait with great interest to that part of the debate because that is the concern that I have. I do not wish to put the clergy in a difficult position unless we have an amendment here today to amend Canon Law, which we have not got here today either. So I wait with great interest to that part of the debate. However, I cannot support an amendment that discriminates the delivery of goods and services to people of different sexual persuasion. That is, in a modern world, I am afraid not acceptable, as many have said, so I shall not talk any more on that, the point has been well made by others, but I will wait with great interest for the Chief Minister, or the Deputy Chief Minister's remarks regarding the use of religious buildings and associated buildings.

1.7.9 Deputy M.J. Norton:

I earlier spoke of today being a day when we can send out the message of where we as an Island stand and that we do not stand and align ourselves with any form of discrimination. At that point, I would wish to acknowledge the Herculean shift and the bravery of the Deputy of St. Ouen for thinking in a Christian-minded way and understanding that there is repair and healing to be done, as has been mentioned by many people, and I think that is worth acknowledging, and I am extremely grateful for him standing up and saying so earlier. I think it is one of the highlights of what has been a very emotional day. On from that, I wish to reflect back at what I thought was a brilliant speech by Deputy Labey earlier on today - Deputy Labey of St. Helier - with regard to discrimination and to put yourself in that position of being the victim of discrimination. Some at some time will know people or will have been that person that have been the victim of discrimination of one form or another, disability, discrimination by being the wrong sex and not being allowed into a club, discrimination by being the wrong skin colour, by standing in a queue and being ignored, by being beaten up because you have the wrong skin tone. Those are things that hurt and still hurt. When there is suggestion, hint of discrimination of one form or another against a group of people that have suffered that collectively for some time, I am just wondering if there are others within this Assembly who, like the Deputy of St. Ouen, have on reflection decided that they cannot tolerate that either. If there are, I would hope that they would too throw out such clauses.

1.7.10 Senator I.J. Gorst:

Just very briefly, because I know that some Members have indicated that they are perhaps a little confused about how they should vote and what their vote means in regard to certain elements of the debate. I say that because I think particularly the last amendment around changes to Article 23, although this is of course a free vote, what the Scrutiny Panel were endeavouring to do was capture any location, which might have inadvertently been missed out as a place of worship, if I can put it like that. But the way they had drafted it we felt very much was too broad and too wide and what this does now is limit the Minister's power to designate a place that cannot be used, because previously it was a very wide power so that it might cover things like private chapels, *et cetera*. But it has to be used carefully and it is narrowly defined and I think it is almost there to deal with the unforeseen eventuality of somewhere that has not been considered. So, for that element I will be supporting it, that is amendment 5. I think where the thrust of the debate today, throughout this day, has been around the conscience clause and that is in amendment 2, para 2, that is 7 and 7A. So Members who want to support the smaller matters, the technical matters, that is amendment 1, amendment 2(1), can vote in favour of those technical matters if they wish. If they are against the conscience clause they must vote against amendment 2, para 2. Then we come on to amendment 3 and 4, they are about the religious content. We felt that the Law as it was drafted was appropriate and balanced, Scrutiny felt that it left too much uncertainty to those officiating at the ceremony and therefore they drafted those amendments, which would in effect, rather than leaving it to the

individual celebrant to decide whether the content was appropriate and was or was not religious in nature, there was a process to go through to determine it. So it is really whether Members want that process or not or whether they want to leave it up to the celebrant to determine whether the content is appropriate in that regard. For my part I think that I am happy with their process, I think it works. I have to say, I came to this from the opposite end of the telescope to the Dean; I think it can only be a good thing if people are having readings and hymns at their civil services and their civil celebration. I know that is not a view shared by the Member sitting opposite me, whereas I think, you are going to stop me again now, I do not like all this divide between the sacred and the secular and the spiritual and the natural, so I think people should be more able to use those things in their orders of service, but that is up to Members to decide which they want to take in that regard. So I hope that gives some clarity to Members when they are voting at the amendments once the summing up has taken place.

1.7.11 Deputy R. Labey:

I am just a little bit confused on the Hougue Bie clause; I cannot remember what the number is.

The Bailiff:

Number 5.

Deputy R. Labey:

Hougue Bie is not going to be used for gay weddings, but I thought we were being encouraged by the Minister for Health and Social Services to adopt the Council of Ministers' amendment just in case, as a safety measure, but that the Council of Ministers would not be voting for that when it came to the end vote.

The Bailiff:

Chief Minister, are you wishing to clarify?

Senator I.J. Gorst:

The whole of this law is a free vote among the Council of Ministers and I know that Ministers are voting differently in that regard.

The Bailiff:

May I summarise, Deputy Labey: the Deputy Chief Minister said he would be voting against it and the Chief Minister said he would be voting for it. Have you finished your speech?

Deputy R. Labey:

I just think that we should throw it out, we should throw all of the amendments out by the Scrutiny Panel, and that is what I will be doing. Some of these things seem to me to be ridiculously intrusive about if somebody wants to read a prayer at a ceremony. I mean that surely is up to individuals. What are we doing here? We are going to look back on this in a short space of time and be absolutely ashamed of our behaviour. What about gay members of the Anglican communion, regular gay churchgoers, it is bad enough that they cannot have their greatest day of their lives and celebrate it in the church that they love and in the church that they pay for in their rates, but also starting to try to ban them going anywhere near the church halls I think is an absolute outrage, so I do urge people, because we will look back on this and be ashamed of it. We are doing enough; the quadruple lock is there, 4 locks on the church door to keep the gays out. For goodness sake let us meet them halfway, let us compromise a little bit and if they want to use the church hall they should be allowed to do so.

[Approbation]

1.7.12 Senator L.J. Farnham:

I am reluctant to criticise Scrutiny because it is a difficult job, but this has to be an absolute example of how not to do legislative scrutiny. Scrutiny have attempted to change the principles and the whole spirit of the legislation and Deputy Le Fondré, my good friend Deputy Le Fondré, most of the time, whether he is after this or not I am not going to be sure, but this is meant to be constructive. Hopefully something we can all learn from in the Assembly. Because this is being brought through at breakneck speed and we have a whole raft of amendments, we have inconsequential amendments, which are typos and punctuation, mixed up with major, in the next paragraph, in the next sentence in the running order, and this is not critical, I do not think any of us can understand, with the greatest of ... and I think we must all learn this is how not to do things. Having said that, I am sure we will eventually get to the right conclusion. I sincerely hope we do. I sincerely hope we do not make a genuine mistake, which leads to something calamitous. That is all I wanted to say.

The Bailiff:

Does any other Member wish to speak? If not, I call on Deputy Le Fondré to reply.

1.7.13 Deputy J.A.N. Le Fondré:

I am slightly disappointed in some of the comments we have had because, having gone through all the technicalities, I get the impression that certain... and my good friend Senator Farnham is one of them, has not read the law or understood the whole principles behind it.

Senator L.J. Farnham:

I have tried, Sir.

Deputy J.A.N. Le Fondré:

That means it probably has not succeeded. The problem, bearing in mind that has been the problem with this whole process, is how complicated the law is. The issue around some of the amendments we have been bringing ... I am sorry, I will start again. The so-called tolerance law; that is what I will refer to as Article 7 and 7A, as covered in the second part, I am not going to address, we have had that debate. I know how I will vote; I am pretty certain how I know most other people are going to vote, I am assuming most people are going to vote against that particular section. Fine, I am not going to address those comments. That was the purpose of having the earlier debate to try to keep people focused. Anyway, that is life. These amendments that are coming through, and I shall go through them one by one, are (a) individual technical corrections where there have been errors; (b) including things like representatives from the Humanist Society, which is to allow this qualification, I did say this all those many hours ago this morning; and then (c) where there are issues particularly in relation to either Anglican churches or equivalent scenarios in other churches. If it is a Church of England church or building, there is a major conflict potentially between the present law, the state law that we are bringing in, and Discrimination Law, and the issues around church law, which is Canon Law.

[18:15]

Essentially, if those conflicts arise, potentially the relevant minister, clergyman, or whatever language you wish to use, if he or she ends up breaching Canon Law, can lose their licence. That is it. All the way through, we have not been expressing individual views, what we are trying to do is introduce clarity and sort out contradictions. Now, Members may not like the quadruple lock but the purpose of the quadruple lock was to basically deal with a lot of the issues between introducing same sex marriage in States Law, which I am supporting, and the conflicts with Church of England Canon Law and other church or religious organisations and their beliefs. In certain instances, when we have gone through the technicalities, there are gaps. Now, for example, Deputy Labey may say: "I do not agree with the quadruple lock"; well the quadruple lock is going to be there unless he wants to vote against the entire law. So if one is assuming that there are, on the basis of the quadruple lock, certain

buildings are going to be locked out, I do not like that expression but are not going to be able to be used for same sex marriages, then there are other buildings, which in theory the same treatment should be applied to. There is a separate distinction one needs to make between Church of England buildings, because of the status of the Church of England within the States and within this Island and within the United Kingdom, and the position of Canon Law, and, for example, the Catholic church, but I will just say other religious organisations. The simple way of putting it is if you are another religious organisation, you can opt in if you want under certain conditions, but generally the presumption is you are opting out. The Church of England is opted out under the quadruple lock. So, things like what I shall refer to as Article 23... and as I said we have spent a number of times meeting with the Chief Minister and the Deputy Chief Minister to go through the amendments. With the understandable exception of the tolerance clause, it was our understanding that these were all being accepted. What I had not appreciated until approximately half an hour ago was the personal view of the Deputy Chief Minister on some of these aspects. That was not communicated to us. It is not relevant, but when one is working with the Chief Minister's Department and we are getting amendments through and saying: "Yes, we are accepting them", or: "Is there a problem with this?" or when you have a conversation with the Chief Minister and say: "It is just the tolerance clause that is the cause of the issue and everything else is okay" and you get a yes, one tends to assume, therefore, that we have done that bit of work to make sure we have covered the technicalities, that is where we have been. Apologies for the slight rotation, I had not appreciated the views of Senator Green on certain areas but what we are identifying is that there are gaps in the law and we will be putting in a quadruple lock, that certain buildings that potentially should be included will not be. Therefore, that has the potential to cause some conflicts with people ... that is the trouble, with interaction of the Discrimination Law and Canon Law and will end up in court, and that is what one is trying to stop. I am trying to keep it simple because it is late and it is technical but that is what we are trying to avoid. I am presuming, procedurally, I have to summarise the individual points and then we go to individual votes. I presume it is not possible for me to say amendment 1 and this is what it does and call for the appel on that and then do amendment 2 and call for the appel on that in terms of explaining what it is.

The Bailiff:

We have had debate on the whole and you should sum up on the whole.

Deputy J.A.N. Le Fondré:

I should sum up on the whole; no, that is okay.

The Bailiff:

Then we will take the votes individually.

Deputy J.A.N. Le Fondré:

Right, so ...

Senator P.F.C. Ozouf:

I am very concerned that Members are going to want this to be clear. We have had a long day and there is lots of sand being put up and we are not clear as to ... I do not know how we are going to do this, where we are going to understand what we are voting on because we have also got conflicting messages and ...

Deputy J.A.N. Le Fondré:

I was about to address that, Sir.

Senator P.F.C. Ozouf:

... views about whether or not ... it is a point of order, Sir. How can we have a vote where the Assembly is going to be clear what they are voting for because I am confused by some of the things that the sand is being thrown up, and I am now also unclear as to the position of the Deputy Chief Minister, whether or not he is accepting or not the amendments? Is it possible, Sir, to have an explanation of what we are going to vote on and whether or not it is accepted or not by the Deputy Chief Minister?

The Bailiff:

The Deputy Chief Minister has already made his position clear. He is going to vote against, so he said. He is going to vote against amendment 2, paragraph 2 and he is going to vote against amendment 5, as it has been amended. If I have got that wrong he would put me right but that is what he has told us.

Senator A.K.F. Green:

That is correct, Sir, Article 23.

The Bailiff:

The Chief Minister is going to vote against paragraph 2 of amendment 2 and he is going to vote in favour of amendment 5.

Deputy J.A. Martin:

Sir, I hope it is a point of order. The proposer of the amendment and Senator Ozouf have said the confusion is because Senator Green or the Deputy Chief Minister is accepting or not. As far as I know, unless I have come into a different Assembly, everyone here has got a vote and an opinion. Yes, but the proposer started and, yes, I think I have now got where I am and I know exactly which way to vote on what but the actual one is 2(2). If you want to chuck out the tolerance and everything it is 2(2).

The Bailiff:

Deputy, you do not have a question for me.

Deputy J.A. Martin:

It was a point of order, Sir, yes. Probably the ruling, yes, the ruling was, Sir, we do not have to be guided because of the Deputy Chief Minister, everyone has a free vote, that was my point of order from the Chair, Sir.

The Bailiff:

Deputy, thank you, you are quite right, every Member has a vote, except the Dean, of course.

Deputy J.A.N. Le Fondré:

May I continue? Thank you, Sir. Right, I was about to try to give points to where we are and where it goes in the order of running order. If we could go to page 8 on the running order, okay. I hope we are all sitting comfortably and are listening. Please note, we did not draw up the running order because in the ideal world we would be having an individual debate on each individual Article before it, but that is life. No, what I meant was in terms of it has got to be one summing up on everything. Number 1, which says: "Page, 67, Article 2 on minor consequential changes." Hopefully, that is non-controversial. Number 2, at the bottom of page 8, part 1 is the one that will be of interest to Deputy Doublet, okay, that goes over on to page 9 and there are 2 parts there which talk about qualifications of civil celebrants, which is the human aspect and then compliance with guidance. Are we all happy so far? Right.

The Bailiff:

It is not a debate, it is just you summing up.

Deputy J.A.N. Le Fondré:

No, sorry, Sir. Middle of page 9 it then has amendment 2, part 2 and Members will see Article 7, religious marriages, and Article 7(a), same sex, that is over the page and that goes over to page 11 as well. That is what is being referred to as the tolerance clause and I rather suspect that many people will not be supporting that. Part 3 on page 11 is the issue around religious content. My understanding was that the Chief Minister was accepting that but obviously he has his own views on that. Amendment 4 on page 12 is very, very similar and it is about the use of, again, religious content in conversions. On page 13, number 5, this is the one that has been amended by the Chief Minister’s amendment. In this instance, if I have understood correctly, Senator Green does not support it, whereas Senator Gorst does, so the Chief Minister does support this amendment; that is what he has been saying. On page 13, and we have amendment 6, which is, again, a cross-referencing error and I think that is it at this point. Does that help everybody before I sit down? In this case, I call for the appel on part 1.

The Bailiff:

The appel is called for on amendment number 1 and I ask Members to return to their seats. The vote is on whether to accept amendment number 1 to substitute marriage celebrant and put a comma in to “marriage, birth” and I ask the Greffier to open the voting.

POUR: 38		CONTRE: 5		ABSTAIN: 0
Senator P.F. Routier		Connétable of St. Saviour		
Senator P.F.C. Ozouf		Deputy J.A. Martin (H)		
Senator I.J. Gorst		Deputy R.J. Rondel (H)		
Senator L.J. Farnham		Deputy R. Labey (H)		
Senator A.K.F. Green		Deputy T.A. McDonald (S)		
Senator S.C. Ferguson				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Peter				
Deputy S.Y. Mézec (H)				

Deputy A.D. Lewis (H)			
Deputy of St. Ouen			
Deputy L.M.C. Doublet (S)			
Deputy S.M. Wickenden (H)			
Deputy S.M. Bree (C)			
Deputy M.J. Norton (B)			
Deputy of St. Mary			
Deputy G.J. Truscott (B)			

The Bailiff:

We now come to amendment number 2 and we are going to take the vote in separate parts, paragraph (1), which deals with civil celebrants and I ask the Greffier to open the voting.

POUR: 31	CONTRE: 14	ABSTAIN: 0
Senator P.F. Routier	Senator P.F.C. Ozouf	
Senator I.J. Gorst	Connétable of St. Clement	
Senator L.J. Farnham	Connétable of St. Lawrence	
Senator P.M. Bailhache	Connétable of St. Saviour	
Senator A.K.F. Green	Connétable of Grouville	
Senator S.C. Ferguson	Deputy J.A. Martin (H)	
Connétable of St. Helier	Deputy G.P. Southern (H)	
Connétable of St. Peter	Deputy M. Tadier (B)	
Connétable of St. Ouen	Deputy of St. Martin	
Connétable of St. Martin	Deputy R.J. Rondel (H)	
Connétable of St. John	Deputy S.Y. Mézec (H)	
Connétable of Trinity	Deputy R. Labey (H)	
Deputy of Grouville	Deputy S.M. Wickenden (H)	
Deputy J.A. Hilton (H)	Deputy T.A. McDonald (S)	
Deputy J.A.N. Le Fondré (L)		
Deputy of Trinity		
Deputy K.C. Lewis (S)		
Deputy E.J. Noel (L)		
Deputy of St. John		
Deputy M.R. Higgins (H)		
Deputy J.M. Maçon (S)		
Deputy S.J. Pinel (C)		
Deputy R.G. Bryans (H)		
Deputy of St. Peter		
Deputy A.D. Lewis (H)		
Deputy of St. Ouen		
Deputy L.M.C. Doublet (S)		
Deputy S.M. Bree (C)		
Deputy M.J. Norton (B)		
Deputy of St. Mary		
Deputy G.J. Truscott (B)		

The Bailiff:

We now come to paragraph (2) of amendment 2, which is the tolerance or intolerance clause, whichever way you want to look at it. I ask the Greffier to reset the voting and open the voting.

POUR: 5	CONTRE: 40	ABSTAIN: 0
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Senator S.C. Ferguson		Senator P.F. Routier		
Connétable of St. Martin		Senator P.F.C. Ozouf		
Connétable of St. John		Senator I.J. Gorst		
Deputy J.A.N. Le Fondré (L)		Senator L.J. Farnham		
Deputy of St. Mary		Senator P.M. Bailhache		
		Senator A.K.F. Green		
		Connétable of St. Helier		
		Connétable of St. Clement		
		Connétable of St. Peter		
		Connétable of St. Lawrence		
		Connétable of St. Ouen		
		Connétable of St. Saviour		
		Connétable of Grouville		
		Connétable of Trinity		
		Deputy J.A. Martin (H)		
		Deputy G.P. Southern (H)		
		Deputy of Grouville		
		Deputy J.A. Hilton (H)		
		Deputy of Trinity		
		Deputy K.C. Lewis (S)		
		Deputy M. Tadier (B)		
		Deputy E.J. Noel (L)		
		Deputy of St. John		
		Deputy M.R. Higgins (H)		
		Deputy J.M. Maçon (S)		
		Deputy S.J. Pinel (C)		
		Deputy of St. Martin		
		Deputy R.G. Bryans (H)		
		Deputy of St. Peter		
		Deputy R.J. Rondel (H)		
		Deputy S.Y. Mézec (H)		
		Deputy A.D. Lewis (H)		
		Deputy of St. Ouen		
		Deputy L.M.C. Doublet (S)		
		Deputy R. Labey (H)		
		Deputy S.M. Wickenden (H)		
		Deputy S.M. Bree (C)		
		Deputy M.J. Norton (B)		
		Deputy T.A. McDonald (S)		
		Deputy G.J. Truscott (B)		

[Approbation]

The Bailiff:

We now come to vote on amendment number 3, which is the vote on forbidding religious acts in civil celebrations of marriage. I ask the Greffier to reset the voting and ask the Greffier to open the voting.

POUR: 11		CONTRE: 34		ABSTAIN: 0
Senator I.J. Gorst		Senator P.F. Routier		
Senator S.C. Ferguson		Senator P.F.C. Ozouf		
Connétable of St. Martin		Senator L.J. Farnham		
Deputy of Grouville		Senator P.M. Bailhache		

Deputy J.A.N. Le Fondré (L)		Senator A.K.F. Green		
Deputy K.C. Lewis (S)		Connétable of St. Helier		
Deputy S.J. Pinel (C)		Connétable of St. Clement		
Deputy R.G. Bryans (H)		Connétable of St. Peter		
Deputy A.D. Lewis (H)		Connétable of St. Lawrence		
Deputy of St. Ouen		Connétable of St. Ouen		
Deputy of St. Mary		Connétable of St. Saviour		
		Connétable of Grouville		
		Connétable of St. John		
		Connétable of Trinity		
		Deputy J.A. Martin (H)		
		Deputy G.P. Southern (H)		
		Deputy J.A. Hilton (H)		
		Deputy of Trinity		
		Deputy M. Tadier (B)		
		Deputy E.J. Noel (L)		
		Deputy of St. John		
		Deputy M.R. Higgins (H)		
		Deputy J.M. Maçon (S)		
		Deputy of St. Martin		
		Deputy of St. Peter		
		Deputy R.J. Rondel (H)		
		Deputy S.Y. Mézec (H)		
		Deputy L.M.C. Doublet (S)		
		Deputy R. Labey (H)		
		Deputy S.M. Wickenden (H)		
		Deputy S.M. Bree (C)		
		Deputy M.J. Norton (B)		
		Deputy T.A. McDonald (S)		
		Deputy G.J. Truscott (B)		

The Bailiff:

We come to amendment number 4 which deals with conversions, marriage by conversion. I ask the Greffier to open the voting.

Deputy L.M.C. Doublet:

Sir, I am sorry, I am little lost, could you just repeat which part we are voting on?

The Bailiff:

We are on amendment 4, which brings in an amendment substituted Article 22, which deals with hours during which a marriage by conversion must be solemnised and restrictions on a civil marriage celebrant by conversion in relation to religious acts.

POUR: 13		CONTRE: 29		ABSTAIN: 0
Senator I.J. Gorst		Senator P.F. Routier		
Senator A.K.F. Green		Senator P.F.C. Ozouf		
Senator S.C. Ferguson		Senator L.J. Farnham		
Connétable of St. Peter		Senator P.M. Bailhache		
Connétable of St. Ouen		Connétable of St. Helier		
Connétable of St. Martin		Connétable of St. Clement		
Connétable of St. John		Connétable of St. Lawrence		
Connétable of Trinity		Connétable of St. Saviour		

Deputy J.A.N. Le Fondré (L)		Connétable of Grouville		
Deputy K.C. Lewis (S)		Deputy J.A. Martin (H)		
Deputy A.D. Lewis (H)		Deputy G.P. Southern (H)		
Deputy of St. Ouen		Deputy J.A. Hilton (H)		
Deputy of St. Mary		Deputy of Trinity		
		Deputy M. Tadier (B)		
		Deputy E.J. Noel (L)		
		Deputy of St. John		
		Deputy M.R. Higgins (H)		
		Deputy J.M. Maçon (S)		
		Deputy of St. Martin		
		Deputy R.G. Bryans (H)		
		Deputy of St. Peter		
		Deputy R.J. Rondel (H)		
		Deputy S.Y. Mézec (H)		
		Deputy R. Labey (H)		
		Deputy S.M. Wickenden (H)		
		Deputy S.M. Bree (C)		
		Deputy M.J. Norton (B)		
		Deputy T.A. McDonald (S)		
		Deputy G.J. Truscott (B)		

[18:30]

The Bailiff:

We come to amendment 5, which was the Chief Minister's amendment, which has been adopted and I invite the Greffier to open the voting.

POUR: 12		CONTRE: 32		ABSTAIN: 0
Senator I.J. Gorst		Senator P.F. Routier		
Senator S.C. Ferguson		Senator P.F.C. Ozouf		
Connétable of St. Peter		Senator L.J. Farnham		
Connétable of St. Lawrence		Senator P.M. Bailhache		
Connétable of St. Martin		Senator A.K.F. Green		
Connétable of St. John		Connétable of St. Helier		
Deputy J.A.N. Le Fondré (L)		Connétable of St. Clement		
Deputy K.C. Lewis (S)		Connétable of St. Ouen		
Deputy R.G. Bryans (H)		Connétable of St. Saviour		
Deputy A.D. Lewis (H)		Connétable of Grouville		
Deputy of St. Ouen		Connétable of Trinity		
Deputy of St. Mary		Deputy J.A. Martin (H)		
		Deputy G.P. Southern (H)		
		Deputy of Grouville		
		Deputy J.A. Hilton (H)		
		Deputy M. Tadier (B)		
		Deputy E.J. Noel (L)		
		Deputy of St. John		
		Deputy M.R. Higgins (H)		
		Deputy J.M. Maçon (S)		
		Deputy S.J. Pinel (C)		
		Deputy of St. Martin		
		Deputy of St. Peter		
		Deputy R.J. Rondel (H)		
		Deputy S.Y. Mézec (H)		

	Deputy L.M.C. Doublet (S)		
	Deputy R. Labey (H)		
	Deputy S.M. Wickenden (H)		
	Deputy S.M. Bree (C)		
	Deputy M.J. Norton (B)		
	Deputy T.A. McDonald (S)		
	Deputy G.J. Truscott (B)		

The Bailiff:

We come to amendment 6, which are probably typographical corrections. I ask the Greffier to open the voting.

POUR: 38	CONTRE: 7	ABSTAIN: 0
Senator P.F. Routier	Connétable of St. Lawrence	
Senator P.F.C. Ozouf	Connétable of St. Saviour	
Senator I.J. Gorst	Connétable of Grouville	
Senator L.J. Farnham	Deputy of St. John	
Senator P.M. Bailhache	Deputy R.J. Rondel (H)	
Senator A.K.F. Green	Deputy R. Labey (H)	
Senator S.C. Ferguson	Deputy T.A. McDonald (S)	
Connétable of St. Helier		
Connétable of St. Clement		
Connétable of St. Peter		
Connétable of St. Ouen		
Connétable of St. Martin		
Connétable of St. John		
Connétable of Trinity		
Deputy J.A. Martin (H)		
Deputy G.P. Southern (H)		
Deputy of Grouville		
Deputy J.A. Hilton (H)		
Deputy J.A.N. Le Fondré (L)		
Deputy of Trinity		
Deputy K.C. Lewis (S)		
Deputy M. Tadier (B)		
Deputy E.J. Noel (L)		
Deputy M.R. Higgins (H)		
Deputy J.M. Maçon (S)		
Deputy S.J. Pinel (C)		
Deputy of St. Martin		
Deputy R.G. Bryans (H)		
Deputy of St. Peter		
Deputy S.Y. Mézec (H)		
Deputy A.D. Lewis (H)		
Deputy of St. Ouen		
Deputy L.M.C. Doublet (S)		
Deputy S.M. Wickenden (H)		
Deputy S.M. Bree (C)		
Deputy M.J. Norton (B)		
Deputy of St. Mary		
Deputy G.J. Truscott (B)		

1.8 Draft Marriage and Civil Status (Amendment No. 4) (Jersey) Law 201- (P.91/2017): amendment (P.91/2017 Amd.) - paragraph 6

The Bailiff:

We are now, for Members wishing to follow it, just beyond page 15 of the running order and come to the sixth paragraph of the first amendment lodged by the Chief Minister. Perhaps I had better ask the Greffier to read the amendment.

The Greffier of the States:

Page 73, Article 2 – For the substituted Article 7(2), substitute the following paragraph – “(2) For the avoidance of doubt – (a) A person cannot be compelled by any means to refrain from doing any of the activities described in paragraph (1)(a), (b), (c), (d), (e) or (f); and (b) A person may withdraw, and shall not be compelled to refrain from withdrawing, a consent or certificate previously given or an application previously made.”.

1.8.1 Senator A.K.F. Green (Deputy Chief Minister - rapporteur):

I am trying to keep it as brief as I can but maintain the integrity of the proposition and also not make it so short that it is not respectful. Now that we know about amendment 7, I am in a position now to be able to propose my amendment 6, which sets out Article 7 of P.91, should be amended to clarify: “That in addition to a religious official or religious organisations not being compelled to refrain from any activity in relation to same sex marriage, they also cannot be compelled to refrain from withdrawing their consent.” In layman’s terms, they can give their consent but they can also withdraw their consent but they cannot be compelled to do either. Sir, I make the proposition.

The Bailiff:

Seconded? **[Seconded]** Does any Member wish to speak? All those in favour of adopting the amendment, kindly show. Those against? The amendment is adopted.

1.9 Draft Marriage and Civil Status (Amendment No. 4) (Jersey) Law 201- (P.91/2017): third amendment (P.91/2017 Amd.(3))

The Bailiff:

We now come to the Chief Minister’s third amendment. I will just ask the Greffier to read it so that Members know what they are looking at.

The Greffier of the States:

Page 73, part 1 – At the end of the substituted Part 1, after Article 7 insert the following Article – “7A Same sex *et cetera*l. marriages: no compulsion to participate by providing location (1) A person to whom paragraph (2) applies shall not be compelled by any means (whether by any provision of this Law or any other enactment, or by the enforcement of a contract or other legal requirement) to participate in a same sex marriage or an acquired gender marriage. (2) This paragraph applies to the owner or trustee of a location, in a case where – (a) the owner or trustee is a religious organization, and the location’s principal use is for, or relates to – (i) the purposes of the owner, or (ii) the purposes or objects of the trust in question, as such an organization; or (b) the principal occupier of the location is a religious organization, and the location’s principal use is for, or relates to, the purposes of the principal occupier as such an organization. (3) For the purposes of paragraph (1), participating in a marriage means providing the location for or in relation to – (a) a marriage ceremony; and (b) any social event or social function directly associated with, and immediately subsequent to, a marriage ceremony.”

1.9.1 Senator A.K.F. Green (Deputy Chief Minister - rapporteur):

I will try and keep this short but keep it respectful and in context. The proposition is simply to ensure that church halls in Jersey, which often have different ownerships and curtilage arrangements... I think Deputy Le Fondré talked about St. Brelade's one where the main road runs between the church and the church hall. The churches over here often have different curtilage arrangements than the U.K., this is to ensure that they are placed on the same footing as non-Anglican churches, as the religious organisations can choose to consent to same sex marriage or not. I could go on but I hope I have covered sufficient for Members to make up their mind.

The Bailiff:

Is the amendment seconded? **[Seconded]** Does any Member wish to speak?

1.9.2 Senator P.F.C. Ozouf:

I commend, again, the Deputy Chief Minister for trying to find a proper compromise for the rights of religious organisations. I cannot help but just say, however, that some religious organisations show immense tolerance and love to other religious organisations. I call to mind particularly the Catholic community at Saint Thomas opening their church hall for the celebration of Muslim weekly meetings. I just make that point because that shows tolerance or I thought showed extreme tolerance. But I understand why the Deputy Chief Minister is proposing this and it seems to be, to me, fair enough but it is just worth saying, our Christian community, as the Deputy of St. Ouen has shown, can show love and respect to even things that they might not have in their fundamental thing for the love of their fellow man and woman.

1.9.3 Deputy J.A. Martin:

Following Senator Ozouf, I was very suspicious of this amendment being lodged so late and wondering why. Was it an appeasement? If the Scrutiny Panel do not get their extreme through, this, again, to me, is tinkering and tinkering 48 hours before the debate. I am surprised at the comments of Senator Ozouf really because I have a problem with ... and maybe the way I am reading, just see 3(b): "Any social event or social function directly associated with, and immediately subsequent to, a marriage ceremony." But, to me, we have thrown out just all of the Corporate Service's amendments, which seem to be very similar to this and I need to probably hear a much better explanation of why this was lodged late and what is it really trying to do? That the actual law I am happy, we go back to the actual law I passed but at the moment, no, very suspicious and I do not want to accept this. I have probably voted against everything else and I will probably vote against this because I cannot understand why this has been lodged so late and what it is supposed to achieve. Maybe, is it trying to appease a few other people? I wait for the explanations. But I need to know why it was lodged so late and what it really, really means.

1.9.4 Deputy S.Y. Mézec:

I will be voting against this as well. We have spent the whole day debating tolerance or intolerance clause and this is an intolerance clause as well. It is just a slightly watered-down one, a slightly less horrible one. Enshrined in this is discrimination against gay people; it is abhorrent and I will be voting against it.

1.9.5 Deputy M. Tadier:

I am not sure why the Deputy Chief Minister is maintaining this. He has already told us that it was put in there, effectively, as a safeguard because of the worse situation we would be in had the Scrutiny Panel's amendment gone through. Now that has fallen, we do not need this. The bottom line is that the L.G.B.T. community, do you see what I did there? **[Laughter]** They will be worse off if we pass this amendment today. If we have been talking about them all day and about anti-discrimination, at least this gives them an option to have more premises, more choice and it also gives churches the option, most of whom now, I think, are moving in the right direction. I would like to see the hall in

St. Brelade, I want to see that rented out wherever possible to whoever wants it, including the L.G.B.T.Q. community. If we are serious about what we talked about, first of all, I would ask the Deputy Chief Minister to withdraw this; there is no need for it to be here now. But, certainly, if he does maintain it he does not need to speak in any overly effective way to try and get votes for this.

1.9.6 The Connétable of St. Helier:

Just to be clear, are we saying if this is approved that the religious proprietor of the church hall, when meeting someone who comes to arrange the social event following their wedding, once he or she finds out that this wedding is of a same sex couple, is able to say: “Excuse me, we are not going to allow that to take place in our hall” because in some way it will spoil its atmosphere or whatever? I think if that is the case, then I absolutely agree with the previous few speakers that we should throw this out because it has no place in this law.

1.9.7 Deputy A.D. Lewis:

To my understanding here, and I perhaps could ask maybe the Dean to comment on this and maybe the Deputy Chief Minister in summing up, but the issue we have here and the reason why this amendment is here is because it conflicts with Canon Law. Unless you change the Canon Law, then you have got an issue. I appreciate what everybody said so far; it appears discriminatory because it is. But unless you change the other law, you have got a problem for the clergy. I wonder if the Dean could perhaps, if he is going to speak, clarify that. That is my understanding of this amendment. If that is the case, I would not wish to put the clergy in that difficult position without that law being amended first. I think Members need to have that explained to them before the vote goes ahead. Sir, I wonder if the Dean could speak, if he wishes, or the Assistant Chief Minister respond to that.

Deputy M. Tadier:

Could I add to that and ask the Solicitor General also to give an opinion?

The Bailiff:

The Dean indicated he wished to speak and ...

The Dean of Jersey:

For point of clarity, Canon E(14) refers to: “The church, the church porch or the church yard.” Does that help? [Laughter] I am just reading it here.

Deputy A.D. Lewis:

If I may, does that mean that you do not regard it as a necessity?

The Dean of Jersey:

That means that the church wardens and their assistants and the rector, by Canon Law, can determine what religious activities take place within that curtilage, the church, the church porch or church yard, during the time of divine service: “They shall also take care that nothing be done therein contrary to the law of the church.” It goes on to: “Being guilty of riotous, violent or indecent behaviour in any church or chapel.” But the Canon Law states that the church wardens and their assistants, at the moment it is lawful for them to decide what happens within the curtilage with regard to religious ceremony within the church building, regardless of ownership, church porch or church yard.

Deputy K.C. Lewis:

Just for clarity, is Canon Law silent on church halls then?

The Dean of Jersey:

It is not ...

The Bailiff:

Are you comfortable with this, Dean, or would you rather the Solicitor General dealt with this?

The Dean of Jersey:

I would rather the Solicitor General, yes, on every possible level, Sir. **[Laughter]** I will gladly hand over the Canon to him at this moment.

The Bailiff:

While he is thinking about that, I call on the Chief Minister.

1.9.8 Senator I.J. Gorst:

It was late, for which we apologise. The chairman of the Scrutiny Panel said, yes, we had met with them and tried to understand their intentions with their various amendments. One of their intentions was that they pointed out to us that the law treated different church halls differently. A church hall within the curtilage has the protection that this amendment is now extending to the likes of St. Brelade's church hall, which is not within the curtilage, so it has been missed out of the law.

[18:45]

It is not within the curtilage because there is a road between it and the same with somewhere like St. Paul's Centre. The original law included church halls in this manner in the curtilage but Scrutiny had conversations with interested parties and said: "Our church hall is used for exactly the same purposes but does not have that protection of what is in the main law because it is not within the curtilage." We, rightly, thought that Members would not ... their other amendments would not find favour and, therefore, said that we would bring to deal with that anomaly as a separate amendment. It is entirely up to Members whether they want to extend that same protection to those church halls outside of the curtilage as within the curtilage. This is a simple thing that the law does and it allows, as the Deputy Chief Minister said, the same protection for non-Anglican churches as well. They can say yes or no, it gives that protection.

Deputy J.A. Martin:

Is the Chief Minister sitting down? Sorry, I wanted to interrupt. Five times you said this gives protection; protection from whom or against what? I am sorry.

The Bailiff:

Chief Minister, can you clarify what you meant by protection? Did you mean the same protection that is available to other churches?

Senator I.J. Gorst:

I meant the same protection that was available to other churches; if it was a mis-chosen word then I apologise.

Senator P.F.C. Ozouf:

Can I ask a question of the Solicitor General, when possible, please, Sir?

The Bailiff:

If you ask it now then he will be, no doubt, answering it in a moment.

Senator P.F.C. Ozouf:

May I just give a question? I am not clear I understand the Deputy Chief Minister's proposal. Can I take a Catholic question? If I take an example of St. Martin's Catholic Church, the Columba Hall, that is the church hall. It is not covered by Canons. We are dealing with civil law here, I am only

interested in the civil law thing. What is the law that we are passing or not meaning for the Columba Hall of St. Martin's Roman Catholic Church? Without this or the underlying law, are they compelled to have a same sex marriage in the Columba Church Catholic Hall?

1.9.9 Deputy J.A.N. Le Fondré:

I think Deputy Le Fondré is getting a headache. The difficulty here is that there are 2 conflicts going on; one, as I said, for the Church of England with the status of what is called Canon Law, which has a legal standing within the church. Anybody who breaches Canon Law in terms of clergyman can basically have their licence withdrawn or be sacked. The rejection of the amendments in Article 23 has potentially already caused a conflict between Canon Law and state law, which is what we were trying to avoid. Just to be clear, there may be some issues already between Canon Law and state law because of the rejection that has already happened, and that is why we were suggesting that there needed to be some flexibility. Now, in this instance the 2 examples I will use will be the Glass Church in my Parish which has a church hall next to it which was within the curtilage of the church. As we heard from the Dean, basically if it is within the curtilage - this is my understanding from the legal advice we had - then Canon Law will apply and there are various restrictions over activities that take place. This goes back all the way to the references of yoga classes and rock bands and what have you. They are sensitive on that. Bear in mind - and this is why I spent quite a long time this morning talking about Canon Law and faith and all that sort of stuff - it is not my view, it is just saying that is their position. In Church of England position terms it has got a higher level almost because it is church law. For other religious organisations the general principle on all of this lot is they are not compelled to take part but they can if they so wish, and it is about flexibility. For the Glass Church, as I said, there are no issues as we have understood it and on the legal advice we had at the time is that was covered effectively by Canon Law. But St. Brelade's church hall, for example, is across the road and is, therefore, not directly within the curtilage. Then you get into issues as to where the ownership lies. In St. Clement the Caldwell Hall is owned by the Parish ... well, anyway, as far as we understood it was not owned by the church, but again it is not part of the curtilage as we understand it, and there might be some issues around that. It is technical and what we are trying to say is does one want consistency if a church hall is within the curtilage it is covered already by Canon Law as we understood, and there are restrictions over what can happen there. Does one then want to put people, particularly in the Anglican Church where the church hall is not in the curtilage of the church, and they may be requested to do certain things which will then go against the fundamental beliefs of the Anglican Church. That then creates a major conflict and you will potentially see clergymen in court, and that is what we are trying to avoid. I am going to keep it simple, but that is the advice we had around this whole area.

Deputy A.D. Lewis:

Can I seek some clarification from Solicitor General? Canon Law; can that be amended by this Assembly or is it a matter for an ecclesiastical court? Because the issue appears to be a matter of another law, if we have some control of that in this legislature can we make the required amendment in order not to have this muddle, or is a matter for the ecclesiastical courts.

The Solicitor General:

As regards that last question and the status of Canon Law, it is a special situation and I have limited experience of it, I disclose to the Assembly straight away. But as far as I am aware there are special procedures that need to be gone through in terms of consulting with the ecclesiastical authorities before this Assembly makes any decisions as regards an amendment to Canon Law.

The Bailiff:

Solicitor General, can I help you? Canon Law in this case is handed down by an Order in Council from the Queen and that has happened and has been approved first by this Assembly after approval

by the Deanery Synod, so we cannot change the Canon Law without asking Her Majesty to change it.

Deputy A.D. Lewis:

But we could ask Her Majesty to change it?

The Bailiff:

Yes, indeed we can. Deputy Tadier, did you have a question for the Solicitor General?

Deputy M. Tadier:

I do, and in asking it I would be happy to ask whether the Solicitor General would like to consider it overnight until the next day whenever we sit. I am not sure where the Assembly sits with the timeline but if I ask my question first, so if we imagine the scenario of the St. Brelade's Church and the St. Brelade's church hall; it seems to me that if we do not accept this amendment that if someone approaches the rector of St. Brelade's Church and says: "I would like to use the hall for a same sex function, celebration or for the actual marriage. I understand it is not part of the church under Canon Law, presumably then it is owned by the Parish and as a parishioner who is a ratepayer my partner and I would like to get married in there with our own celebrant." So currently the rector, without this amendment, could say: "That is fine, I am not allowed to marry you in my church but I am quite happy if you want to use the church hall to do that as long as you provide your own celebrant and as long as you are obeying the law." Currently ...

The Bailiff:

Is that the question?

Deputy M. Tadier:

That is the question, it might have sounded like a speech but that is the question. Currently is it the case that the rector of St. Brelade would be allowed to do that, and by accepting this amendment today it would mean that he could not do that because it would put the Church Hall - which is not currently under the curtilage of the Church - under the curtilage of the Church and therefore he would not be able to have a marriage there because of that reason under Canon Law.

The Bailiff:

Deputy, just so that the Solicitor General is clear about your question, I understood it to be a gay couple come along to the rector of St. Brelade's and say: "We would like to be married in the church hall across the way, can we do it?"

Deputy M. Tadier:

Yes.

The Bailiff:

Very well. Did you have any other questions for the Solicitor General?

Senator P.F.C. Ozouf:

No, I do not know whether Deputy Tadier was coming out or something or what he was asking because he said "I". [Laughter] Is it a heterosexual couple or a homosexual couple, is that the issue? Because one of them is accepted and one is not, but anyway it does not matter because this is a civil marriage, is it not?

Deputy M. Tadier:

Can I just clarify I am not coming out and that is because I am straight? But I was obviously using the hypothetical “if a Parishioner comes to the” ... I do not mean to disappoint anyone. **[Laughter]**

The Solicitor General:

While I would personally be delighted to give Members an off the cuff answer to these questions, a number of different churches and church halls have all been mentioned; and further I need to think about the use of the word “location” which is quite a general word and I would, I think, need more time to consider the questions and come back with an answer. I am sorry to disappoint the Assembly but I think it would be safer for me to do that rather than give an off the cuff answer which would be wrong.

Deputy M. Tadier:

Sir, may I test the mood of the Assembly then and ask to adjourn? **[Members: No]**

1.10 Draft Marriage and Civil Status (Amendment No. 4) (Jersey) Law 201- (P.91/2017): third amendment (P.91/2017 Amd.(3)) - leave to withdraw the amendment.

1.10.1 Senator A.K.F. Green:

Rather than continue this another day, because this is so important for people, I am prepared to withdraw that amendment. **[Approbation]**

The Bailiff:

You need the leave of the Assembly to do that but I take it from the stamping that Members agree. Does anyone disagree?

Deputy J.A.N. Le Fondré:

Are we allowed to talk to this, sir?

The Bailiff:

Just a moment. Senator Green, you wish to withdraw the amendment and consider it and come back perhaps with a further amendment at a later date?

Senator A.K.F. Green:

At a later date if need be. But this is so important to so many people, I would like to see it settled tonight so I would like to seek the permission of the Assembly to withdraw this amendment.

The Bailiff:

Is that seconded? **[Seconded]**

1.10.2 Deputy A.D. Lewis:

Can I just ask a question though? Would the clergy be at risk of breaking their own licence arrangements with their churches, in other words contravening Canon Law; is that the case or not?

The Bailiff:

Does any other Member wish to speak on that limited proposition as to whether or not the Senator should be able to withdraw the amendment?

1.10.3 Deputy J.A.N. Le Fondré:

I will try and talk briefly. The reason I will not be supporting the withdrawal is that when we identified this as a piece of work it was identified as a concern to us by various religious organisations. This paragraph is about not compelling anyone, so if somebody does want to participate they can do,

but if there is an issue because of the conflict between their creeds and Canon Law then they are not compelled. Now, to be very clear, as I have said previously, I have understood there is already a problem between the rejection of Article 23 or the amendments to it and this potentially might resolve that problem. But there is a conflict and there is a risk that if something like this is not approved or something like the amendments to 23 were not approved then there might be some problems in the future between the churches and the courts and state law, and that is what we were trying to avoid.

1.10.4 The Deputy of St. Ouen:

I think this is one instance where regard should be had to the position of faith, and this is clergy ministers who would have control, either by owners or trustees of these premises; I think they are unlikely to be Parish property, they would more so be held within some sort of trust. As you know, trusts have got restrictions so it is likely that a trust for a church hall would say that the trustees must only operate the church hall in line with the doctrines of the Church of England, let us say, or for the furtherance of the Christian ministry. So a minister might have real difficulty as a result of his faith and what he has undertaken to do as a minister, to allow that church hall to be used for same sex marriages.

[19:00]

But it is not a compulsion, it is he shall not be compelled or she shall not be compelled. So if the minister and his denomination was perfectly happy with allowing it to be used then it can be used, but by not inserting this amendment into legislation it seems to me we would be entering into a position where some ministers could be compelled to allow the use of that church hall for same sex marriages against their sincerely held beliefs, or they say nobody can use it because they could say nobody could get married there, which seems a withdrawal of a perfectly good provision for the whole of society. So it seems to me that we are trying to divide among locations here, so there are some locations where everything is within the curtilage and there are other locations where a church hall is outside a curtilage. Some people in this Assembly are trying to grab hold of some church premises which could be used for same sex marriages but others cannot be because they are within the curtilage. So it is only right surely that all church property or trusts held for church purposes should be treated in the same way, and we should not have all this: "It is because of the road that something different should apply." Have regard to the position of faith, to ministers who may have that genuine difficulty, and they should not be compelled to act in a way that is against their convictions.

The Bailiff:

This is a very limited debate, Senator Ozouf.

1.10.5 Senator P.F.C. Ozouf:

I absolutely understand the rights of the Christian community with their own properties to have a right to say whether or not to have that. But we have had conflicting arguments, we have the Solicitor General who cannot answer these questions of the law, and I accept it was a late amendment. I understand absolutely what the Deputy of St. Ouen is saying, but there is a lack of clarity. The Deputy Chief Minister has given an assurance that he will come back and resolve any conflicts, it should not get us from passing what effectively is now a run to get this law in place. It is better to get it right for our religious communities where there is this uncertainty, than do something just on the hoof like this on a late amendment, which was done with the best of intentions. I support absolutely the right to withdraw and urge Members to support this. **[Approbation]**

1.10.6 Deputy K.C. Lewis:

I will be very brief. I will not repeat what the Deputy of St. Ouen has said, but this was consulted on extensively and it is my understanding that Liberate accepted this.

Deputy J.A. Martin:

It was only lodged 2 days ago; nobody has consulted us on this.

The Bailiff:

Very well, all those members in favour of ...

Deputy M. Tadier:

Can we have the appel please?

The Bailiff:

The appel has been called for. The vote is on whether or not the Chief Minister or Deputy Chief Minister should be permitted to withdraw this amendment. I ask the Greffier to open the voting.

POUR: 35		CONTRE: 8		ABSTAIN: 0
Senator P.F. Routier		Senator S.C. Ferguson		
Senator P.F.C. Ozouf		Connétable of St. Martin		
Senator L.J. Farnham		Deputy J.A.N. Le Fondré (L)		
Senator P.M. Bailhache		Deputy of Trinity		
Senator A.K.F. Green		Deputy K.C. Lewis (S)		
Connétable of St. Helier		Deputy A.D. Lewis (H)		
Connétable of St. Clement		Deputy of St. Ouen		
Connétable of St. Peter		Deputy of St. Mary		
Connétable of St. Lawrence				
Connétable of St. Ouen				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy R.J. Rondel (H)				
Deputy S.Y. Mézec (H)				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy G.J. Truscott (B)				

1.11 Draft Marriage and Civil Status (Amendment No. 4) (Jersey) Law 201- (P.91/2017) - resumption

The Bailiff:

We now return to the main proposition. Deputy Chief Minister, do you wish to propose Articles 3 to 26? The Greffier reminds me we have not voted on Article 2. We are back on the main proposition, I was correct, and the vote is on Article 2 which introduces the changes to the Marriage and Civil Status Law. So if you get out your principal proposition, it starts at page 65, substituting parts (1) and (2) into the 2001 Law and permitting same sex marriage. Somebody would like to ask for the appel, no doubt. The appel is called for.

Deputy S.Y. Mézec:

Hang on, Sir, do we not get to debate this Article as amended now?

The Bailiff:

I thought we had debated it; perhaps we have not. Just a moment. Deputy Mézec, you are quite right, it is just getting too late. We are due to have a debate on this Article and the floor is open to Members.

1.11.1 Deputy S.Y. Mézec:

Thank you, I was worried there because I do, I am afraid, have quite a bit to say on this. This is the main Article that includes the changes which will allow same sex couples to get married, and associated clauses to do with that. The Articles that we will be debating after this I think do not really have anything substantial that they are changing that will be controversial or likely to need much debate so I am going to use this to talk about my disappointment really with where we find ourselves. I regret very much what an absolute shambles this process has been from start to finish, and when I say that I mean **[Approbation]** ... when I say from start to finish I mean from May 2014 until this point. I am really disappointed with how this law has been treated and I regret that I am also in the position where I will have to vote for this Article and I urge every Member to vote for this Article because the fundamental thing it does, which is provide the ability for same sex couples to get married, is absolutely the right thing to be doing. It is a huge step forward for L.G.B.T. equality in the Island and at this point it must go through, even if it does have negative things associated with it that I am disappointed have been included, and also disappointed that I will not have the ability to vote against them because this is the package. You either vote for the package or you vote against it. So here are the some of the things I am disappointed in, and some are more serious than others. I am disappointed at how prescriptive it is of what can and cannot happen in a marriage. There are clauses about what times you can have; I am sorry but I think that is ridiculous, if you want to get married under the moonlight in the evening you should be allowed to, and I think it really is ridiculous that, and this law does not cover that. I think the prescriptions over what can and cannot be part of a civil marriage ceremony to do with what has got a religious element to it, I think that is ridiculous. The Chief Minister in a debate yesterday described himself as a free market man; well, when it comes to marriage I am a bit of a free market man as well; I think people should be entitled to do what they want in their ceremonies and I think it is really regrettable and I think we will miss opportunities that we otherwise could have capitalised on in terms of tourism, getting people to the Island to get married here and then to find out that they will be so prescriptive in what they can and cannot do I think is really disappointing. There is obviously another very serious element of this law which I suspect I will not necessarily have the support of a majority of Members on it, and it is something that I have thought long and hard about what I would say and ultimately, if I had the chance, what I would vote on. It is the issue of the quadruple lock. I know that the quadruple lock is meant to be the compromise. It is meant to be our way of saying to the Church that they, because they have a religious objection to same sex marriage, will not be compelled to take part. We have obviously had the debate about extending that to businesses or church halls or whatever and that has not gone through. The quadruple lock obviously exists in other jurisdictions, it was a big part of the U.K. legislation, and I

have thought long and hard about it and I cannot support the quadruple lock. It goes much further than that, and I will declare my interest in that I am a non-believer, I do not go to church, I do not worship, I am not a Christian so take that however you want to take it. But we have an established church, rates money that we all pay goes to these churches; we have an official seat in this Assembly for a Church representative. When it is your state established church I think for it to be enshrined that it will be able to discriminate is wrong and I cannot support it. I will say that I admire the position that the Catholic Church has taken on this where they have gone the European route on this and said that they will have the ceremonies according to their religious beliefs but they will not take part in the legal aspect of it. I think that is absolutely the right thing to do. I have to be honest and say that if the future of the Church of England is that it has not got its head around this issue yet, it has not got the memo that being gay is okay, then I am afraid that I think that they must be disestablished, and I do not think it is right for the States to say that something we are connected to, that is part of our States institutions should have the right to discriminate. It is a point of principle; I cannot support the quadruple lock. I understand that it is meant to be the compromise position but it is a compromise that accepts discrimination and I think that when it is to do with the organs of the state there should be no discrimination. Those that have a problem with it will have to get over it, and I think the process of being told you must get over it will help them reconcile it in their hearts much quicker than they otherwise would. So I know that will not be a majority position, I know that I am compelled to vote for it anyway because it is part of the package, but I want on record that I do not support the quadruple lock. I think it is wrong that we are going down this route. I say, as somebody who a part of my income goes towards paying for the church, I have a wonderful relationship with the churches in my constituency, both Church of England and not, and admire very much a lot of what they are doing. I really think they need to get their head around this issue sooner and I think particularly for young people, they are putting young people off their institution and that, I think, is a very sad thing and that is something to think about in future. There is another element that has not really been brought up much in this debate. I think Senator Ozouf may have alluded to it earlier and I think so did Deputy Tadier, and it is really to do with what is going to be what is going to be the next big issue. On gay rights there has been a huge amount of progress in recent decades, which is all something we should be very glad of; I think this piece of legislation is an important step forward in that. But there is another type of bigotry which we still have a long way to go on. Some people who I know, who are absolutely not homophobic, who really appreciate their gay friends and family members, even some of the people who are progressive on that issue I know have not got to grips with the next one, and that issue is transphobia in our society. This law enshrines discrimination against transgender people and I really, really regret that. I am quite upset at the way that it is phrased in this law where not only will the churches be able to refuse same sex marriages but they will be able to refuse marriages of opposite sex couples if they have reasonable grounds for believing that one of them is of an acquired gender. I am sorry but I think that is disgusting; I really do. I think it is so unfair that people who go through what is unimaginably difficult, being born into a body that you do not feel comfortable in and going through the process of transitioning; a process which, by the way, is legal and you can have your new gender recognised in law in Jersey, to then be told you are still not really equal I think is absolutely terrible. The thing that upsets me the most about it is the statistics that I know Stonewall published last year, which is that 50 per cent of transgender people at some point in their life will attempt suicide. It is really, really difficult in modern day society for transgender people and I am afraid that this law does not do anything close to helping them.

[19:15]

I think that is really, really regrettable; I think it is ... disgusting is the word I have used because the test is having reasonable grounds to believe that somebody is an acquired gender. What does that mean? What does it mean "have reasonable grounds to think someone is transgender"? I am sorry but I find that a creepy thought. I think it is weird and I really am disappointed that this law includes

that. So I say to Members, please vote for this Article despite all the negative things it includes. Try not to be too disheartened at the shambles of a journey it has taken to get here, we were the first of the Crown Dependencies, we are the last to finish it, and the final product we have is not good enough. I hope that this will be revisited very quickly to try and reconcile some of these issues. I apologise to those members of the public who I think have been let down by having a law that is not as good as it should have been, but I am happy that there will be this important step forward for the rights of same sex couples. I hope that as many of these couples as want to take advantage of this law and live long and happy lives together, equal under the law as they otherwise would not have been; but I feel very sad at the position that transgender people have been left in with this and I feel very uncomfortable that an organ of the state will still be able to legally discriminate. We still have a long way to go; do not be complacent about it, there is still much more to be done.

1.11.2 Senator P.F.C. Ozouf:

I brought the original update of the Marriage and Civil Status Law as a first job that I had in this Assembly, and I want to just address one very, very brief thing. I have some sympathy with some of the remarks, I think if I understand them, of Deputy Mézec; but what Article 2, as I understand it does, is reflect the ability of the replacement l'Etat Civil Law, which was brought from the Marriage and Civil Status Law, which allowed religious communities - all of our faith communities, Catholic, Methodist, the Jewish community - to conduct the marriage bit in the eyes of the law in their church. Previously under the old l'Etat Civil Law it was only the Anglican Communion that would be able to effectively confirm or do the modalities around the Civil Law. The reason why I raise this is because I thought at the time I was doing equality to all our religious faith organisations. I thought it was unfair that the Anglicans could do civil law, their civil law marriage, and then get on with their religious service when the other faiths could not. So we brought in the law, and this is replicated here. Now, I understand that the Catholic community have said they are going to withdraw their ability to do the civil law if we change the definition of the law. I say: what a shame. Catholics, presumably they are going to carry on marrying according to the Catholic doctrine, heterosexual couples; why can they not respect the rule of law and carry out the modalities of doing the civil and religious law all in one. People know the situation in France, you have to have a civil law and then you go to your church, if you have ever been there or other European countries. In the Church of England, the United Kingdom, and the Republic of Ireland, and formerly in Jersey, my understanding it was only the Anglicans that could do the civil law at the same time, a 2 for one offer if you like. Now, I just ask the Catholic community please consider again, carry on carrying out your religious Catholic weddings and marriages in your Catholic rights but do not use this to criticise effectively the civil law of Jersey. I just wish to say that bit because I thought I was doing something to make all of our great religions, the Methodist community, the Anglican and Jewish community all together, and now they are withdrawing from it. I say: what a shame. Please reconsider, Catholic community; I would love to see you continue to do what I wanted to do in 2001, which was being respectful. It is almost the reverse argument that we have been discussing today, allowing the Christian communities to do what the civil law says if they want to, it is an opt-in. Please do not opt out, Catholic community, carry on and that would be great.

1.11.3 Deputy M.R. Higgins of St. Helier:

I was going to rise there and ask Deputy Mézec ... I sympathise with what he just said. I had not picked up the fact that these people are still being discriminated against and I was going to ask him why he did not bring an amendment. If he had I would have supported it. All I can say is I shall be supporting the legislation.

1.11.4 Deputy M. Tadier:

I think I might be able to speak to that if I heard the question right as why was an amendment not brought.

Deputy M.R. Higgins:

It was not a criticism, I just ...

Deputy M. Tadier:

Are you talking about the trans ...

Deputy M.R. Higgins:

Yes.

Deputy M. Tadier:

Yes. I am pleased to be able to follow on then from Deputy Higgins. I was in the process and I had been writing to the Greffier to submit an amendment on the very subject of the transgender discrimination that is being replicated in this law. I have got the email trail and I am happy to show that to anyone, it is pretty boring. I realise that there were 2 major reasons why I did not pursue that but the first was it becomes very complicated because the law that we needed to amend is the Draft Marriage and Civil Status Law, it is for all marriage that we need to do that, it is not specifically for same sex marriage. I know that although that is what is in front of us today, we are specifically talking about the narrow issue of same sex couples having the same rights as everyone else and that leads into the second argument; I did not want to conflate the 2 issues. Imagine how long the debate would have been today going into next week, and I need to obviously have that conversation with Members. But a moment ago I took time just to have a brief conversation with the Deputy of St. John and we reflected how sometimes it is easy to forget and get frustrated in the day to day. It seems that sometimes we take one step forward and 2 steps back. But in reality, if I look back in this Assembly as to where we have come in the 9 years - and some of us from the class of 2018 - we have a very long way in terms of the Assembly. When we first started here we were fighting for things like the Discrimination Law, with a Council of Ministers who did not even recognise that we needed a Discrimination Law; and the answers that we were given in question time: "Well, I am not sure that we need it. It would be good if everyone just behaved themselves anyway." To a point where we now have a Council of Ministers and a Chief Minister to who it is obvious that of course you need a Discrimination Law and that we have taken too long to get to that point; so that is encouraging. I am reminded of one of the first ever big debates that I took part in, and it was so long back that it was in the days when Senator Stuart Syvret was still in the Assembly, and it was on the introduction of the transgender provisions. What happened at the time was that the Chief Minister of the day, Senator Terry Le Sueur, had brought forward this law but then had forgotten to put in a key Article which made provision for a carve-out for the religious community to discriminate. We can find this being replicated today on page 72, Article 7; the wording, as my colleague on the left has said, is insidious in the way it is drafted. Listen to what it says: "A person shall not be compelled by any means to do any of the following in respect of 2 persons of the same sex, or of a person whom the marriage celebrant reasonably believes to be a person of an acquired gender." What kind of language is that? Normally you use "reason to believe" when some kind of offence has been committed: a policeman may stop and search you if he or she has reason to believe reasonable grounds for suspicion that a crime has been committed: "We may enter your premises with a warrant if we have reason to believe that you are hiding something." But when we apply it to an acquired gender person it is not "if the person is of an acquired gender" it is "if the person has reason to believe that they are of an acquired gender". The argument I had to make back in the day - because it was an amendment of the Chief Minister so it is not an amendment that I had to bring but I was one of the ones who had to lead the charge against that amendment - was to say: "Why are we enshrining discrimination in our law [and remember at the time we did not have a Discrimination Law] to say that it is okay for an operative of

an organ of the state to override what the law says for everyone else because we put provision in other parts of the law to say you cannot ask?" So if somebody comes up to you and they are a man or a woman and they have the piece of paper to prove it - as if they would need that, because I think most of us do not behave like that anyway - you serve that person accordingly. Of course you have carve-outs, I mean, we talked about carve-outs for sporting events, *et cetera*, and that is because in the past some of us have not differentiated between sex and gender. But they are 2 very different things and so it is possible that somebody feels that they are a female even though they might have the biology of a man when they are born. Of course there are hermaphrodites that exist, and gender is much more complex than just biology and I think we have started to appreciate that much more. It is absolutely outrageous now that this piece of discrimination has been replicated. Part of the consideration of this is this was not the right time to amend it but it needs to be amended, and what I am hoping is that ... I circulated earlier, I think there were 17 who voted in favour of what I would call the non-discrimination, which was quite a mixed bag of people, and there were 32 who voted against. Interestingly, Senator Ozouf and I were on different sides of the debate and we have spoken about that since. But what I hope is that in those 9 years that there has been a move within the Assembly and if that proposition were to come today to get rid of this Article - Article 7 which I am very uncomfortable with but I can only speak against it, I cannot vote against this without voting against the whole of the law - I would hope that even in this Assembly, let alone in the next Assembly, we have moved on to the point where we say: "No, if a parishioner presents themselves to your church it does not matter whether it is a same sex marriage or a mixed sex marriage, whether that person is of an acquired gender." It has the potential to become ludicrous because, as my colleague said, it could well be that a church says: "I am not going to recognise your new gender because you are now a man and you want to get married to another man and, therefore, because I do not accept your new gender I can marry you." So you could marry a same sex couple who are legally same sex arguably in a church because you have chosen not to recognise their acquired gender. I do not think that would stack up legally but it does show this whole academic nonsense, when we should be thinking about real people and real lives here that we are dealing with and the effect it has. Does that make somebody of an acquired gender feel more accepted or does it make them more likely to have low self-esteem and be one more of the statistics of those 50 per cent who consider suicide at some part of their life? We need to get on top of that bit and if somebody brings forward that amendment, and hopefully it can be done in short order, I would expect that now after the debate we have had it would be fully supported. I joked... and it was only really partly a joke, and it touches on what Deputy Mézec said about the privileged position that the Church of England has in Jersey and in Britain, and it is part of the state which is not the case for other churches and other religions. I fully agree that now the time has come to question whether or not it is right for the Church of England to remain established. It is not just us who say that, I think there are devout people out there who are subscribers to the Church of England congregation who also say that they agree that there should be a separation between church and state on the basis it is important that the church be able to criticise the government and the state and what their decisions are doing and that the 2 remain distinct: the spiritual and the legal. The 2 should remain in parallel; as I have said before, it works in other ways. But this is only partly tongue in cheek.

[19:30]

I am waiting for the day that under Article 6, when we have the people and the entities that can solemnise marriage; we have the Superintendent Registrar, we have clergyman, authorised civil celebrant, authorised religious official, we will see one day Facebook on that. Facebook will be authorised to perform marriages because you simply click a box and as soon as the other person clicks a box to accept that you are married you become married and Facebook, the global organisation that it is, will have the ability to marry a couple. It makes divorce law a lot easier because as soon as one person unclicks it you are no longer married. That might seem like anathema to some people but it

does bring into question the whole meaning of marriage. Marriage is essentially a contract and it is a piece of paper, so it is a legal contract ...

The Bailiff:

Deputy, can you relate this to the present debate?

Deputy M. Tadier:

Yes, I am relating it now. The reason it is relevant is that at the moment I look at Article 17, paragraph (6), which says: "Members of the public shall be permitted to attend freely the solemnisation of a marriage." That is a little bit strange because I always thought that a marriage was a personal event between 2 people and you had the choice about who you invited to that ceremony. We have all heard of gatecrashers gatecrashing the reception but it seems to me that there may be serial marriage attendees who turn up to meetings as if they were a Scrutiny meeting or a States debate or a Royal Court. Maybe people can do that. I was told that one of the reasons for that is because somebody has to be able to stand up and say if there is any lawful impediment whereby this couple shall not be married, therefore, you have to allow the public to attend. But it could be strange that if you hire out a church and you are paying for it, anybody can come in and sit in the seats if they get there early enough and that you have not got enough space for your guests to attend. We are replicating very strange things - and it would be good to hear from the Minister for Economic Development, Tourism, Sport and Culture - that we have said a marriage must be solemnised between the hours of 8.00 a.m. and 7.00 p.m. What is all that about? Who thought that is a good idea to put that in there? What if you want to have a wedding at 7.30 a.m. or at 7.30 p.m.? Apparently, that is not allowed. You might want to have a moonlight wedding at the great venue that is St. Brelade's Church, that starts at 10.30 p.m. and finishes at 12.00 p.m. and you can go out there in the moonlight and then have a swim on the beach; but apparently you can only get married between the hours of 8.00 a.m. or 7.00 p.m. because something will happen after that if you do not get married during those hours. I have already talked about religious symbolism and then if we turn to Article 23(6): "Approval shall not be given for solemnisation of same sex marriages at a location that is the usual place of public religious worship according to the rights of the Church of England." Now, there is a simple solution here. We do not need to put that prescriptive part of the law in. What we could say is that the Church of England can use it, so if you are religious and you are part of the congregation you can use it but ultimately who owns those buildings? That is something that Deputy Labey raised himself. Ultimately, they are paid for by the ratepayers of the Parish and in some cases they might receive other funds for upkeep. If the churches genuinely want to restrict who can get married in their churches, and this is dictated by the wider Church of England, not the Church of England in Jersey, then they should take over the churches themselves and pay for them entirely. If they want to do that the ratepayers in the Parish, especially the same sex couples who are not being afforded the right to married in these churches at the moment, they should get a reduction in their rates, if that is the case. It is completely discriminatory and, as is the case, I think, in Germany, they should be able to opt out of paying dues to a church which they are not allowed to use. If they were allowed to use it, that would be different but they are being excluded from it. But there is a compromise position, which is to say: "When we are not using the church feel free to come and use it. If you are parishioner and you are allowed to have a civil marriage, just tell us when you want to use the church, we cannot get involved with it ..."

Senator S.C. Ferguson:

Is this particularly relevant to the debate?

Deputy M. Tadier:

It is absolutely relevant to the debate. This is the law. I am speaking to the law.

The Bailiff:

Deputy, if I may say so, you are absolutely speaking to the law, you are entitled to what you wish to say, and I imagine from what you said earlier that you wish to support the adoption of the law despite the comments you are making. I suppose it may be that you will want to ask yourself whether it is helpful to Members to continue making them in this form at the moment, but you are absolutely entitled to do so.

Deputy M. Tadier:

Sir, I take the direction. It is late and we are getting tired and I did move the adjournment earlier, to be fair. The problem is the way in which this law has been presented, it is just one big amendment to another law. What should have happened is that a new law should have been brought which took out all the nonsense that I am pointing out. The nonsense about this 8.00 a.m. until 7.00 p.m., the nonsense about whether or you can have iconography, whether you can play this C.D. (compact disc) or that C.D., whether you can have this hymn or that poem being read. Who makes the decisions? If it had been done properly in the form of a proper law it might have taken a little bit longer but I suspect it would not. We could talk to the Articles, we could bring amendments to the Articles, I could ask for the transgender discrimination to be taken out because it is abhorrent but it has been presented as effectively one big amendment to another law and that is why I have to speak on it now and that is why I think it is strange. I have made all my points. I have 3 pink bits of paper there and I have spoken to all 3 pink bits of paper. But, of course, I support the law. I appreciate that in the last 9 years - and there are others that have been fighting this for much longer - we have made progress, it has been a slightly tortuous process but it is a small price to pay for the immense difference that we are going to make in people's lives. That is why I can tolerate these inconsistencies for the moment, but I will be making amendments in the next months and I hope that we can get overwhelming support for the most important amendments and the smaller details we can tweak in the months and years to come.

The Bailiff:

Does any other Member wish to speak? I call upon the Deputy Chief Minister to reply.

1.11.5 Senator A.K.F. Green:

I will contain my comments to Article 2 as amended. My glass is half full, not half empty. What we have here is a new modern marriage law. We spent a lot of time today talking about same sex marriage because that was an important part of the new law, but our new marriage laws allow, as we said, same sex couples in Jersey to express their love and commitment, for people to have more choice over where they get married, including being able to get married outside, and more choice over who marries them. It will be significantly easier for people to book their weddings and, importantly, we will have a law that provides better safeguards against sham and forced marriages. We have had a long debate and, in the main, a respectful debate, which I was very grateful for. I would like to just pick out a couple of things. Some Members have not only made really good speeches but they have made moving speeches and they have moved their position. I thought particularly the speech from the Constable of Trinity, and I could not agree more with what he said. The love of particularly a parent to a child is and should be utterly unconditional. I have a simple rule in life that I try and apply to all the work that I do, that if I would want something for a member of my family and something for my family is not good enough, then it is not good enough for anyone else's. Apart from the overwhelming love that the Constable obviously showed for his family, he also wanted to support people in their relationships in the same way that he would support his own family. I thought that was moving and fantastic. The Deputy of St. Ouen as well has moved a long way, I really appreciate it, and it just shows that, although this has been a long debate, debates sometimes do change people minds even if they are hard. We have come a long way with this

marriage law and I know that there will be changes to come in the future. The younger generation that I talked to, the 14, 15, 16 year-olds do not know what we are all hung up about, to be honest with you. I am sure there will be even more relaxation as we go forward. That is a complete contrast to when I was in the Army, 40-odd years ago, it was Court-Martial offence to even declare that you were a homosexual. We have moved a long way, and rightly so because love is love. An 8 year-old said in a letter they sent to me about this, 8 years old: “Love is love regardless of anything else.” Love is love. So we have moved a long way, this has been a long debate. The Article 2 as amended I propose and I call for the appel.

The Bailiff:

The appel is called for and I invite Members to return to their seats. The vote is on Article 2 of the Amendment No. 4 law and I ask the Greffier to open the voting.

POUR: 43	CONTRE: 1	ABSTAIN: 0
Senator P.F. Routier	Connétable of St. Martin	
Senator P.F.C. Ozouf		
Senator I.J. Gorst		
Senator L.J. Farnham		
Senator P.M. Bailhache		
Senator A.K.F. Green		
Senator S.C. Ferguson		
Connétable of St. Helier		
Connétable of St. Clement		
Connétable of St. Peter		
Connétable of St. Lawrence		
Connétable of St. Ouen		
Connétable of St. Brelade		
Connétable of St. Saviour		
Connétable of Grouville		
Connétable of St. John		
Connétable of Trinity		
Deputy J.A. Martin (H)		
Deputy G.P. Southern (H)		
Deputy of Grouville		
Deputy J.A. Hilton (H)		
Deputy J.A.N. Le Fondré (L)		
Deputy of Trinity		
Deputy K.C. Lewis (S)		
Deputy M. Tadier (B)		
Deputy E.J. Noel (L)		
Deputy of St. John		
Deputy M.R. Higgins (H)		
Deputy J.M. Maçon (S)		
Deputy S.J. Pinel (C)		
Deputy of St. Martin		
Deputy R.G. Bryans (H)		
Deputy R.J. Rondel (H)		
Deputy S.Y. Mézec (H)		
Deputy A.D. Lewis (H)		
Deputy of St. Ouen		
Deputy L.M.C. Doublet (S)		
Deputy R. Labey (H)		
Deputy S.M. Wickenden (H)		

Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				

The Bailiff:

The running order suggests that Articles 3 to 26 will be proposed but that is on the basis that the schedule will be dealt with separately and the amendment to the schedule falls because neither paragraph 2 of amendment 2 or the third amendment has been adopted. Just for explanation as to why that is so, if you are on page 17 of the running order you will see Article 24(a) refers to: “In any case where Article 7 or 7(a) applies.” As we do not have a 7(a) clearly we cannot vote on that amendment. Deputy Chief Minister, can I invite you to propose Articles 3 to 26 and the schedule?

1.12 Senator A.K.F. Green:

I am just finding my place on this. Now Article 2 of P.91 is adopted, as you say, we move on Articles 3 to 27 of P.91. These Articles set out change to the existing 2001 Law. Some of those changes represent amendments to existing Articles and some are insertions of new provisions but they come together to make a cohesive whole. Mindful of the time, I will speak only about those Articles that have a significant affect and relate to matters that we have not already touched upon. Article 6 amends Article 42 of the current 2001 Law, in addition to providing for the role description for a Parish Registrar and for changes to their appointment process, as already discussed. It provides that the Superintendent Registrar will and must develop in relation to Parish Registrars a training and monitoring scheme, a complaints and investigation process with associated procedures for suspending and removing registrars from their role, that the process will be subject to consultation with Constables and that any decision to remove any registrar will finally sit with the Constable. Article 7 amends Article 44 of the current 2001 Law. It provides that the Superintendent Registrar’s office and/or the historic records held by the Superintendent Registrar could be potentially relocated from the centre of St. Helier. This is important because this Assembly has already agreed, as part of the M.T.F.P. 2 (Medium Term Financial Plan) that the office must be self-funding by the end of next year. Article 21 amends Article 76 of the current law and it provides for offences relating the solemnisation of marriage. This includes offences that can be committed by any person, by the Superintendent Registrar or in relation to the solemnisation of a marriage. A new Article, Article 80(c) is inserted into the current 2001 Law, it provides that the Minister will, by Order, prescribe the fees to be paid under the amended law. As set out in the 2015 Law, fees charged for converting a civil partnership to a marriage will not apply to conversions that take place within 2 years of the same sex marriage being introduced. Couples who have already paid their registration for their civil partnership, when they were previously not able to marry, should not have to pay again. A new Article 80(d) makes provisions for the forms and documents that the superintendent registrar will publish. Those forms, in addition to being a standard size to facilitate printing and scanning will allow people to choose the designation that they used on their forms. This will allow 2 brides to marry, 2 grooms to marry, 2 spouses to marry or any variation thereon. I propose Articles 3 to 27 of P.91.

[19:45]

The Bailiff:

I did not invite you to do that but Article 28, do you want to propose that at the same time as the citation and commencement?

Senator A.K.F. Green:

Yes, sir. I propose Article 28 and citation.

The Bailiff:

Is that seconded? **[Seconded]** Does any Member wish to speak? Does any Member wish to speak on any of those? Then the appel is called for. I invite Members to return to their seats. The vote is on those Articles and I ask the Greffier to open the voting.

POUR: 44		CONTRE: 0		ABSTAIN: 1
Senator P.F. Routier				Connétable of St. Martin
Senator P.F.C. Ozouf				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy R.J. Rondel (H)				
Deputy S.Y. Mézec (H)				
Deputy A.D. Lewis (H)				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				

The Bailiff:

I think it is implied but I ought to have ensured that the Deputy Chief Minister advanced the schedule as well as Article 26. Article 26 does say that the enactments in the schedule are amended in the manner specified so I assume that Members have approved that but does anyone wish to debate the schedule? I think it follows automatically. That has been adopted. Do you wish to propose the Bill in Third Reading?

1.13 Senator A.K.F. Green:

Yes, I do, and I would like, again, to acknowledge the very respectful debate we have had and the long day we have had and thank Members for their tolerance. I would also like to thank the officers that have been in the back room. They have supported us all the way through this work with many hours, weekends, 4.00 a.m., 5.00 a.m. [Approbation] and I would really like to acknowledge the work. Without them we would have had even more difficulty in getting through this, and the support of the Greffier as well. I make the proposition in Third Reading.

The Bailiff:

Seconded? [Seconded] Does any Member wish to speak?

1.13.1 Deputy J.A.N. Le Fondré:

I would like to reiterate the comments by the Deputy Chief Minister in thanking his officers in terms of the support and advice they have at times given us. I would also like to put down a vote of thanks as well to the Scrutiny Officers, in particular, who have also been working exceptionally long hours [Approbation] and despite the outcomes that came through on the amendments there was quite a logic behind quite a number of them. Unfortunately, I did just vote for all Article 2 and therefore I am pleased to record that I voted in favour, I shall be abstaining on this Third Reading and the reason is I have a concern with the loss of the Article 23 amendments and the Article that the Deputy Chief Minister has withdrawn. With that gap I am concerned that there is a potential conflict between what we are going to be approving and Canon Law. I hope to be wrong, absolutely, and I would seek perhaps some assurances from the Solicitor General when he does come back. Perhaps he can copy us - or the Corporate Services Scrutiny Panel, and obviously me as chairman - into any advice on that matter, because I think we do need some certainty there. I am concerned on that front. If I did not have that concern, I would be voting pour. On the other hand, because of the potential impact and conflict between the 2 laws, I am going to be abstaining, because I need some certainty there.

1.13.2 Senator P.F.C. Ozouf:

I will be very brief because we have had a very long debate. I am grateful I have had a number of messages from people from the L.G.B.T. community that know that this is now on the cusp of getting approved. I have no right to speak on behalf of the L.G.B.T. community, because others have, but I can tell Members that the decision that has been made today will mean a huge amount for the L.G.B.T. community in all its respects of giving equality and what they regard as fairness. It has been a long road and I thank Members for their understanding and for their tolerance. Also the Assistant Chief Minister spoke of the need of healing. It is a matter of regret that the chairman of Corporate Services cannot find it within himself to vote in favour of the Third Reading. I think it is deeply regrettable. Let us be clear: we are in a happy stage, but it has been a damaging course along this way. There has been visceral debate, which is a great shame. I salute the Deputy of St. Ouen. I know how difficult this has been for him. I salute the Constable of Trinity. Time heals, with the effluxion of time societies change; they adapt and change. We need to show respect for our religions and the great faiths of the world and of our Island that are so important for that, but we also have to respect the rights of minority groups. We have done a great deal for L.G.B.T. people and other people. I cannot say from the bottom of my heart how important that it is. There are some things

that are going to have to be cleared up. Certainly the remarks about Mr. Peter Tatchell, I have had an email now about that. It is not quite as it was portrayed, but I would say to those people, it is a great day and I thank the Chief Minister and the Deputy Chief Minister for what they have done. It is immense, and with all the other things they have been criticised for, but this is a bit of really complex law that has taken a lot of work. It is only a small team and it is easy to criticise the Chief Minister's Department, it is so easy to say: "This is wrong" but they have done something quite Herculean here in quite a short time and I salute them too. But I ask those Members who have caused the visceral debate, because there has been - they do not like hearing it - and I ask them to stand up and to recognise the hurt that there will have been along this road. It pains me to say it, but we are there now, but please stop hurting other people, please respect the rights of other people to live the life that they wish to live in the eyes of the law. Now we have a civil law which has got marriage equality. I will end on that mark, but it must be remembered, the hurt that has continued, because even in this debate there have been people who have cited some unfortunate situations. Some Members may know what I am talking about, but there is a dangerous situation when one provokes something, but the end result has been good and that is a matter for celebration and I thank Members from the bottom of my heart.

1.13.3 Senator L.J. Farnham:

I hope Members will indulge me for just 2 minutes, so I can speak about something we have not spoken about today. I know I should have probably dealt with this at Article 2, and that is a bit of economic benefit that we are going to derive from this decision. We have spoken about civil partnership and same-sex, but we must not overlook the other benefits that this brings to the Island. Jersey has a great heritage of being somewhere for couples to come and get married and that goes back generations and decades. Jurisdictions around Europe have seen all the benefits of allowing couples to choose scenic spots and Jersey has an abundance of such locations. Last year we had 152 weddings in Jersey where both participants were from outside of the Island and with what we have approved today, with all its faults, that figure is going to increase significantly. I just wanted to make that point.

1.13.4 Senator I.J. Gorst:

I am sure the Deputy Chief Minister is going to say the same thing. I do want to put on record initially my particular thanks to the one official who has been in the office from at least 5.00 a.m. every morning this week. **[Approbation]** She has not seen her partner or her children. I thank them as well, because it has affected her family life. She, like me, is absolutely a great believer in marriage, so her heart and soul has been put into this work and I thank her on behalf of all Islanders for that work. I also want to just pick up on what Senator Ozouf said. I said in my speech that leaders are called to build bridges, not walls and throw stones. The Constable of St. Helier said we should not build a bridge into the abyss. Of course you do not build a bridge into the abyss, but we are not talking about the abyss. We are talking about people who live in our community and work in our community and are important parts of our community, whichever side one found oneself on with this difficult debate. Today, as we pass this law in the Third Reading, is the day or the evening to start that healing process. I pay particular tribute to my own Deputy, because I think his speech was a tangible starting of that healing process. I ask that others in our community, as I said in my speech, they do reach out and start that healing process. We are too small to have such divisions. We have enough challenges outside without hating each other. We are all privileged in this place. **[Approbation]** We should not take it for granted. We can be different, we can believe different things. We have freedom of speech, but at the end of the day we should respect each other, each other's views and we should work together in every way that we can to build a better future, not only for ourselves, but for our children and our grandchildren.

1.13.5 Deputy M. Tadier:

I will keep it very brief. There were 2 points that I want to make. The first is that we have a tradition of when we name people in this Assembly, we do it sparingly. Obviously one of the names that was mentioned earlier was that of Peter Tatchell. In the meantime, somebody took the liberty of emailing Peter Tatchell and clarifying what we were talking about today. I do not need to put it on record, but I have sent the email around. It is slightly late now, obviously, but it clarifies his position and I think it is quite helpful. He is one of those individuals. This segues into my next point, that Deputy Mézec is too modest to mention this, but it was around about 3½ to 4 years ago, where when some of us get tired of passing on the baton, someone new comes along and says, in their youthfulness and in their energetic way: “I am going to take on this issue and the one thing I am going to do when I get into the States is put the same sex and equality issue back on to the agenda.” He did it. There are lots of people who are similar, they make promises in their manifesto, they keep their promises and sometimes they do not win straight away, but I think the more that happens, that is one way in which we will reaffirm the positive aspects of this Assembly, because I think we all come in here to try to make a difference. Sometimes it takes a long time and some of us get downhearted. It is nice to have somebody to pass the baton on to and who does make the change. I remember it resulted in some indignation. There were lots of people at the time saying with frustration there was an amendment and it seemed to wreck it, it seemed to be a wrecking amendment, but nonetheless, that is where Jersey’s first gay pride came out of, it came out of a protest. It was a strange event, because we were able to share a platform with Senator Ozouf, somebody with whom we, on a weekly basis at the time, were perhaps sparring, robust debate, as is normal and healthy in politics, but we were on the same platform fighting for the same rights. But it is not the politicians, from the safety and privilege of their own Parliament or from behind their computer screens, who are the real heroes in this, it is those who have fought for all civil liberties, not just in the gay arena, but in all walks of life, often facing the truncheons and the rubber bullets not of other countries, but of their own governments and their own police forces at a time when they suffered real pain and real discrimination. It is those that we should be remembering throughout the course of history. Jersey should be proud. We have had, I think, an edifying debate. We have had to listen to all sorts of opinions and I think we have come out of it stronger and I think we can look back at this debate - and people will in the future - thinking: “Okay, I do not know why it was necessary.” It is certainly evolution. It is not revolution. It feels really like evolution, but we seem to be getting to the right point, so of course congratulations to all those who have done the paperwork, but also those who have gone before us who simply will not be remembered because they did it at a time when it was not popular and when it really difficult and when real sacrifices were made.

1.13.6 Deputy G.P. Southern:

Just briefly, because I see people’s faces are really tired at the end of the day. They remind me of the time in July, some time back, when I put on the agenda a discrimination law and it went through because it was July, it was the last meeting and it went through on the nod. Who would have thought then that all those years later we would be here making this sort of progress? The fact is anti-discrimination law does not end. We have got disability discrimination coming soon. We are already looking at trans litigation in order to make that area better. The work goes on. Congratulations, we are doing the right thing.

[20:00]

1.13.7 Senator A.K.F. Green:

I will not keep Members very much longer, I am sure they are pleased to hear. I would like to echo the Chief Minister’s thanks to that one particular officer. She was eating croissants, I was just drinking coffee at about 6.30 a.m. yesterday and that has been the pattern of her work for days now, so a very big thank you to one officer who has steered this all the way through, working with the Law Draftsman. **[Approbation]** It would be very wrong of me not also to acknowledge the work and the

support and the help that we have had from Liberate, particularly the Liberate Chief Executive Officer, who has been very patient with us and worked with us and helped us. I would like to thank him as well. **[Approbation]** The Chief Minister talked about bridges and he is right in what he said. We have had a difficult debate and we have got wounds, if you like, to mend. But I am reminded of the comment from Nelson Mandela, which I think Senator Ozouf mentioned earlier today, but it is worth, just before we close, thinking about it: “If you want to make peace with your enemy, you have to work with your enemy, then he becomes your partner.” I do not like word “enemy”, but we have had some difficult times. I would like to change the word “partner” to “colleague.” Let us put out the hand of friendship to each other, to our community as a whole and go forward as a cohesive joint community that can enjoy the wonderful Island that we live in, but we can all enjoy it equally. I make the amendment.

The Bailiff:

Do you call for the appel? The appel is called for. The vote is on whether to adopt the Draft Marriage and Civil Statement (Amendment No. 4) (Jersey) Law in the Third Reading and I ask the Greffier to open the voting.

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If all Members have had the opportunity of voting, I ask the Greffier to close the voting. I can announce that the Bill has been adopted: 42 votes in favour, one against and one abstention.

The Greffier of the States:

The Connétable of St. Martin voted contre and Senator Ferguson abstained.

The Bailiff:

I give notice to Members that an amendment, Minimum Wage: amendment of States Act dated 21st April 2010, P.121, has been lodged by the Council of Ministers. Chairman, do you wish to propose the arrangements for the next meeting?

ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS

2. Connétable L. Norman of St. Clement (Chairman, Privileges and Procedures Committee):

Yes, please, Sir. As per the Consolidated Order Paper, with the exception of on 20th February, the Draft Liquor Licensing (Jersey) Law is moved from that date to 20th March. On 6th March, with the addition of P.22, a Standing Order amendment in the name of the Privileges and Procedures Committee, and on 20th March, the Liquor Licensing (Jersey) Law, which I have just mentioned, and Projet 21 lodged today is the Draft Stamp Duties and Fees (Amendment) Law. I would also ask that Projet 118, which is currently shown as the first item on the agenda on 20th March, remains that way because of the requirement of the Attorney General to be here. On the next sitting, I would anticipate that if all those items remain, it will be another 3-day sitting.

2.1 Senator I.J. Gorst:

Members will know that the strengthening of governance proposal is down for debate at the next States sitting. I am not sure if I have received a letter, but I am aware that the sub-panel that have been set up to review those proposals are considering whether they require more time or not, so I will be in conversation and correspondence with them. Members will also know, as I said in my speech yesterday, that there are certain elements of that proposal which are absolutely critical to get through before the next election. Perhaps others can wait until after the election, but some are very critical.

I am saying to Members that I will work with the Scrutiny Panel to see if we can find a compromise position, but it may be that we start the Articles and principles and let Scrutiny carry on, but I am not sure whether that is going to be a workable position or not or if we will have to deter the debate, but I will let Members know in due course.

The Bailiff:

Thank you. I am sure Members would want me at this stage to thank, on their behalf, the Deputy Greffier, Assistant Greffier and Greffe staff and the Usher. **[Approbation]** The States now stand adjourned until 20th February.

ADJOURNMENT

[20:05]