



PARLIAMENT
OF THE CAYMAN ISLANDS



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OFFICIAL HANSARD REPORT

Second Meeting of the 2022-2023 Session
Third Sitting

Monday
12th December, 2022
(Pages 1-59)

Hon. Katherine A. Ebanks-Wilks, MP
Speaker

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PRESENT WERE:

Hon. Katherine A. Ebanks-Wilks, MP
Speaker

MINISTERS OF THE CABINET

Hon. G. Wayne Panton, JP, MP	<i>Premier</i> , Minister of Sustainability & Climate Resiliency
Hon. Christopher S. Saunders, MP	<i>Deputy Premier</i> , Minister of Finance & Economic Development <i>and</i> Border Control & Labour
Hon. Juliana Y. O'Connor-Connolly, JP, MP	Minister of Education <i>and</i> District Administration & Lands
Hon. Bernie A. Bush, MP	Minister of Youth, Sports, Culture & Heritage
Hon. Kenneth V. Bryan, MP	Minister of Tourism & Transport
Hon. André M. Ebanks, MP	Minister of Financial Services & Commerce <i>and</i> Investment, Innovation & Social Development
Hon. Sabrina T. Turner, MP	Minister of Health & Wellness <i>and</i> Home Affairs
Hon. Johany S. "Jay" Ebanks, MP	Minister of Planning, Agriculture, Housing & Infrastructure

EX OFFICIO MEMBERS OF THE CABINET

Hon. Franz I. Manderson, MBE, Cert Hon, JP	<i>Deputy Governor</i> , ex officio Member responsible for the Portfolio of the Civil Service
Hon. Samuel W. Bulgin, KC, JP	<i>Attorney General</i> , ex officio Member responsible for the Portfolio of Legal Affairs

ELECTED MEMBERS
GOVERNMENT BACKBENCHERS

Hon. W. McKeeva Bush, JP, MP	Elected Member for West Bay West
Ms. Heather D. Bodden, OCI, Cert. Hon., JP, MP	Parliamentary Secretary to Tourism <i>and</i> Social Development, Elected Member for Savannah
Mr. Isaac D. Rankine, MP	Parliamentary Secretary to Home Affairs <i>and</i> Planning, Agriculture & Infrastructure, Elected Member for East End
Hon. Dwayne S. Seymour, JP, MP	<i>Deputy Speaker</i> , Parliamentary Secretary to Labour, Housing <i>and</i> Transport
	Elected Member for Bodden Town East

OPPOSITION MEMBERS

Hon. Roy M. McTaggart, JP, MP	<i>Leader of the Opposition</i> , Elected Member for George Town East
Mr. Joseph X. Hew, MP	<i>Deputy Leader of the Opposition</i> , Elected Member for George Town North
Hon. Sir Alden McLaughlin, KCMG, MBE, KC, JP, MP	Elected Member for Red Bay
Mr. Moses I. Kirkconnell, JP, MP	Elected Member for Cayman Brac West and Little Cayman
Ms. Barbara E. Conolly, JP, NP, MP	Elected Member for George Town South
Mr. David C. Wight, JP, MP	Elected Member for George Town West

OFFICIAL HANSARD REPORT
SECOND MEETING OF THE 2022/23 SESSION
MONDAY
12 DECEMBER, 2022
1.07 P.M.
Third Sitting

[Hon. Katherine A. Ebanks-Wilks, Speaker, presiding]

The Speaker: Good afternoon. I will call on the Honourable Deputy Premier to grace us with prayers.

Hon. Christopher S. Saunders, Deputy Premier, Minister of Finance and Economic Development, and Border Control and Labour, Elected Member for Bodden Town West: Good afternoon colleagues.

Almighty God, from whom all wisdom and power are derived: We beseech Thee so to direct and prosper the deliberations of the Parliament now assembled that all things may be ordered upon the best and surest foundations for the glory of Thy Name, and for the safety, honour and welfare of the people of these Islands.

Bless our Sovereign, King Charles III; William, Prince of Wales; and all the Royal Family. Give grace to all who exercise authority in our Commonwealth, that peace and happiness, truth and justice, religion and piety may be established amongst us. Especially we pray for the Governor of our Islands, the Premier, the Speaker of the Parliament, the Leader of the Opposition, Ministers of the Cabinet, ex officio Members, Members of the Parliament, the Chief Justice and Members of the Judiciary, that we may be enabled faithfully to perform the responsible duties of our high office. All this we ask for Thy great Name's sake.

Let us say The Lord's Prayer together:

Our Father, who art in Heaven, Hallowed be Thy Name. Thy Kingdom come, Thy will be done on earth as it is in Heaven. Give us this day our daily bread, and forgive us our trespasses, as we forgive those who trespass against us. Lead us not into temptation, but deliver us from evil. For Thine is the Kingdom, the power and the glory forever and ever. Amen.

The Lord bless us and keep us. The Lord make His face shine upon us and be gracious unto us. The Lord lift up the light of His countenance upon us and give us peace, now and always. Amen.

The Speaker: Please be seated.

Proceedings are now resumed.

**ADMINISTRATION OF OATHS
OR AFFIRMATIONS**

The Speaker: None.

**READING BY THE HONOURABLE
SPEAKER OF MESSAGES
AND ANNOUNCEMENTS**

The Speaker: None.

PRESENTATION OF PETITIONS

The Speaker: None.

**PRESENTATION OF PAPERS
AND OF REPORTS**

The Speaker: None.

**QUESTIONS TO HONOURABLE
MINISTERS AND MEMBERS
OF THE CABINET**

The Speaker: None.

**STATEMENTS BY HONOURABLE
MINISTERS AND MEMBERS
OF THE CABINET**

The Speaker: I have given leave to the Honourable Attorney General to make a statement.

The Honourable Attorney General

The Attorney General, Hon. Samuel W. Bulgin:
Thank you, Madam Speaker.

Madam Speaker, this statement is in accordance with Section 11(6) of the Public Management and Finance Act and relates to Cabinet's approval, under Section 11(5) of the Act, to allocate supplementary funding to cover the legal costs arising from certain court proceedings.

Madam Speaker, the legal proceedings in question involve a challenge to the grant of a coastal works permit for the construction of a private residential dock and cabana. The matter was heard on 14th October, 2020 (Cause G45 of 2019), and judgment rendered on 22nd June, 2021. In its ruling, the Grand Court quashed the decision to grant the coastal works permit and ordered that the matter be remitted to Cabinet for further consideration. The court further ordered Government to pay the applicants cost of the proceedings.

Reason for exceptional circumstance: Madam Speaker, to meet the order of the Grand Court, Government had to move swiftly to agree and pay the costs of the proceedings. Accordingly, Cabinet authorised the reallocation of funds in the 2021 budget appropriations through a section 11(5) application, to facilitate payment of the claimant's cost in the judicial review proceedings. To this end, funding for Output SCR 1 which is Policy and Administration (Ministry of Sustainability and Climate Resiliency), was decreased by an amount of \$110,000 and OE 105-Settlement of Claims, was increased by the same amount—that is \$110,000.

In considering this allocation, Cabinet was advised by the Ministry of Finance, that these appropriation changes would not impact the Government's forecast financial results for the 2021 financial year, as they only involved the transfer of planned operation expenses from one category to another. The reallocation of expenditure was included in the forecast expenditure to the end of the 2021 financial year and [was] also included in the Supplementary Appropriation Bill, 2021 when the Bill was brought to Parliament for consideration.

Madam Speaker, I can confirm that the agreed costs were paid by Government and received by the claimant. I recognise that this statement is being made belatedly, but the approved appropriation changes were intended to comply with the order of the Grand Court. The outcome of litigation, Madam Speaker, including the form of relief audit, is not always predictable. That aside, as I indicated, the appropriation changes had no adverse impact on the Government's 2021 financials.

In closing, Madam Speaker, I would like to thank those involved in arranging the payment of costs within the time frame agreed with the claimant.

Thank you, Madam Speaker.

The Honourable Speaker

The Speaker: Honourable Members, when we adjourned last Thursday, Members were advised that the House would resume at 10.00 a.m. today, Monday 12th December, and I would like to remind Members of Standing Order 10(1) which expressly states that **“every sitting shall, unless the Presiding Officer otherwise directs, begin at 10 a.m.”**

I take the opportunity to remind Members this afternoon, because we have a live stream that started from 10.00 a.m. and we have viewers who have been sitting waiting for us to start. The viewing public will not appreciate that Members of the Government have been here at the House of Parliament in meetings from 10.00 a.m.; to the public, it just looks like we are starting late.

As Speaker, I would like to start our meetings on time, and I encourage you to schedule your meetings accordingly, so that it does not prevent the House from commencing at the agreed time.

Thank you.

PERSONAL EXPLANATIONS

The Speaker: None.

OBITUARY AND OTHER CEREMONIAL SPEECHES

The Speaker: None.

RAISING OF MATTERS OF PRIVILEGES

The Speaker: None.

GOVERNMENT BUSINESS

BILLS

SECOND READINGS

GAMBLING (AMENDMENT) BILL, 2022 (Continuation of debate thereon)

The Speaker: We are reverting to the Second Reading of the Bill.

Does any other Member wish to speak?

[Pause] Does any other Member wish to speak?

[Pause]

The Honourable Deputy Leader of the Opposition.

Mr. Joseph X. Hew, Deputy Leader of the Opposition, Elected Member for George Town North:
Thank you, Madam Speaker.

Madam Speaker, I rise to make a short contribution to the Gambling (Amendment) Bill, 2022. I have had a few days to think about it and to do a bit more research.

Madam Speaker, I want to take us back to the first order of business in this Sitting when we debated the Government Motion concerning a referendum on small quantities of cannabis and gambling. The reason I want to take us back to that is more to do with the small quantity of cannabis, and also the robust discussion we had at that time on numbers or gambling, the pros, cons, et cetera; much debate which probably was not necessary at the time concerning this particular Motion, but it is obviously an issue that many of us in here struggle with.

Madam Speaker, this Government Bill will once again take an issue similar to the consumption of marijuana, increase the fines, and create an even greater barrier for any individual who may be caught after this Bill is passed—should it go through this House—for continuing to support themselves—perhaps continuing education; perhaps [applying] for a visa, or even for life saving trips overseas. I say that Madam Speaker, because this is an issue that we all know; it has been discussed, it has been well ventilated

in this Parliament. It is widespread across our three Islands. From the young to the very old are participating, in particular, in the lotteries.

Madam Speaker, what is being proposed today is a Category B criminal offence which will go on an individual's police record, should they be convicted of buying or selling a lottery ticket, and I am focusing much more on the lottery side of it than the gaming house. I will touch on the gaming house further on, Madam Speaker.

If we were to pass this Bill today [and] it should come into effect by Friday, we will not see the end of lottery, but those who may be arrested would end up facing large fines and having a criminal record, which is one of the primary reasons that we are now talking about decriminalising marijuana or cannabis; because if a young or old person is arrested for personal consumption of cannabis, or in possession of personal quantities of cannabis, they end up with a criminal record which sometimes exempts them from gainful employment and visas to travel for health or studies.

Madam Speaker, I think I saw [that] under the law, simple possession of marijuana carries a fine of up to \$3,000 or three years in prison. Madam Speaker, such has not worked in eliminating personal consumption or the use of cannabis in the Cayman Islands. One only has to go to a concert, a football game, or just drive through some of our neighbourhoods with your window down or in fact, if you're sitting in traffic and you have your window down, you will smell it.

It has been known, it has been proven, that simply increasing fines or prison terms is not a deterrent. That was heavily debated when persons were calling for 50 years and all sorts of penalties for the possession of unlicensed firearms years ago. I remember the Courts, I remember the arguments against such penalties because they will not act as a deterrent. Today, we are actually kind-of basing some of the reasons for this Bill on gun crimes, where you can get up to 20 years, I believe, for possession of an unlicensed firearm.

Again, outside of the fact that selling a lottery ticket is illegal, I struggle to understand how charging someone up to \$4,000 for selling a lottery ticket has any real effect on reducing organised, violent, gun crimes—whatever sort of crimes.

Madam Speaker, some of the areas that were referred to, where armed robberies have taken place, and unfortunately in one instance there was a murder as a result of it, [are] places that don't just sell lottery. In all of our constituencies and certainly in mine, the areas that I know have had armed robberies also sell illegal alcohol and illegal drugs. I can't tell you whether the robber went there for the lottery money, the beer money, the alcohol money, or, in one instance, the food money, but what I can tell you is, yes, there was illegal activity happening there. Why it was able to happen so long that robbers knew where it was, that they knew that there was money there through illegal activities to

go and rob it, but the police didn't know it was there? I can't tell you. What I can tell you, is that no matter what fine we implement, no matter what provisions we put here for illegal gambling, if we are doing it for the purpose of stopping armed robberies or reducing armed robberies in these instances, it isn't going to happen.

I don't know if a retail store that was held up, which it was argued sold numbers, was robbed for the retail sales or the numbers' sales money. If a bar is held up but there is a guy outside, a client of the bar, who everybody knows sells numbers: Was the bar held up because of the numbers' seller or was it held up for the sale of alcohol or the restaurant next door? You can't say; you don't know.

Madam Speaker, there is also the social aspect of this which I hinted to. What are the effects of a 70-year old pensioner buying her lottery ticket— which by the way, from what I understand, perhaps those are the only ones that insist on having a little piece of paper with the numbers written on it because that's the old school way. I remember the Premier spoke about people finding themselves in desperate situations, if those persons are caught— what happens to them? Their desperate situation just became exacerbated. They now have a criminal record, they now face huge fines or time in prison.

We are assuming that these people act in a vacuum when they find themselves buying numbers; what influenced them? How did they get into that position? There are a number of economic, social and cultural factors, Madam Speaker, that may push someone or be reasons why someone purchased illegal numbers or illegal lottery tickets.

Madam Speaker, what is being proposed here? Where do we address the social aspect of it? As it stands now, persons who are repeat offenders for drug consumption, have Drug Court that they can go to; they have places they can go and get help. The Court can put them in places for help, they can enrol in the Drug Court Programme that will help them with their drug addiction.

If a person is desperate and feels that they need to buy lottery tickets, or they are addicted to gambling and they are buying lottery tickets and they are caught over and over again. Do we just throw them in jail? How do we address the social aspect of it? Again, what we are going to do is levy a huge fine against them and give them a criminal record. How does this person go on to feed their family? How do they go on to make a living?

Madam Speaker, I again say, [that] the fines prescribed in this proposed Motion will only exacerbate the situation. It will only make matters worse for the individual who thought, *just maybe I'll take a chance to make some ends meet at the end of this month. I'm gonna by a li'l number, spend my li'l \$5 and try to get \$280.* Now I am facing a \$3,000 or \$4,000 fine, and may be facing prison.

Then, Madam Speaker, we just spoke about a referendum to legalise gambling. Why such drastic measures, such drastic penalties if we are going to have that referendum, if the Government is truly genuine about its intentions on this Referendum? It can't be to stop gun crimes, it cannot be to stop the string of burglaries and robberies that we have been having.

It is not fair to say that all these persons who were robbed over the weekend at their doorsteps were numbers' sellers or buyers. It is not fair to say that the establishments that were robbed this weekend had persons there selling numbers—and speaking of that, because one of the largest fines in here is “causing your business to be a place for gambling or gaming house”.

How do you identify if a client [who] is in a restaurant, bar, supermarket, barbershop... A customer is waiting to get their hair cut; they are having a drink, they are buying groceries, but they sell numbers. They sell numbers. If they are caught in that establishment, will you say that the owners of the place knew that this was being used as a gaming house? How do you prove that?

Madam Speaker, we have had an issue with gun crimes for some time. We know the obvious answer is to get illegal guns off the street or crackdown on the importation of illegal guns, but to pin it all, or to use that as a reason for such a drastic increase in fines and penalties for illegal lottery, is a bit far stretched.

How ironic my memory serves me. I even remember, Madam Speaker, that one of the service clubs, the treasurer responsible for the raffle had a home invasion. It was not a good thing. It was extremely traumatic for the family. Thankfully, those individuals were caught and prosecuted, but it just goes to show that the criminals are not just targeting [numbers people]. They are not going out and finding guns to go and rob numbers people. If they have the gun and they are desperate criminals as they are, they are going to rob anyone or anywhere.

Madam Speaker, if we were able to stomp out gambling completely, canoes are still going to come in with drugs and guns, canoes are not coming in with numbers books. Like I said, they hardly use them anymore. Persons aren't entering the Cayman Islands illegally to come and sell numbers. This is where our focus needs to be if we want to stamp out gun crimes. This is where the focus needs to be.

I say again, that the majority of these places that sell numbers, and I mean the majority of these places that were referred to in earlier debates, don't only sell numbers. In those places, illegal activity will continue. Illegal activities will continue. Again, Madam Speaker, this Bill is being promoted as an end-all solution to organised crime and the violent robberies and it just simply isn't true.

It simply isn't true, Madam Speaker. I don't care what is passed this week, I doubt it will stamp out the lottery issue. I know it won't stop armed robberies. If anybody on the other side of this aisle believes that

such is true, they are simply not in touch with reality. Simply not in touch with reality.

[Inaudible interjection]

Mr. Joseph X. Hew, Deputy Leader of the Opposition: Madam Speaker, I support amending the law to make prosecution more effective. You already have stringent laws in place to deal with money laundering. I can appreciate it, fine, it is \$10 for buying a lottery ticket, but have we ever traced that, after we arrested someone for a lottery ticket, to get to the person that has all the money, and to prosecute someone for money laundering?

Is increasing the fines to the level that we have increased them supposed to motivate the police officers to do a proper investigation to get to the person they need to get to? Or will that just be lip service that we are arresting a couple of our people on the street corner for picking up a lottery ticket? Or you might grab one or two of the sellers. It makes no sense to me, Madam Speaker. I do not believe that these disproportionate, draconian increases in the fines are going to make a real difference, Madam Speaker. If I believed it, I would support it 100 per cent.

What I do know is that it's going to make criminals out of many normally law-abiding people who just took a chance to buy a lottery ticket because quite truthfully, those who do it all the time, full-time maybe, are too wise to the system to get caught. They are now electronic. They have standing orders now.

I can't believe within myself, Madam Speaker, that this will provide the solution the Government is looking for. All this time we spend in here debating this, fighting over this, where are we talking about how are we going to deal with these robberies? How are we going to deal with people being held up at their doorsteps? People in restaurants—my own restaurant had an attempted robbery.

Thankfully a Good Samaritan called the police and the restaurant and told them to lock the door—and I can guarantee you there were no number sellers in there. In fact, when I arrived along with the police, there were a number of civil servants in there who were clueless to what happened. We saw, on the video, what happened and I won't say anymore for the privacy of persons, but when are we going to talk about that?

When are we going to hear real solutions to stopping the importation of guns into the country, getting the guns off the road [and] to catching these guys, because this Bill is not the answer.

[Inaudible interjection]

Mr. Joseph X. Hew, Deputy Leader of the Opposition: In fact, it *may* qualify as a chip off the iceberg. It may qualify for that.

I have real concerns, Madam Speaker, around the current situation with crime, but I do not believe that

this is the answer to that. I really don't. I genuinely do not believe this is the answer to it. In my opinion, the mere fact that we had this major debate around the decriminalisation of small quantities of cannabis tells you that the reason we are not stamping out small portions of cannabis is because we do not have a zero tolerance... I lost my train of thought there, Madam Speaker. We do not have a zero tolerance policy on small quantities of cannabis.

All of us have seen police walk right by people smoking. Before I broke my ankle I would be playing football on a Sunday morning, and the referee and linesmen would be policemen and you could barely breathe on the field because of ganja smoke; but if any policeman is honest enough with you, *he don't want to destroy the youth's life*. Do you not think the same thing is going to happen when a policeman has to look at a young person or a 70-year old pensioner to arrest them for a \$3,000 or \$4,000 fine or four years in prison?

If it is illegal, it is illegal, I agree 100 per cent, but this, this Bill, does not address the real issues. This Bill will not get the desired result that the Government, the country, are looking for. It falls way short. It is not the answer.

There was much discussion about persons' desperation in buying lottery tickets, they could end up someplace to buy it and end up falling victim to serious harm, if not death. Understood, but the same thing could happen if you go to the barbershop to get your hair cut and they're robbing the barbershop, or if they are robbing the bar or if they're robbing a convenience store— poor convenience stores. It is like a revolving door for them; they might as well just put the robbers' money outside. Give them their portion.

[Inaudible interjection]

Mr. Joseph X. Hew, Deputy Leader of the Opposition: The gas stations. If you notice, they're all closing earlier and earlier and earlier.

Madam Speaker in closing, I want to support the police, I want to support the Government in reducing crime in this country, in particular, serious crimes involving firearms. I would even take it further, Madam Speaker, let us talk about the situation with the accidents. You could put the blood levels on alcohol down to zero, it will still not going to stop the reckless driving that we have happening all day long. The accidents aren't just happening— I appreciate years ago, when accidents were only happening at two and three in the morning, the kids coming from nightclubs, et cetera. The accidents are happening all day long. All day long.

The robberies are happening everywhere to everyone and we only hope and pray that we never have to see another fatality again. We all agree on that, but I don't think this is the answer, Madam Speaker, I really do not believe so. I believe the unintended consequences of this Government Bill will be far worse than its intended purpose.

Thank you, Madam Speaker.

An Hon. Member: Well done.

The Speaker: Does any other Member wish to speak? *[Pause]* Does any other Member wish to speak? *[Pause]*

Parliamentary Secretary for Tourism and Transport.

Ms. Heather D. Bodden, Elected Member for Savannah: Thank you, Madam Speaker. Thank you for allowing me to voice my support to the Gambling (Amendment) Bill, 2022. As usual, I will be short.

Madam Speaker, as the Premier stated, it is a fundamental requirement for each of us to follow and abide by our duty to uphold the Constitution. Madam Speaker, the Bill before the House today will amend the existing Act, a piece of legislation that is nearly 60 years old and I would say, Madam Speaker, that the Amendments are long overdue.

Illegal gambling is most prominent in the form of buying numbers from regional markets. It is a racket business and it has come to the point recently where a life was taken. That life was the son and brother of some of my dear constituents and I ask, Madam Speaker: Are we waiting for another life to be taken before something is done? Let us be bold and courageous and do something about it.

Illegal gambling is a broad issue, Madam Speaker, with many businesses and individuals partaking in the activity. It's blatantly done and it is not what we are familiar with, this is not the Cayman I grew up in, Madam Speaker. How have we as a society, become so complacent to illegal activity? Why do we take this so lightly?

Madam Speaker, we cannot let this issue drag on any longer. We certainly do not wish for another family to feel the grief and pain of losing a loved one. I understand that others have different views, but I am following my heart, my soul and my conscience. I recall during the Chamber debate last year when I was asked if I was in support of legalising gambling, my answer then and my answer now is quite simple and remains the same, Madam Speaker: No.

Madam Speaker, we have seen the effects gambling can have on a person, their family, their job, their community, and it is because of this, Madam Speaker, that we must reinforce the Gambling Act (2016 Revision) with this Amendment. We must provide the authorities with the tools needed to combat this issue. We need to prioritise the safety of our people and promote law and order within our communities. We must protect our people, Madam Speaker.

Madam Speaker, there are some great fans of Disney movies in this honourable House, so I will end with this reminder from Pocahontas and I hope it hits home: **"Sometimes the right path is not [always] the**

easiest one". It is our duty as law makers, not to wander down the easy path but to strive to always seek out the right path. Law and order is needed in this country, Madam Speaker. It may not be the answer, but we need to begin somewhere.

I thank you, Madam Speaker.

The Speaker: I call on the Honourable Minister of Health and Wellness.

Hon. Sabrina T. Turner, Minister of Health & Wellness and Home Affairs, Elected Member for Prospect: Thank you, Madam Speaker for affording me the opportunity to lend my brief contribution to this Gambling (Amendment) Bill, 2022. A Bill for an act to amend the Gambling Act (2016 Revision) to update the penalties for the commission of offences; and for incidental and connected purposes.

What history has laid down, Madam Speaker. I am not even 50 but we have been dealing with a piece of legislation dating back to 59 years. From 1963 we have been trying to get this right. Here we are in 2022, 59 years and we are still having the same issues in trying to amend a piece of legislation; to strengthen the legislation so that the safety of our people, upholding our Constitution, understanding who we are as a people in a jurisdiction, and our very own beliefs, our culture being a strong Christian nation.

As an elected Member of Parliament (MP) given the opportunity to serve and represent the people, amending and strengthening legislation is something that is deemed an illegal act in our country and for any apprehension that one may actually feel based on engaging with their constituents, the core and fabric of what we are elected to do is in the best interest of our country and people, and it is in our remit to ensure that our country and people are always safe.

I find it hard to think that this Bill which we are contributing on is going to be a one-size-fits-all. No, it isn't. The mere fact that for 59 years it would almost appear as though we have turned a blind eye, have been somewhat silent to what is the obvious: that this is illegal in our country. We need to take a closer look, Madam Speaker, to our oath and [the] responsibility that comes with the job; the job that we signed up to do.

I have heard talk on this Floor and even in the community, about the police not doing enough, literally throwing them under the bus, and all you are hearing is that the Legislation lacks teeth. What's the sense of going to bust a gambling house, do a raid for, right now \$40, and in some cases \$100. Now, am I saying that every illegal act, every robbery, is linked to numbers, gaming, gambling? No, Madam Speaker. No, I am not, but we know that this is a problem in our country and bottom line is, we know that it is illegal.

Can we as legislators elected to serve our people make legislation better for our country, the lives of our people and the safety of our people, but looking at

this very specific Bill, this is a 59-year-old piece of legislation that governments long before me, have been trying to get right. What is wrong with us taking that bold step in 2022? [In] 2016 it was amended, in 2018 they tried to make a move again, and here we are in 2022. Will we find today the courage— going back to the old phrase— the *gumption*, or, let me be more professional, the acumen, to amend and support this Bill?

Think back and look back at where we were back then and where we are now. We know that our Cayman Islands does not allow any form of commercial gambling. Outright, it is illegal. That's why there are no casinos. Not even cruise ships, Madam Speaker, are allowed gambling on board whilst in our territorial waters, so when you look at even the whole definition, it means to play a game whether of skill or chance for money or money's worth. That is what gambling is. That is how it is currently defined.

This was put in legislation because of our strong Christian faith, as I stated, in addition to the fact that religion remains an important part of our culture, our fabric, so the fact that the penalties are fines of \$40 or two-months' imprisonment of any persons caught wagering or gambling, or even someone upholding a gaming house, moving that fine a bit more from \$100, is a joke in my humble opinion, Madam Speaker.

Yet, here we stand again, and say that the police are not doing their job when it comes to this specific topic. Let's hold them accountable. Let's do our job as elected MPs [and] make the necessary amendments. Support this Bill, this 59-year-old Bill, which in my humble opinion, is woefully inadequate.

What will it take? Will it take another death? Be very passive and casual and say to the families— to the brothers, to the sisters, to the mothers of those who have gone because of this particular incident— *We are aware we cannot continue to turn a blind eye to the obvious*. We have a mandate to uphold and do what is in the best interest of our country, its safety and what is best for our people, Madam Speaker.

I've even heard some on this Floor say that passing this Bill will throw our Caymanians into prison, that we also need to build a bigger prison— are we kidding? We know right in here that there are many people out there, it's been stated that they are on work permits and they never hit a day in their life of the work permit that they are on because they are "supposedly" out there selling numbers.

Why would any of us want to throw a 70, 90-odd year old woman for buying a 10-piece of a double-odd? How many young persons out there right now really buy numbers? Be real, be honest. We have a job to do as elected politicians and if we are wobbling and flapping around like headless chickens, and fail to do our jobs, then we have to really rethink our purpose.

Yes, I said it. In the current state of this piece of legislation, it is woefully inadequate and we need to do what the people have elected us to do and vote in

support of the Bill. We have to put ourselves in the mature position and look at the bigger picture, look at the fact of the very deterioration of our society, of our culture, find the guts and stand for something.

We know, in this House, this is the right thing to do. Ponder no more. I ask that we take a look back to where we were as a Caymanian society, where we are coming from. Remember the peaceful communities that we once were, and it hurts my heart that I am actually speaking in past tense. Even in Cayman Brac now we got to wonder if you can leave your doors open anymore. You could drive from Spot Bay and go West End and you didn't care. We have to look at the obvious. We continue to deteriorate.

Just last night, the helicopter almost ripped up my roof, hovering with spotlights. That has been going on from Friday. Am I saying that its numbers alone? No. Is it easy for me to pinpoint it to some gambling house? No. The night before that, another female out walking the dog only to find that she was probably being watched by a male who then ran off into the bushes. Less than 48 hours prior to that, there was a lady walking on Marina Drive who screamed out when there was an attempted armed robbery. Her screaming caused the person to flee.

Who are any of us on this Floor right now to say that it is not in some way linked to gambling, without the police given the necessary tools, and legislation with teeth? Which one of us in here? But I tell you, we know what our job description has in it. We have an opportunity to make a difference, and if this is supported by each of us in here, bipartisan, removing the aisles, we have every right to pound the police for not doing their job; but until such time, we have a responsibility to make the necessary amendments to this Bill, accept this Bill, before we throw them under the bus anymore.

Blind Bartimaeus can see where crime is going in our beloved Cayman Islands. Like I said, is it all linked to gambling? No, I don't think so. Our Caymanian society is facing a catalyst of change. We have so many people who have joined us, be it as guest workers or spouses; so many cultures are here, maybe where they are coming from gambling is a norm, but when they look at our legislation— because they *ain't* fools— and see \$40 and \$100 and they may be underpaid, because our Government don't have the will to change and make the necessary change as a deterrent, a start to do something, of course they *goin'* do it.

You want to stop it? Make the right move and support the Bill. Then have the police and the judiciary do their job, but as elected representatives, we need to do ours as well and the buck begins with us by supporting this Bill.

For years I've known persons who have enjoyed the thrill of playing poker, bingo, blackjack, dominoes, ludi, and practically any game under the sun can be turned into some form of gaming. Eventually we saw

Belize's lottery coming into the system; Honduras' lottery on Sundays, and then the Jamaican lottery came. Then it went to cockfighting. The best thing any and all of our elective representatives could do right now, from 2016, is to put a \$40 [or] \$100 fine.

Madam Speaker, I think we have an opportunity to be a catalyst of change because as we can see, the crime is escalating in our country. We know for a fact that there is possibly one death related to a spot that is linked with what they claim is probably a gaming house, I don't know. I am saying I don't want to attend another funeral when we are in an elected position to make a change. I don't want any other person dying because of crime-related activities, and worse, if it has to do with this Bill that we have an opportunity to change today.

I've supported making the national lottery go to a referendum including the decriminalisation of small amounts of marijuana. Yes, for people to have their say, but if at the end of the day, wherever that Referendum goes, this piece of legislation, if not addressed, is still woefully inadequate, and we have to do our jobs; however, until that is done, no matter what the outcome of the Gambling Act is, we may have to come back for a future Amendment. Isn't that our job? Isn't that what the people elected us to do? Then guess what, Madam Speaker, we'll come back.

It is widely talked about that even civil servants— I have family members who enjoy buying a little number. I personally don't do it, but I *goin'* tell you what: I would take my gamble on a "partner" any day than using my last \$25 or \$50 on a Sunday or any weekday, because I know "partner" has helped people build their house, educate themselves and their children, but I can't stand here to leave it by chance based on a number.

Who are we paying, when statistics prove the only one that wins are the organisers? Is the little man that is buying the number really think they're winning? No, they're not. If the people of the Cayman Islands want to change our very culture, that's democracy. That is the way it works, and that's why they need and they will have their say where the National Lottery is concerned in the Referendum.

For far too long, for 59 years, the only persons capitalising on this, obviously because there is a demand, are the facilitators, and millions on top of millions of dollars continue to leave our shores, but yet we grapple when somebody gets a little partner draw and goes to do a deposit. There is a huge difference.

[Inaudible interjection]

Hon. Sabrina T. Turner: In all honesty Madam Speaker, I feel that I have said enough on this matter. I hope that I have been able to get my points across, and I hope that those who are hearing this broadcast will be a little bit more informed of what we are debating here today.

In my perspective, it is our responsibility as elected Members to do our jobs and we see the need where this Gambling (Amendment) Bill, 2022 must be, should be addressed, in order to make some start in the way we govern an illegal act that has been played a blind eye to for just far too long.

I am appealing to my colleagues, to my friends, in this most honourable House, to do the right thing. Do the right thing not only for yourself, but for the future—and when I say do the right thing for yourself, I *nah* talking about your 2025 elected seats. We are dealing with today; today. Look into yourself, and look at what this Gambling (Amendment) Bill says, and the wider picture.

Madam Speaker, this concludes my contribution, and I thank you for affording me this opportunity.

The Speaker: Does any other Member wish to speak?
[Pause] Does any other Member wish to speak?
[Pause] Does any other Member wish to speak?
[Pause] Does the mover of the Bill wish to exercise his right of reply.

The Premier, Hon. G. Wayne Panton, Minister of Sustainability & Climate Resiliency, Elected Member for Newlands: Thank you, Madam Speaker.

Madam Speaker, I will start by recognising the contributions of Members who have spoken. I think they all feel that there is an issue, there is a problem, there is something that needs to be addressed.

Madam Speaker, we've had Members say that this Bill is not going to stop the illegal numbers activities tomorrow; that it is not going to stop the robberies; that it is not going to lower the level of criminality that has been occurring. No single piece of legislation is a magic bullet, Madam Speaker. This piece of legislation is an attempt to be a part of a solution to the problems that we have been having. To the scourge of criminality, of robberies, that has been developing, of people even losing their lives.

Madam Speaker, if I have a medical problem, I am going to go to the doctor. If I have a legal problem, I will go to a lawyer. If I have a law enforcement problem, I am going to listen to the police. I am going to listen to what they say they need or what would help.

Madam Speaker, in the same way that the previous Government dealt with a Bill, and it was acknowledged that it was very similar if not almost identical to this [one]. They did that on the basis of advice from the Commissioner of Police at that time, and Madam Speaker, it is the same today. The difference, Madam Speaker, is that a number of years have passed, and in fact, the situation has gotten worse and people have lost their lives, so the problem isn't going away, it is something that we need to deal with.

Now, there are Members, and probably no less than two former Premiers, who have stood in this House and said we should legalise it. The problem with

that, Madam Speaker, is that we don't have a mandate from the people to legalise it.

We have a piece of legislation which for nearly 59 years has said that gambling is illegal and, unlike most pieces of legislation which evolved over time, reflect changing circumstances, reflect what is relevant, in terms of deterrent factors—meaning the fines and potential sentences—unlike most other pieces of legislation, this one has not had the benefit of that at all. We have a piece of legislation which, for the benefit of the Member for George Town North, already makes it a criminal offence to be gambling, to be buying numbers. If you are convicted of it, it already goes on your record. This Bill does not seek to change that. This Bill does not seek to make it any more of a criminal offence.

Madam Speaker, the way the fines have been set up, it is obviously designed to try to be lighter on the buyers, the ordinary members of society who may want to engage in this activity, and heavier in relation to those who are actually conducting the activity; facilitating the activity; banking the activity; providing the premises for the activity. That's the way it is set up, Madam Speaker.

Madam Speaker, my good friend, the former Premier and Member for Red Bay, says he loves Alice in Wonderland, and in particular, he loves the mythical character of the Cheshire Cat. I believe he likes [the] Cheshire Cat because he is known for his mischievousness.

In his contribution, the Member referred to section 10 of the Bill which purports to amend section 21 of the Act, which is a penalty for conducting or taking part in a lottery. When he used the analogy of a 90-year old lady getting convicted and fined \$20,000 or being put in jail for four years for buying a ticket, it was completely inaccurate, Madam Speaker.

[Inaudible interjection]

The Premier, Hon. G. Wayne Panton: Or both, correct. Whether it is both or not, Madam Speaker, it was still inaccurate. That is not what that section is designed to do, and he knows it. It is not designed to convict a buyer, somebody who is participating, someone who is out for entertainment or otherwise. That's not what it is designed to do. That is the kind of mischief that I am referring to, Madam Speaker.

[Laughter]

The Premier, Hon. G. Wayne Panton: I don't mind constructive comment and criticism, but let's be honest about it, and say exactly what it is designed to do. As I said, Madam Speaker, this Bill is very similar to one which was brought in 2018. The same Member, the Member for Red Bay, told this honourable House that, I think his term was, '*it was foisted upon him as a former Premier.*'

[Inaudible interjection]

The Premier, Hon. G. Wayne Panton: Me? I learned what?

[Inaudible interjection]

The Premier, Hon. G. Wayne Panton: Oh, okay. I thought you said I learned a new word. I was going to accuse you of being even more mischievous.

[Inaudible interjection]

The Premier, Hon. G. Wayne Panton: Madam Speaker, I find it interesting, right, that he is suggesting that it was foisted upon him.

The 2018 Bill was published almost at the end of October, 2018 and we did not have a UK Governor here for about five months before that, Madam Speaker, so I don't know who he is talking about [that] foisted it on him. I seriously doubt that he is suggesting that the Deputy Governor, who would have been the Acting Governor at the time, foisted anything upon him. Madam Speaker, we all know the process for these Bills; they don't just happen. You don't snap your fingers and they come into existence.

For the benefit of the listening public and everyone else: you have a process which involves a proposal which comes by way of a Paper, and it goes through what we refer to as a "Government Caucus". It is considered there, and in the case of a Bill, there would generally be drafting instructions considered by the Caucus [with] all the factors around it taken into account. It would only go to Cabinet if there is a general acceptance or recommendation from the Government Caucus; then, Madam Speaker, it would go through Cabinet approval.

My point is, Madam Speaker, I don't call any of that foisting. I call that a considered decision that the Government at that time would have made, and they would have brought it. In that case the Bill was published, but it never made the Order Paper.

Madam Speaker, these years later now, we have gone through the same process with this Bill in circumstances where we currently have a 400 per cent increase in robberies [and] we have had people die. It is not unreasonable to suggest, Madam Speaker, that if at least some kind of action was taken—

Again, I am not saying that this is a silver bullet. I am not saying there is anything magical about it; I am not saying it's going to guarantee anything; but we, as legislators, we as the Government, we as leaders in the country, need to try to do something to help. The police are telling us they need our assistance in order to address the problems that are going on, and they are saying that this is a part of the solution. Now, it's our job to try to balance it, to try to make sure that it is not unduly, unfairly onerous or disproportionate; all these things, Madam Speaker, and I think this Bill meets those tests.

Members on that side who spoke, described it as draconian, and the Member for George Town North actually used the word disproportionate, also.

Madam Speaker, my point is simply that yes, you can call this draconian in appearance. Yes, you can argue that, you know, it looks disproportionate on the face of it; but not when you look at the fact that it is a 1964 piece of legislation which is nearly 59 years old which has not been updated and does not reflect the current levels of deterrent that other pieces of legislation that have been dealt with in this honourable House either brought into effect as bespoke legislation, or [were] amended and updated.

If you put it in context, it is not really draconian. It is not designed to try to harm the average person. It is not designed to try to put "loads of our people in jail".

Madam Speaker, we all acknowledge that we have a problem that we need to find a solution to. Personally, I have had no constituents complain to me and I know—I know I have people in my constituency who gamble. I know that. I know some of them, I know who they are. I have had to help some of them get out of the jams, the problems, that they got themselves in, and Madam Speaker, I can guarantee one thing: at the end of the day, illegal gambling or numbers or lottery or whatever you want to call it, is not the solution.

It is not the solution to the challenges that our people face in the country today. It may be a distraction for some, it may be helpful in that respect for some, but for the majority who cannot really afford it, it's worse than that. It is creating real problems for people, particularly those who end up having gambling addictions.

Madam Speaker, I wish that we could all find a way to stop struggling to provide a solution to this problem. My constituents tell me that what they want addressed is the criminality; they want the robberies to stop. I'm constantly getting messages about what I must say to the Commissioner, but Madam Speaker, when the Commissioner says to me, *I need this or I need that, or this will help, or that will help*. How do you just say, *No, don't worry about any of that; you go and do your job. You stop this and that from happening?*

Madam Speaker, just because places get robbed that aren't allegedly selling numbers doesn't mean that the places that are selling numbers aren't contributing to the overall criminality, to the overall problem. Crime begets crime, it is a self-reinforcing thing.

As an example—I mean, I don't really like to use him as an example, but maybe he was a little bit more astute at the time. [When] Rudy Giuliani was Mayor of New York City, they had a massive problem. New York had a per capita homicide rate, which was through the roof; people were getting mugged and murdered left, right and centre, and they had to try to find strategies to address the problem so that it could be safe for its residents, and also for tourists, visitors and business people to come there.

Tourism is what they thrive on, being one of the financial centres of the world— and none of it matters if their own people who are just working there in the delis, or in the clothes store, or in the bank, or in a law firm or accounting firm are also getting killed. So the strategy there, was to try to address the criminality on a broader scale. The broken windows approach of dealing with much of the smaller stuff to ensure that the overall level of law and order improves and increases. Madam Speaker, it worked. It worked, New York is a very safe city these days.

Madam Speaker, I don't know the details around the numbers' thing. I just know [that] it happens, and what happens on the ground in general in relation to it. I never participated in anything like that; I don't like gambling myself, but I am not passing judgment on anybody. Except, that there is an obligation on us, Madam Speaker, when we know we have a problem and the Commissioner of Police tells us that he needs certain things done, we have an obligation to look at it very carefully and try to ensure that it is delivered.

Madam Speaker, as I said, I think the comments across this House in relation to this Bill reflect acceptance and acknowledgement that there is a problem. It seems there is a difficulty, for one reason or another, in accepting *how* we address the problem.

Madam Speaker, we brought a motion for the referendum, part of which was on the question of a national lottery, [and] part of it was on the question of the decriminalisation of possession and consumption of small amounts of cannabis.

On the first part, Madam Speaker, our approach, in the context of doing this Bill with the increases in fines around the illegal gambling activities, is to try to find a way forward for the people to tell us whether or not they would like to have a national lottery which is properly regulated, supervised and legal. That would address those who want to participate from an entertainment perspective or think that their lucky number is up, and they are going to hit it big enough in some way.

Madam Speaker, if we had a national lottery that is legal, supervised, regulated, all of the normal parameters around it to ensure that it's properly regulated, we might still have people on the outside, on the fringes, who are trying to operate illegally, operate illegal gambling, operate illegal numbers— and numbers and lottery that's all the same thing. We might still have that, so even in the context of when you have legislation which prescribes legal activity and licences legal activity, you still need provisions and offences around it for those people who are acting against it, who are not being licensed, who are trying to conduct or conducting that business while not being licensed.

Look at every licensed activity of any kind of significance we have in this country; you have those provisions. The law will say, *you are licensed to do this if you have applied, if you complied with the requirements and there is an agreement that you satisfied*

those requirements and you can have a licence to do this. There is another provision that says if you're conducting this activity, this and this is an offence, and this and that element are offences, and yes, there are both significant monetary fines and potential custodial sentences or both.

So, that would be the framework within which we would be operating if we go down the road and have a national referendum and the country says, *yes, we would like to have a national lottery.*

Madam Speaker, I think we all agree that it has to make sense. It doesn't make sense to have a national lottery if, you know, it's losing money; so it needs to be something that would make sense financially and would generate funds which would go to public purposes. I put it no higher than that at this point, but we have many examples in various countries, of what public purposes these things are applied to— and yes, if it does generate significant income, it can make significant contributions to public purposes.

So, that is the context in which a referendum approach alongside this Bill was contemplated, Madam Speaker, because you are still going to need many of these provisions for activity that is not licensed.

Madam Speaker, the truth is we have criminality going on which is having a major impact on our people's quality of life— the safety of our people. Part of the root of it is the rule of law and some provisions, some laws, specifically the Gambling Act.

This is what the Commissioner tells us; this is what they tell us when they come to the National Security Council and provide reports to the Government: *Sir, this is a part of the problem; this is how we help to resolve this.*

Madam Speaker, clearly we don't have an agreement on how we address the problem, but if we don't address it, we will have a continuation of what we have today and, unlike what one of the Members on the other side said— I know who it was, but I won't bother to attribute it— this is not what will create a social disaster. The social disaster will be shredding this and doing nothing. That's a social disaster, Madam Speaker, because that's where we are right now.

That is where we are right now, Madam Speaker. So, as the Parliament of this country, the leadership of this country, we all need to accept the obligations that we have to pass laws and to implement legislation for the peace, order, and good governance of this country, Madam Speaker. If we don't, we will have the social disaster.

Madam Speaker, recognising that we are in that situation where everybody seems to accept that there is a problem but there doesn't seem to be an agreement on exactly how to address it; and recognising that we do have an obligation to address these issues and not try to duck them, not try to indefinitely defer action, Madam Speaker.

I and my colleagues in Government propose to refer this Bill to a Select Committee of the whole House.

Now, I had discussions with the leadership of the Opposition today, and the Leader quite properly indicated to me that he couldn't get consensus; that's not to say, that with the benefit of more time and sitting down and discussing these issues, we can't achieve it. It would be a wonderful thing, Madam Speaker, to achieve consensus on how to address the problem that everybody seems to acknowledge exists.

It would be wonderful for the whole House to sit in Select Committee, discuss it, and find a way forward.

Madam Speaker, I have to move a Motion so I will not speak about it right now, but that is the proposed approach, Madam Speaker. Recognising all I have said, I think and I hope, that with some speed, we will be able to find a way forward to address the problems that we have, which this Bill is relevant to, to avoid any further degradation of the issues our people have been facing because, Madam Speaker, we owe it to them.

Madam Speaker as I indicated, I will move a motion shortly. With that, I thank you.

Hon. Sir Alden McLaughlin, Elected Member for Red Bay: Madam Speaker, just on a procedural point, I do believe that the proper course is for the Premier to move a motion to withdraw the Bill or defer the Bill before he moves a motion to send it to Select Committee. I don't think he can do both at once.

The Speaker: Standing Order 24(9)(b) sets out where a Bill can be referred to a select committee.

[Inaudible interjection]

[Pause]

The Speaker: Pursuant to Standing Order 49(1), [which] sets out that: **"When a Bill has been read a second time it shall stand committed to a committee of the whole House, unless the House on motion made refers it to a select committee. Such a motion shall be made immediately after the Bill has been read a second time, and may be moved by any Member."**

The question is that a Bill shortly entitled Gambling (Amendment) Bill, 2022 be given a second reading.

All those in favour, please say Aye. Those against, No.

AYES.

The Speaker: The Ayes have it.

Agreed: The Gambling (Amendment) Bill, 2022 was given a second reading.

The Speaker: The Honourable Premier.

Motion to Refer the Gambling (Amendment) Bill, 2022 to a Select Committee of the Whole House

The Premier, Hon. G. Wayne Panton: Madam Speaker, I rise to move a Motion under Standing Order 49(1) to refer the Bill shortly entitled the Gambling (Amendment) Bill, 2022, which has been given a second reading, to a select committee of the whole House.

The Speaker: The question is, that the Gambling (Amendment) Bill, 2022 be referred to a select committee of the whole House.

All those in favour, please say Aye. Those against, No.

AYES.

The Speaker: The Ayes have it.

Agreed: The Gambling (Amendment) Bill, 2022 is referred to a Select Committee.

[Pause]

The Speaker: In accordance with Standing Orders 70(2), I hereby appoint, as Chairman of the Select Committee, the Honourable Premier, the Member in charge of the Bill, and all the elected Members of the House.

[Pause]

The Speaker: I stand corrected.

I am only here to appoint the Chairman of the Select Committee, who is the Honourable Premier.

[Pause]

The Speaker: Members, we will take a five-minute suspension. I ask that you stay in your seats; we are only breaking for five minutes.

Proceedings suspended at 2.50 p.m.

Proceedings resumed at 2.58 p.m.

The Speaker: Proceedings are resumed. Please be seated.

Members, we agreed that the Gambling (Amendment) Bill, 2022, will be sent to Select Committee. When the Select Committee meets at that first meeting, they can elect the Chairman.

IDENTIFICATION REGISTER BILL, 2022

The Speaker: The Honourable Minister of Financial Services and Commerce.

Hon. André M. Ebanks, Minister of Financial Services and Commerce and Investment, Innovation and Social Development, Elected Member for West Bay South: Madam Speaker, I beg to move the Second Reading of a Bill entitled the Identification Register Bill, 2022.

The Speaker: The Bill has been duly moved.
Does the mover wish to speak thereto?

Hon. André M. Ebanks: Yes, Madam Speaker, thank you.

Madam Speaker, I rise to present the Bill on behalf of the Government. When this Government published its Strategic Policy Statement about a year and a half ago, it was committed to, among other things:

- **“Providing solutions to improve the well-being of our people so that they can achieve their full potential;**
- **Building a modern infrastructure to ensure a successful future for our islands; and**
- **Improve our financial services as an industry, product, and an economic driver for our Islands”.**

In that document, Madam Speaker, we stated that the Government recognises that setting these financial targets are not just simply numbers, but that these targets affect the lives of our citizens at a personal level; therefore, about a year ago, during the 2022/2023 Annual Budget Statement in this House, the Government committed to supporting the National Digital ID.

In that budget debate I conveyed, Madam Speaker, that this Government is ready to embark on transformative change, [and] I explained that this is the context as to why we created the Ministry of Investment, Innovation, and Social Development.

Madam Speaker, to facilitate transformative change through the Ministry, we allocated monetary sums in the budget to reflect our priorities and set policies which clearly indicated that investment and innovation are going to be vehicles to deliver meaningful reform to society and to the people of these Islands; which brings us today, Madam Speaker, to the reasons for this Bill as part of that project.

Madam Speaker, when I entered Parliament today, I looked at Heroes Square and wondered, 100 or so years ago or even 50 years ago, would our fore-parents have possibly imagined the world we live in today? If someone would have told them that there would be a device called the ‘cell phone’ that would fit in your pocket and become an indispensable tool, would they have been able to fathom its immense capabilities? Would they believe that it can transmit information at the speed of light, unlock doors, enable us to talk and see each other from any corner of the world; order

goods and services straight to our doorstep, instantly capture and record moments of our lives?

Madam Speaker, they particularly might be interested in the maps we use for our mobile devices; hundreds of years ago they were using a compass or the stars to navigate fundamentally, and now, this can all be done with mobile technology and the internet. The pioneering ancestors of this country laid foundations for us to be resourceful and innovative, and we see the fruits of their innovation everywhere.

The Bill before us today, Madam Speaker, is an innovative piece of legislation that will propel our country and transform the manner in which we conduct business with Government. It will give our people a tool to solve problems, save time, and reduce hassle. For the first time ever, it will give us the opportunity in one document to say simply and clearly “*I am Caymanian*”.

The Bill will enable Government to serve our people better with secure systems which promote transparency and accountability. The plain way of saying this, is that the Bill will fully embrace the principles enshrined in the existing Data Protection Act; minimal sharing of personal information in a sophisticated and modern way, protecting our civil liberties but enhancing the way in which we do business. The Bill will be a source of innovation, enabling new digital services to come online.

Madam Speaker, over our country's history, government has expanded its services and offerings to Caymanians, made possible by the blessings of economic growth that we have created and generated for ourselves. A few examples of services that may not have existed or even thought of centuries ago:

- Early education for children ages 0 to 5;
- Scholarships;
- Proof of business ownership;
- Assistance with buying homes; and
- Social services for the vulnerable and the elderly, just to name a few.

At the same time, Madam Speaker, each of those government services requires us to have our own tailored and bespoke legal foundation and associated processes to get each one of those services. It is here that the person engaging with government experiences inefficiency, frustration, loss of precious time. The Bill, however, will enable each unique individual to be recognised as the same person across government systems, without the need to repeatedly prove over and over again their own identity.

Madam Speaker, just a few examples: to assist our children whether it's for education through their scholarship applications, proving themselves in order to take university examinations; inter-island travel, simply having no form of identification that they can use because some of them aren't old enough to drive and don't vote.

Older persons who are no longer able to drive and reach a certain age where they stopped traveling

and have the need for a passport. They, too, encounter problems with being able to prove who they are, in order to transact business with government. [It is] very difficult for Caymanians with very similar names for them to distinguish themselves. I know at least one other André Ebanks; sometimes I get his personal documents from government and he sometimes gets mine. I can't be alone in that.

Also, Madam Speaker, even if the relevant department gets it right, I still have to carry around five and six documents just to prove who I am and that I am Caymanian, but we can do better than that, Madam Speaker. Given modern technology and the systems that we now choose to utilise, I think our fore parents would shake their heads in astonishment a century later, to realise that we must zealously guard and replicate, for the purposes of proving that their children in the future would have to carry around paper documents of their birth certificates, in order to prove our birth-right as Caymanian.

Madam Speaker, people have high expectations of government systems, as they should, but Government can serve them with the same services on a digital application that's user friendly, convenient, efficient and also crucially secure.

Madam Speaker, we are still engaged in heavily paper based processes. Our people have to take significant time out of their lives to stand in lines on their lunch breaks or on the weekend just to carry out necessary errands to renew documents, get certain services, enrol children in school, and pay various government agencies. We have therefore turned our citizens and residents into couriers of information for the Government.

The Bill makes it possible for the Government to deliver digital transformation. The Bill gives us the ability to solve problems within and throughout our society; to offer dramatic improvement in services, and give people back their precious time and confirm their identity.

Madam Speaker, I turn to outline the primary aspects of the Bill. The Bill is arranged in nine parts.

Part 1 contains clauses 1 and 2.

Clause 1 contains the short title and commencement provisions.

Clause 2 provides definitions for the words that are used throughout the legislation.

Part 2 of the Bill starts off with clause 3 and establishes that there will be a register for the purposes defined under clause 3, principally:

- a. Enabling registered persons to prove certain facts about themselves;
- b. Providing a secure and reliable method for the use of [identification] ID information for the purposes of ascertainment, verification and authentication, by requesting entities of identity facts or related facts about those persons, where necessary, and in the public interest;

- c. Providing any service under any enactment to a person by a public authority;
- d. Enabling or facilitating interoperability between the Registrar and public authorities for the purpose of efficient public administration or policy development; and
- e. Enabling or facilitating compliance by a person, public authority or private entity, in respect of such person, with any duty that relates to identification registration under any enactment.

It also sets out the criteria for the persons that shall be enrolled at present:

- a. Caymanians
- b. Permanent residents;
- c. Any other person who is legally and ordinarily resident in the Islands;
- d. Any person who has participated in a registrable event as defined under the bill;
- e. and any person or category of person prescribed by regulations made by Cabinet

Madam Speaker, clause 4 provides for, among other things, the form in which the information contained in the register is to be kept and the form in which that information is to be provided to the Registrar.

Clause 5, at present, requires the Registrar of the Identification Register to make an entry on the register in respect of the Caymanians, permanent residents, persons who are legally and ordinarily resident in the Islands, persons who have participated in a registrable event and any other prescribed persons. This clause also provides for the contents of each entry.

Clause 6 enables a person to apply to the Registrar for a copy of the identification information recorded in the register in respect of that person or any other person so prescribed by regulations.

Clause 7 requires a registered person or the person's delegate to inform the Registrar of any information in respect of a registered person that is found to be incomplete, incorrect, misleading or otherwise in need of updating

Clause 8, in furtherance of clause 7, requires a person to notify the Registrar of any changes to certain identity facts and related facts.

Clause 9 enables the Registrar to verify the identity information of a registered person, in order to ensure the accuracy of information in the register about the registered person.

Clause 10 provides for the Cabinet to prescribe a system of assurance through which the levels of assurance may be applied to identity information. This is an important component of the Bill, Madam Speaker, as the intention of these regulations would be to develop a system of assurance which will allow entities to rely on important pieces of information in the register,

particularly a residential address, which is a very important part of due diligence and distinguishing between two different individuals.

Clause 11 enables the Registrar to authorise a person other than the registered person to access and use the register on that person's behalf on a delegated authority basis; for example, a parent on behalf of a child or someone who may be incapacitated.

Moving on to Part 3 of the Bill.

Clause 12 provides for the appointment of the office of the Registrar of the Identification Register who is responsible for keeping and maintaining the register, and the administration of the Act. The Registrar shall be a civil servant and hold the office in accordance with the Public Service Management Act (2018 Revision).

Clause 13 sets out the powers of the Registrar, including the power to obtain from persons and public authorities relevant information and documents pertaining to carrying out the Registrar's functions.

Clause 14 sets out the duties of the Registrar which include the establishment, development and constant review of the register, deciding on the grant, withholding or revocation of access to identification information in the register.

Clause 15 enables the Cabinet to issue written policy directions to the Registrar in exercise and performance of the Registrar's duties as it appears to the Cabinet to be necessary in the public interest.

Clause 16 specifies that the Registrar is subject to the Public Service Management Act (2018 Revision). This provision requires the Registrar to make available to the public a report in relation to information contained in the register, the activities of the office of the Registrar and any such other information as the Registrar considers fit or as Cabinet prescribes.

Madam Speaker, this clause represents another layer of transparency and public accountability for the office of the Registrar and the Cabinet, in terms of the activities associated with the register. This report may form part of the annual report of the office of the Registrar.

Clause 17 enables the Registrar to delegate certain duties under the legislation. To be clear Madam Speaker, the delegation of these duties is not intended to allow the Registrar to delegate activities such as printing ID cards to any other Cayman Islands Government authority like the elections office, for example; the delegation is within the office of the Registrar.

Clause 18 requires the Registrar to disclose any actual or potential personal pecuniary interest, either directly or indirectly, in the transaction or decision being considered by the Registrar which may impact the performance of the Registrar's duties.

Clause 19 sets out the circumstances under which the appointment of the Registrar may be terminated.

Part 4 of the Bill, Madam Speaker, starting with clause 20, requires the Registrar to assign an identi-

cation code to every person that is entered into the register. The identification code is a unique identifier that is used to identify each person in the register and is personal to the individual to whom it has been issued. The identification code may not be transferred or vested by operation of law in any other person.

This is crucial, Madam Speaker, because in my earlier example of distinguishing between two André Ebanks'— and I think there is another André M. Ebanks, the same as me— that unique identification code would distinguish between the two of us.

Clause 21 provides for the use of the identification code by a registered person, such as myself. A registered person may use his or her identification code to access goods and services provided by the Government or the private sector, or for any other purpose for which authentication of the person's identity is required.

Clause 22 clarifies that a person's enrolment in the register does not confer on the registered person any right of having the immigration status of being Caymanian or any other immigration status or right to remain in the Islands. To break that down a bit, Madam Speaker, there is still a verification process of your status in the country. The card in and of itself does not confer that just because you have it; a verification process has to be completed, then the card is issued to you and then it should be able to display that you are Caymanian.

Part 5, starting with clause 23, requires a public authority to provide the Registrar with all such information as the Registrar may require for the purpose of carrying out the Registrar's functions under the legislation.

Clause 24 sets out the obligations of persons submitting data for entry in the register, including the requirement to ensure that data is submitted in accordance with identification documents specified in the legislation or any other enactment and the duty to correct errors or mistakes immediately upon their discovery. Once again, Madam Speaker, because the control and the authority over the personal data resides with the individual user, the responsibility to submit accurate data when necessary, like updating an address for example, is expressly stated in the Bill. So again, the individual user is in control.

Clause 25 provides for how the Registrar must deal with a dispute in relation to the accuracy of identification information in relation to a registered person. Effectively, Madam Speaker, the Registrar is required to take steps to verify the information in question, in order to resolve any questions as to the validity of information.

Clause 26 empowers the Registrar to take measures and submit inquiries in order to obtain any data which is missing from the register in relation to a registered person. Here, Madam Speaker, any person enrolled in the register should have basic information as referred to in clause 3 as part of their entry; where some of this information is missing for any reason,

Madam Speaker, the Registrar shall have the ability to source that information and complete the record. It is expected that such information will likely come from relevant public authorities in an attempt to complete the entry on behalf of the individual.

Part 6, starting with clause 27, confirms a person's unequivocal right to obtain their own information from the register. This clause confirms that a person in respect of whom the registered person has delegated authority may also access the register, as well as a public authority or private entity with a legitimate interest as defined in the clause.

Clause 28 allows a requesting entity to request with the consent—importantly, Madam Speaker—the registered person's, or the person's delegate's consent, identification information about the registered person from the register for the purposes of accessing, authenticating or verifying certain facts about the registered person.

Madam Speaker, I would like to highlight that the requirement is for requesting entities in both public and private sectors, to seek the registered person's consent before accessing their data so it's not that entities are going fishing into the register, they have to seek the user's consent first. This is particularly important in the context of private sector services because there is no exception for activities in the public interest on their part, so citizens are therefore protected.

Putting it simply, the majority of the public sector access to the register, certainly the day-to-day access with very few exceptions for public interest activities, like protecting the national security, have all been covered under the Bill to ensure that the data protection element is enshrined in the Bill.

Clause 29 provides for the access to the register and the use of information by public authorities for specified purposes, namely, the carrying out of any function under any Act or research or statistical analysis, to facilitate public administration or policy development. Here is an exception to the rule of express consent, Madam Speaker.

When it is said to be the access of the government in the public interest to facilitate public administration of policy development, that information will be on a statistic, anonymous basis; so the public authority isn't seeing me, André Ebanks, it's just collecting a number that will then be attributed to a statistic of a relevant fact, therefore the public authority doesn't know it's me, but has a number to better collate stats.

Clause 30 requires the Registrar to maintain records of the access to the information in the register and entitles the registered person to obtain from the Registrar a record of access to that person's identification information.

Madam Speaker, Part 7 starts with clause 31 which requires that, except in certain cases, information collected under the legislation in relation to a

person in the register may be disclosed only in accordance with the provisions of the legislation and in such manner as prescribed by regulations.

Examples of exemptions include:

- a. Pursuant to a request of the person whose information is being disclosed;
- b. To facilitate the search for or identification of missing persons or unknown deceased persons;
- c. Pursuant to a court order;
- d. Where this Act or any other enactment expressly authorises the disclosure;
- e. For the prevention, detection and investigation of a crime;
- f. To facilitate an investigation under the Proceeds of Crime Act;
- g. In the interest of national security;
- h. Where there is a disaster as defined under the Disaster Preparedness and Hazard Management Act or a public health emergency; or
- i. For the preservation of life.

As you can see, Madam Speaker, these are all serious life or death matters in which security or health is at risk.

Clause 32 creates an offence for an unauthorised disclosure of confidential information. This clause and the next few [contain] the protections and deterrents for misuse of the register.

Clause 33 provides for the duty of confidentiality to be maintained by a person who has or had a duty under the legislation or a person who is or was employed in the administration of the legislation. In other words, or non-legal jargon, Madam Speaker, the duty of confidentiality by anyone who is employed in a post where they have a responsibility for the information, the Registrar is legally required to maintain confidentiality even if they are no longer employed in the said post.

Clause 34 requires the Registrar to implement security measures to safeguard the confidentiality of information in the register in order to ensure that the information is secured and protected against use that is not permitted under the legislation; and against accidental or intentional destruction, loss or damage. This clause specifically spells out that security measures are to be implemented by the Registrar for the stated purpose of safeguarding the information in the register against misuse or other threats to privacy and confidentiality.

Clause 35 prohibits a person from impersonating another person or a person's role or function authorised under the legislation, or exercising or attempting to exercise authority under the legislation where that person has not been authorised. A person who contravenes this provision is liable on summary conviction to a fine of \$10,000 or two years' imprisonment, or both.

Clause 36 creates an offence for collecting or attempting to collect identification information without lawful authorisation. This offence carries the same penalty as I read in clause 35.

Clause 37 also creates an offence where a person wilfully provides false information to the Registrar, obstructs, or impedes the Registrar in the exercise of the Registrar's functions. Again, Madam Speaker, this attracts a penalty of \$10,000 or imprisonment for a term of two years, or both.

Clause 38 specifies certain offences in relation to the register, such as unlawfully accessing the register or a registered person's information in the register. The penalties here are more severe, Madam Speaker; offences like unlawful access to the register carry a penalty of \$20,000 or imprisonment for four years, or both.

Clause 39 prohibits the tampering of the register and carries the same penalty as I just read for clause 38.

Clause 40 deals with offences which may occur in the registration process such as registering or attempting to enrol more than once in the register and providing false information or making false statements when submitting information for the entry or modification of the entry. Madam Speaker, in the spirit of providing comprehensive protections for the information in the register, it shall be an offence for the registered person to misuse or defraud the register. This carries a fine of \$10,000, two years' imprisonment, or both.

Clause 41 provides for the liability for offences committed by a body corporate, and the ability to hold directors of the said body corporate if it is deemed that the offence occurred with the knowledge of the directors or any individual purporting to act in any such capacity.

Clause 42 provides that no enactment or law prohibiting or restricting the disclosure of information precludes a person from furnishing the Registrar with any information required for the Registrar to discharge his duties and functions under the legislation.

Clause 43 provides that the Registrar or any other officer authorised by the Registrar, shall be protected from the liability of any lawful act done, or omission made, in good faith, under the legislation.

Importantly, Madam Speaker, clause 44 enables a person aggrieved by a decision of the Registrar to appeal the decision by submitting a written notice of the person's intention to appeal to the Chief Officer of the Ministry in accordance with the procedure prescribed by regulations.

And finally, Madam Speaker, clause 45 provides for the power of the Cabinet to make regulations for the better carrying out of the objects and purposes of the legislation.

Madam Speaker, as I begin to wind up this presentation, I would like to first of all thank the Innova-

tion Team in the Ministry for their hard work and dedication not just during this Administration, but the last two administrations.

To give credit where credit is due, the project was initiated by the Member for George Town North, and when this Administration set this initiative as a priority, given that the subject of national ID has been in contemplation for at least three decades, the innovation team really went to work. The team's activities with stakeholders in the months leading up to Cabinet approval have been extensive: beginning in July 2022, the Ministry's innovation team conducted over two dozen, in-depth, consultation focus groups in preparation for the Bill, three of these held in Cayman Brac. Each of these consultations entailed extensive prep and subsequent systematic analysis. A diverse array of Caymanians of all ages and demographics including young and older persons, civil servants, legal practitioners, tech experts and business owners participated in these groups. Each of these consultations consumed at least two hours of the working day and an additional two hours by the innovation team to analyse those focus groups' feedback.

Madam Speaker, I take the opportunity to express my profound gratitude to those individuals who set aside their daily obligations and responsibilities to add their input into the focus group consultation process prior to the Bills being gazetted.

Madam Speaker, I'd also like to convey thanks to the main media outlets who attended the Ministry's consultation on this Bill and the accompanying Cayman Islands Identification Card Bill, 2022 prior to the publication of the Bills. This was done so that their reporting could take account in advance of publication of the Government's reasons for the Bill. We are truly grateful that representatives of all of the main media platforms on the Island made use of this opportunity, and they all published articles and analysis in the days immediately following the publication of the two Bills.

At the same time, throughout the public consultation period, the Ministry availed itself of dozens of radio and television broadcasts to reach the widest possible audience, and we are grateful for all those who read, listened, watched, emailed, commented and called in to express their opinions.

Throughout the public consultation period, the Ministry also utilised the Government's communication infrastructure that issued press releases and published numerous social media posts to direct people to an established consultation website. I am grateful to the Government's video production team who made my interview available to the public.

Simultaneously, Madam Speaker, upon publication of the Bills, the Ministry and the eGovernment (eGov) Unit established a dedicated, user friendly website located at the website address imagine.egov.ky to make information available to the public. That website included both this Bill and the Cayman Islands Identifi-

cation Card Bill, 2022; a set of Frequently Asked Questions (FAQs), and embedded links to a wide array of media coverage and social media posts during the consultation period. The Ministry continued to dedicate significant time to in-person and online consultation between 4th November 2022, and today.

I also pause here to note my profound gratitude to those persons in the community who reviewed the legislation, observed the public discourse and submitted over 100 written comments on these Bills during the past month. Madam Speaker, though there was very strong support during the public consultation, there were those who had concerns, centred around four main areas:

1. The possibility of the expansion of the legislation of the Bill by the Executive rather than Parliament;
2. Being compelled to be on the register, even if the Cayman Islands Identification Card Bill, 2022 makes the card voluntary;
3. Being compelled over time to enrol in the register, even if the register enrolment was changed to be voluntary— there is a concern that somehow public authorities may deny services to non-cardholders in the future; and
4. Storage of the data “allegedly” being held outside of the Cayman Islands.

Those concerns resulted in those individuals asking for more time.

Madam Speaker, taking those concerns in turn, it is important to note, as stated during many of my media appearances, [that] our objective is to provide an innovative tool to prove your identity [and] improve our digital infrastructure thereby modernising government services to save time and hassle; all built on data protection principles and securities. The long list of clauses that I read in relation to protection of data and the duty of confidentiality already exists in the Data Protection Act, they have just been enshrined into this law to make it expressly clear.

Madam Speaker, this is not a tool to spy on anyone or force anyone who has concerns right now to have the tool; therefore, by listening to that feedback and those concerns I was more than willing to make accommodations, by way of Committee Stage amendments, to:

- Limit the powers of the Executive and the Registrar;
- Make the register voluntary; and
- Add a clause, which I'll propose at Committee Stage, that the authorities cannot withhold services to non-cardholders.

Madam Speaker, if those Committee Stage amendments are accepted, each resident would have more than enough time to decide whether to apply for

this innovative tool because they would not be forced into the register.

I should probably pause here to explain, Madam Speaker: The reason that the register itself [in] the Bill is now “shall”, is because the register was only going to keep a very small set of identity facts that Government has already downloaded from the General Registry and Department of Workforce Opportunities & Residency Cayman (WORC's) website; then take that information to easily facilitate anyone who is going to opt for the card to get it and be verified as to who they are. By making the register voluntary, the automatic download of a complete dataset in the register wouldn't occur, and it would just take a bit more effort for the office of the Registrar to match that person who applies for a card to the information in WORC's and the General Registry's databases.

The register does not become a honeypot of information coming in from all these different authorities into one register. What it would allow, is [for] the individual who can be identified with that number and those identity facts to then choose which other government agencies they would like to do business with and share their identity with those services— and those agencies in return can't see what the others are seeing.

On the location of the data, the Ministry team and I have said over and over in media appearances, on websites, and written forums, that the data will be stored in Cayman and we should be proud that we have Caymanians in the civil service with the expertise to do this. Interestingly, Madam Speaker, this brings me to why the request for time, that is, withdrawal of the Bill, may not achieve what some think or worse, might lead to further public confusion.

As an example Madam Speaker, just this weekend, there are folks from all walks of life [in] different districts, as we are starting to go out and about to Christmas functions, who have come up to me and said, *Minister, the accommodations that you are proposing in the legislation should be able to alleviate the doubts and concerns and give those who do not want to join at this time ample time to decide whether they want to join; but don't stop it for those who want it and see the vision of it now.*

Madam Speaker, a few individuals said to me, *Minister, think this through.* Behind closed doors, I have argued with some of those hard-core doubters. There is nothing that you are going to say to overcome their concerns, and for many, this is not an emotive issue, it's pretty simple; so I am not going to go to large Town Hall meetings to debate with people who are friends of mine, in public. You could end up with a lopsided consultation with folks who continue to misconstrue the provisions of the Act and get no further ahead, which is why certain transformative changes in this country haven't occurred, because of the confusion, and the Government not taking a position and just forging ahead in a way that adequately accommodates those who have concerns. Besides, anything can happen in

the next three to four months, an unexpected or unforeseen event that throws things off.

Additionally, it can affect other pieces of legislation. The concerns about digital currencies and cryptocurrencies are now widely in the public domain. It is going to require the international standard setters to become more robust and we are going to have to import those probably in the next three months, so there is another theory that the reason for this register and the card is because this leads to a digital currency.

Imagine now, Minister: You get up because you have to advance the virtual assets legislation for international standard setting purposes, while at the same time you bring this Bill back. Folks are going to say, *well wait a second, this proves that this is all about the digital currency, this was the plan all along*, and then you might not be able to pass legislation or hamper legislation that needs to be done for international standard setting purposes.

So, Minister, let us join and let them be able to analyse and assess for themselves as this goes forward. However, I do have to say, to be very sensitive, that many of the folks who have concerns are our people; so I've said to a number of individuals who do not want this to stop, *be very mindful of the fact that these are our people and not subject them to ridicule*.

Even if there are people who hold the view that what this legislation and the Identification Card Bill will lead to is mandatory vaccine requirements, restrictions for travel because you're not vaccinated, widespread national surveillance; that might sound fanciful and farfetched to many, but we can alleviate their concerns by giving them the freedom of choice at Committee Stage, and let those who want to pursue [it], go forward.

Madam Speaker, there is one theory out there that I do think—with my Minister of Financial Services hat on—should be roundly and vigorously rejected. It's a theory that this Bill and the [Identification] Card Bill, are being brought because there is a secret plan to move to direct taxation. Madam Speaker, we might not ever be able to overcome that fear, but I just have to say that I just can't imagine that, I, myself, as a civil servant, have been in the international halls of power with the Member for George Town East, the Member for Red Bay, [and] the current Premier. I have been in those discussions with the Attorney General, and I know that they happened with the Member for West Bay West when he was the Premier, way before I even joined the public service. With all of that history, there is no way that anyone could say that one more minute of consultation shouldn't convince everyone that we would now suddenly, after fighting that battle all of these years, sneak a Bill through to bring forward direct taxation and ruin the financial services industry. That *cannot* stand to logic and reason and must be rejected.

Madam Speaker, I'll close with a short anecdote. People often ask me: now that you have become a legislator, what are some of the things that surprised you as a positive advantage? One of those is getting to

know and meet legislators in other jurisdictions and talking to them about passing legislation and things that they want to do in their countries.

Overall, the theme is, *we are here to take a position to advance our people forward; to find reasonable compromises; to pass legislation that is sensible, above legal challenge, addresses the concerns but keeps the country moving forward*; and much of that theme, Madam Speaker, has been in some of the debates we've been having, and some of the other Bills and matters that have come before this House. It is high time, where we have addressed concerns, and even if those concerns can't be quelled, if we have given freedom of choice, the country has to move forward.

It is our job to take them forward. In fact, this would enable more interactive consultation because with passed legislation, the department can continue with software and hardware development, and then those Town Hall meetings can actually show the concept rather than trying to talk about it in a sort of conceptual way. You can see it for yourself and make an informed decision, rather than to continue to talk about it in a bubble, in a vacuum.

The opportunity before this House is to take this piece of transformative legislation and move our people through the digital times for their personal growth, their professional development, their efficiency, and to prove in one document for those of us who are Caymanian and verified as Caymanian, that we are so.

Madam Speaker, as the former UK Prime Minister [Winston] Churchill said "unless the intellect of a nation keeps abreast of all material improvements, the society in which that occurs is no longer advancing." UNVERIFIED QUOTE

Madam Speaker, this has been talked about for 35 years, it goes back to 1987, came back in various iterations and motions. The only difference in this case is that we are now deep into the digital era, we're adding digital features to make the lives of our citizens and residents better, if they choose to take it.

Madam Speaker, I now commend the Identification Register Bill, 2022, to this honourable House.

The Speaker: Does any other Member wish to speak? *[Pause]* Does any other Member wish to speak?

The Honourable Deputy Leader of the Opposition.

Mr. Joseph X. Hew, Deputy Leader of the Opposition: Thank you, Madam Speaker.

Madam Speaker, I rise to offer comments and debate on the Identification Register Bill, 2022, and I thank the Honourable Minister for his detailed and open discussion and debate on introducing the Bill.

Madam Speaker, the Minister is correct that the concept was this administration's and that the work began during my term as the Minister of Commerce which, again, was cut short by COVID; but Madam Speaker, during that period of shelter-in-place, a group

of private sector persons from five different sectors formed what became known as the Strategic Economic Advisory Council (SEAC). Those five sectors were: education, tourism, financial services, information technology and development.

Madam Speaker, we initially met via Zoom or Teams, and I myself chaired the initial group. Once the shelter-in-place had been lifted, we were then able to have in person meetings and committees were formed for each of the categories and an exercise later termed as *Cayman 2.0* began.

The committees met extensively and then each committee narrowed down all of their discussions to five key recommendations for the Government. The council then narrowed those five key recommendations to two or three to pass on to the Government for consideration. I give that detail because two of the technology sector's key recommendations were a modern fibre optic subsea cable, and a national digital ID programme.

Unfortunately, Madam Speaker, this Bill being debated today and one to come up later, received quite a bit of criticism from the public. Several concerns were cited and opposition began to gain traction and grow within our community. The Opposition met with some of these concerned persons; we heard their concerns, we worked through them. I did my best from my perspective, from the background of the national ID programme, to answer as many questions as possible that they may have and to alleviate many of their concerns.

In addition, Madam Speaker, and in part due to the campaign launched by those who oppose the Bill, we on this side received many calls from our constituents who otherwise would have supported the national ID programme, but now had questions and concerns and they said to us that they would like a bit more public consultation, a bit more time to get to understand these issues.

Consequently, Madam Speaker, the Leader of the Opposition wrote to the good Minister on 29th November, 2022 and urged him to withdraw the Bills from Parliament and extend the public consultation period. As I said, the Leader indicated in his letter that some of the concerns were due to misunderstanding, but others were very valid and needed further clarification.

Madam Speaker, with all of that background and accepting that the concept started with this administration and, in particular, as the Minister rightly pointed out, with myself as Minister of Commerce, we feel as the Leader indicated. We urge the Government to withdraw the Bills and put them out to public consultation, Town Hall meetings; giving those persons who have concerns the ability to hear for themselves, from the Government, in layman terms, the many benefits of the programme, but also to help alleviate their fears and concerns.

As the Minister said, some of them you will never be able to change their minds on it. Some may even be far afield, farfetched, but there are people out

there who genuinely, genuinely said to me, *I want to support this, I think it's a good idea; but I now have concerns. I need a better understanding of it.*

Thus, Madam Speaker, rather than to sit here and debate the provisions of the Bill, which to be very honest, some of the amendments that the Minister spoke to actually cover some of the concerns, but we still feel on this side that the Bill should be withdrawn, that proper public consultation should happen, proper town hall meetings as we call them, because I agree with the Minister: This Bill is too important to the future of this country and to its people. It's ground-breaking, it will set the platform for future development in our financial services, it will make lives easier for our people.

I agree with all of that, but I would hate to see it cast into the darkness of "file 19" over the next few months, never to resurface, due to the misunderstanding and concerns of our people who are deserving of the opportunity to alleviate themselves of those concerns and then, hopefully, offer their full support that we can see this Bill returned to the House and we can see in the near future the actual ID programme with whatever amendments are needed to appease those who have concerns and we can move forward as a country.

Madam Speaker, we on this side once again urge the Government to withdraw this Bill and give themselves some time for some proper town hall meetings, proper public consultation. We will be happy to support them in those endeavours.

Thank you, Madam Speaker.

The Speaker: Does any other Member wish to speak?

[Pause] Does any other Member wish to speak?

[Pause] Does any other Member wish to speak?

The Honourable Deputy Governor.

The Deputy Governor, Hon. Franz I. Manderson:

Madam Speaker, thank you.

Madam Speaker, the Minister of Innovation has done his normal fabulous job explaining the details and the rationale of the Bill [so] I don't want to repeat it; but I do want to give some background and speak from the Civil Service side in relation to the Bill before us and the Bill to come.

Madam Speaker, the vision of government being joined has been a priority of multiple governments during the time that I have served as Deputy Governor and Head of the Civil Service. It has been one of our priorities for so many years, to have a joint approach to serving our customers.

I am pleased that it will finally come to fruition with the Identification Register and the Identification Card Bills, which are necessary to create the foundation for a high standard of customer service; to afford transparency and accountability that comply with a robust Data Protection Act, and to enable Government to adapt and respond in tandem with the development of widely used technology.

Madam Speaker, the role of the Director of the e-Government Unit requires a visionary and highly capable person who has had a unique combination of technical and managerial skills. I know you will agree that we are fortunate to have found an individual, a Caymanian, and to have their commitment to delivering on a vision articulated by Cabinet in 2014.

Specifically, the introduction of a national ID for citizens of the Cayman Islands and users of the e-Government platform, is a requirement for the successful completion of the project. When we hired e-Government Director Ian Tibbetts in December 2014, he brought to the position three decades of professional experience, in the private sector's telecom industry. Mr. Tibbetts was involved extensively in creating the Cayman Islands' digital infrastructure that all residents utilise and benefit from today; the internet and our cell phones.

Mr. Tibbetts played a key role in the negotiations with the North America Numbering Council (NANC) to make individual area codes available to the Caribbean nations, so that each country could have its bespoke area code. Since we are here to talk about identity, we may also thank Mr. Tibbetts for making it possible for Cayman to have a memorable identity associated with our own area code, 345; we shall always be grateful for that.

He has been a tremendous asset within the Cayman Islands Government, delivering on the e-Services Strategy, as well as enabling a true transformation of Government's overall digital infrastructure and information security during his tenure. I noted during the Public Accounts Committee hearing in this esteemed House in October that Mr. Tibbetts was a unit of one staff, himself, until the first e-Government staff member was hired in February, 2017; so he largely did much work by himself.

My own office has had the privilege of working with the e-Government Department with the successful rollout of our digital British Overseas Territory Citizenship application process. Likewise, I have seen a host of excellent systems that have been implemented collaboratively across government, working in tandem with the equally professional and dedicated staff of the Computer Services Department, and business process owners.

Some of the notable services that we have brought online for the first time include:

- Police clearances;
- Trade and business licensing;
- Scholarship applications; and
- The Needs Assessment Unit (NAU), an example that I will explain in more detail shortly.

Since 2017, the Department of Commerce and Industry received at least 27,000 online trade and business applications; transactions worth about \$9 million,

and between 2018 and 2022, there were over 168,000 police clearances handled online.

With the online police clearance form came a new era of online payment for government services. Today, you can use the system to pay for a growing list of services including work permit fees, British Overseas Territory Citizenship fees, and vehicle licensing. The online payment solution has generated over \$30 million in payments to government [for] this year alone, and since 2017 the figure exceeds \$60 million.

The Needs Assessment Unit online form also deserves to be highlighted. Working with the Ministry of Investment, Innovation and Social Development, the e-Government team has provided key advances for the Needs Assessment Unit during the past year and a half.

First, with a website that provides information in a user friendly format. One year ago, the NAU's first online form was launched; during the past year, it has been used successfully hundreds of times by Caymanians who are applying for government's financial assistance saving them time, money and hassle.

At the same time, the Ministry worked with our two online mobile networks, FLOW and Digicel, to provide zero-cost access. This means anyone can access both NAU's website and online form through their cell phone, even if they have zero funds on their account. All of this work with the Ministry and e-Government highlights, in a tangible way, what joint government looks like.

The two fundamental lessons I have taken from this are:

That thoroughly woven into the civil service core principles is that we as a Government should provide services in a way that our customers want, not how we want. I recently had a preview of the one-stop shop, a portal that will truly transform how people use the government's e-services.

At a recent meeting of the Civil Service's senior leadership team, Mr. Tibbetts demonstrated the ease of using the ID card and its QR code; the associated mobile phone App, and the use of the card's digital feature to sign a document.

The other fundamental takeaway is how all of this demonstrates the civil service's commitment to delivering on the elected Government's vision outlined in the Strategic Policy Statement last year specifically, goal three— provide solutions to improve the well-being of our people so that they can achieve their full potential; and goal eight— to build a modern infrastructure to ensure a successful future for our Islands.

In our commitment to delivering a world-class civil service, when developing new systems and policies, I have always supported our civil servants' expertise and knowledge by engaging with other jurisdictions to truly learn and apply that knowledge in our setting.

The journey to today's debate over the ID Register and ID Card Bills began many years ago, when previous Governments made a commitment to establishing an e-Government programme to advance our

digital offerings to our customers. To do that, I served as the Chair of the e-Government Steering Committee which covered multiple approaches. The business case we approved derived from the Estonia model. With Cayman also being a jurisdiction with a relatively small population, we settled on Estonia's as a prototype with numerous attributes:

- Its systems have been developed collaboratively between the public and private sector;
- It was a highly cost-effective model underpinned by transparency that could be replicated but also customised; and
- It established a non-profit organisation to assist other governments in their quest for e-Governance.

In 2015, the Cayman Islands Government hosted a delegation from the E-Governance Academy of Estonia which afforded the opportunity for civil servants and other public officials to gain insights from the Estonia experience as a world leader in digital governance. In pursuit of developing a system that could be adopted and adapted in the Cayman context, Mr. Tibbetts took a delegation to Estonia in 2017, including members of the Computer Services Department, the Cabinet Office, as well as the Ministry of Home Affairs. Mr. Charles Brown accompanied him on a separate trip.

These fact-finding missions, Madam Speaker, enabled our civil servants to explore the application of e-governance in different departments and Ministries, including the police and border guard, department of motor vehicles and education. Watching the system in action, they understood how these digital capabilities deliver better services, resulting in overall better quality of life for Estonia's citizens.

Madam Speaker, I promise to work with Chief Officers across the Civil Service to evaluate and determine the easiest services that can be connected to digital workflows, to pinpoint those where a clear and distinct benefit will be derived from accepting documents with digital signatures. We commit to ensuring that the e-Government unit can continue its work in delivering to our customers through its work on user interfaces and user experiences with services and data.

We ensure the computer services department will be adequately resourced to assist departments in transforming their paper processes to digital workflows. The register makes it possible to redesign these processes to incorporate the core identity information, thus minimising our citizens' digital footprints, improving accuracy and efficiency, and saving customers' time.

To register is akin to a missing puzzle piece in enabling us to deliver a truly joined up government. It makes it possible in law and it also allows technical expertise to be utilised in developing these systems. More importantly, over the longer term this will reduce the

government's cost in maintaining redundant databases, registers and systems. Thus, Madam Speaker, you will see that the Civil Service stands ready to support the Minister and the elected government in implementing this very, very, important project.

Madam Speaker, the Minister earlier set out the reasons why this ID card is absolutely necessary; please allow me to share with you an experience I had a few years ago, which happened up until earlier this year.

I was informed by the civil servants who rolled out our Cayman Pride project many years ago, when it was reborn, that we had hundreds of Caymanians showing up at the Lions' Centre looking for work and the most difficult thing that we as a civil service had to overcome, was that the vast majority of Caymanians who showed up had no ID. We had to find ways to identify persons [and] create ways to pay them because they had no bank account. It was a very difficult exercise, but we found a way.

More recently, Madam Speaker, my staff who was involved in dealing with the expungement of convictions from persons' police clearance came to me and said, *Mr. Manderson, we have an irate customer and we don't seem to find a way to assist him. Can you have a chat with him?* I said, *of course*, so I spoke to the young man, who was very anxious for us to expunge his record.

The officers had quite rightly asked for his ID and he had none to which I said, *But, sir, why don't you have ID?* And he said, *Mr. Manderson, I don't have a job. I had this conviction on my record and could not get it off until now. I don't even have the \$25 to process my application, why do you think that I have money to get an ID? Every ID that the government issues, costs. I don't have money to get a passport. I don't have money to get a driver's licence. I don't have any ID.* Madam Speaker, it really hit me, that many Caymanians simply have no form of identification.

Forget proving that you are Caymanian, they simply have no way of proving that their name is John Brown and, Madam Speaker, that is one of the very, very, important hurdles that our Caymanian people will no longer have to overcome when this ID card comes into play. They can go and get their identification, their ID card is issued, and they can have it renewed, I think, every five years. Madam Speaker, that is fundamental to what the Government should be doing for its people, giving them easy ways to identify themselves and also allowing them to be part of the workforce, part of the community.

I had a long chat with this young man, Madam Speaker, and it was clear to me that he did not feel like part of the community. He didn't have an ID, he didn't have a passport, he didn't have a job; he didn't feel that he was valued in Cayman, you know? We got him his \$25 and we got his conviction expunged, and I hope that he has been able to secure employment.

Speaking with that young Caymanian, that situation, stayed with me, Madam Speaker. Like I said, it happened earlier this year, but it stayed with me until today. I think it is very important, and I commend the Minister and all of the team that has been working on this. It has been talked about for years; for many, many years, we have been talking about having a national ID.

I understand now that there are many, many, people who think it is a bad idea, but Madam Speaker, for many of our people, it is going to be a very good thing. It's going to help many of our people identify who they are. You know, I remember talking to this man. Hearing his voice at the time, he was not feeling very confident that we cared. After listening to him, and telling him how we were going to be able to help, I think he realised that we do care. Again, these Bills show that we care.

Madam Speaker, that is the vision that we are pursuing with these two Bills. I state with confidence that this new legislation will contribute immensely to achieving our ambition of delivering world-class service to all whom we serve. Again, I commend the Minister and his team; the acting Chief Officer, Ms. Tamara and all of her team, who have been working very, very hard for very long hours. Mr. Charles Brown and other staff are here this afternoon and again, I want to thank them.

I mentioned Mr. Tibbetts earlier, and the great work that he has been doing; as I said he was a team of one for many years, but he has done a tremendous job in taking our e-services to a new level, and I think the national ID is going to be a key part of the puzzle that allows us to achieve world-class service for our customers.

I thank you, Madam Speaker.

The Speaker: Does any other Member wish to speak?
[Pause]

The elected Member for Red Bay.

Hon. Sir Alden McLaughlin: Thank you, Madam Speaker.

Madam Speaker, because these two Bills are so closely connected it was impossible, certainly for the Honourable Deputy Governor who just spoke, to make a distinction between the two, and I accept that. He often went from one to the other, it seemed, to us on this side, but I don't have a problem with that at all.

I want to say from the outset Madam Speaker, that, conceptually I absolutely support what is being proposed here and so do all Members of the Opposition. Indeed, I don't even know if it is fair to say that it started under the first administration which I had the leadership of.

I actually think the concept has been around in one form or the other even before that, but we certainly supported and pressed the civil servants who were involved, mainly Mr. Tibbetts, to move it forward. I therefore want to be very careful not to convey the impression that what the Honourable Deputy Leader of the

Opposition said in any way indicated a lack of support for the concept.

I think we all understand the critical importance and the benefit that having a national ID will bring to a whole range of experiences which the average person living and working in Cayman, not just Caymanians, have to deal with, and it certainly should go a long way, if it is properly implemented, to help address this issue, which Caymanians correctly rage about, which is that persons who are granted Caymanian status have a certificate they can point to, whereas those of us who acquired the right to be Caymanian as a result of our birth have to present three or four birth certificates and various other documents to demonstrate our right to be Caymanian.

Thus conceptually, we have no difficulty with what is being proposed, but I do not believe that due regard is being paid by the Minister or the Government to concerns which are increasingly being expressed by various sectors of the community, including members of the legal fraternity, some of whom have communicated with us. I have to say Madam Speaker, that after what is at least, an eight-year journey, I don't understand why the Government would not have taken more time to talk about these important Bills with the broader community.

Indeed, some of the representations that I have personally received, some very irate ones, said, *Well, I don't belong to any of these groups or societies or associations that they spoke to. Does my voice not matter in this?* I know the Minister and his team have recently made efforts to go on various talk shows and talk about the matter, but again, you are only able to address a relatively small sector of the community.

Having walked down this road with other Bills over the years, Madam Speaker, and having, at least on a few occasions, lost the fight because communication was deemed inadequate by people—they didn't understand enough, no matter the fact that we thought we had tried really hard, I would strongly urge the Minister and the Government to defer the debate on these Bills, and their passage, for three months or so.

Give people who still have lingering doubts about what these Bills seek to do; concerns about what they fear will be further erosion of their right to privacy; and indeed, some people whom I know are just generally very fearful, if not paranoid, about "Big Brother" watching them and having access to their information, a chance to address those concerns.

This is such a far-reaching, and if done right, I believe, a positive development for Cayman, that it really would be good, it would be wonderful indeed, if these Bills, when they come through had the consensus of both sides of the House; but I fear, given the amount of representations that we have received, we simply will not be able to support either of these Bills at this particular point.

I am not going to go into the technicalities of the Bills because at the moment our objection isn't to

particular provisions, but to the Bills being dealt with this speedily, albeit that they barely meet the 28 days' constitutional requirement for publication prior to the start of debate in the House. They barely meet that, but they meet it.

I urge the Government to defer these say, until March. Carry out a more comprehensive consultative process; allow us, the Opposition, the opportunity to be involved, so that we can, hopefully, speak with one voice about such an important concept, and then bring them back to the House knowing that both Bills have the support of both sides of the House. That would give the broader public a great deal more confidence about the concept and about what the Bills actually seek to do.

Madam Speaker, that's really all that I want to say about the Bills, but if the Government still insists on going through with them, I'm afraid they will have to pass them on their own. I know there are Members on the other side who have had the same representations we have had and share the same concerns we have, at the perceived rush of such important pieces of legislation. All I will say to the Premier and the Minister [is]: *take sleep and mark death*.

The Speaker: Does any other Member wish to speak? [Pause] Does any other Member wish to speak? [Pause]

The Honourable Deputy Premier.

[Pause]

Hon. Christopher S. Saunders, Deputy Premier: Madam Speaker, I definitely will not be speaking long on this Bill, as the Honourable Member for Red Bay already stated that the Opposition's concern isn't really with the substance of this Bill or the Bill to follow, but rather the timeliness or the speed.

Madam Speaker, the Honourable Member for Red Bay is correct that we have received representations on this Bill also; I, for one, definitely received representation from people in my community. The Honourable Member for Red Bay will also be pleased to know that even though he is asking for, I think it was three months, this Act will not commence until around July of next year, for the simple fact that there are many—

[Inaudible interjection]

Hon. Christopher S. Saunders, Deputy Premier: The Act won't commence until July of next year for the simple fact that there will still be much work to be done in the background during that time in terms of getting the right system, the regulations, et cetera; as we move to actually put together the infrastructure that would be necessary.

Again, I don't think that is something that can be done or should be done without any level of public support or public input. I know the Minister has worked

very hard on this Bill, and as such, we need to at least get the ball started. To quote my good friend, the Member of Red Bay again, *we cannot let the perfect be the enemy of the good*, we have to start somewhere.

I have had representation from people who definitely want the Bill; from people who wanted more information, and from some people who went very far out with different conspiracy theories, et cetera—and I respect that; this is what it is about, Madam Speaker. However, at the end of the day, this is something that we have to move at some point, we have to get started somewhere, we have to do something. Leaving the status quo as is, is nothing.

Now, I accept the Opposition's role in the sense of more consultation; as with any other Act, there will always be changes. I mean, you look at the Order Paper, there are several amendments coming to existing legislation. We learn as we go, we learn as we grow, but we need to start somewhere, and passing this now gives us at least the green light to start moving to the next stages where we can start the implementation process, so at least we can get this done.

Credit given where credit is due, Madam Speaker: Much work was also done on this by the previous administration and something that I love about Cayman, you know, when I laid the Moody's report in this honourable Parliament last week, we spoke about the political stability, political maturity and a political consensus in which we operate.

Something that has made Cayman the envy of many Caribbean Islands, and I would go as far as to say many countries, is that successive governments have not gone down the road of throwing away the work of a previous government. We have seen in other Caribbean Islands, Madam Speaker, where one government comes in and there's a wholesale change from what was there before.

When we presented the Strategic Policy Statement and the Budget last year Madam Speaker, we reminded the country that we build on foundations we did not lay, it is what has made Cayman unique. This is one more thing we are building on, Madam Speaker, which we did not lay; but we recognise that years of people's hard work, sweat and tears have gone into this and this is what governance is about: This is what leadership is about.

We would love to have as much consultation as possible with every Bill, Madam Speaker. The Honourable Member for Red Bay spoke about battles that he lost. I remember one of them, I was in this Chamber. At the time, I argued against the Domestic Partnership Bill, that we needed more time, nonetheless it still arrived so I recognise the challenges, but at some point we need to move forward.

I can safely say that I have had representation, especially from our younger people, who say that they want this Bill. You know, Madam Speaker, here is something that has made governance in today's world different in a very short time. This is the first time in the

history of human civilisation that we have four generations working side by side. In the workplace today, we have an 18-year old working right beside an 81-year old.

This is the world we are living in and as a result, Madam Speaker, the mantle of leadership has passed to a point where before it used to be that the elder would become the one, and when the young person became the elder, they took it. What is driving that is, that this is also the first time in the history of human civilisation where the knowledge transfer has not gone from the elder within the community to the younger; but goes from the younger to the older as a result of technological changes.

As a result, you now find that the leadership age bridge which normally used to be late 50s, 60s, and in some cases 70s, has moved to 45 to 55 in most developed countries, simply to recognise the age gap. Many of us can go back to the 2008 United States' elections with former President Barack Obama flashing his Blackberry and John McCain basically saying it was too high-tech for him, and look at where we are today—Blackberry literally doesn't exist anymore, but back in 2008 it was cutting edge.

This is the world we are living in Madam Speaker. At some point, the work needs to move to the next level, but the next level can't come without this legislation being there, and I got the Minister to remind me a while ago—just to double check what we discussed. This Act will not commence until July of next year, for the simple fact that there are many things that still need to be done in the background.

I also want to go on record Madam Speaker, to thank the Deputy Leader of the Opposition for the work that he did on this Bill which made the load much easier or much lighter for my current Minister to actually continue the hard work that he started.

Madam Speaker, I understand the concerns. It is a challenge for all of us here as MPs; we recognise that people are always skittish about information, but I want to make one thing clear Madam Speaker: this is information that the Government already has.

It is not as if we're going out and getting something new, this is information that is already in the Government's possession. Basically, all we are doing is trying to see where we can have it, that we don't have this hassle and frustration for people going to one government department then another government department and saying, *but I already gave you guys this*—because they still see it as one government.

This is where we are trying to get to, what we are trying to achieve. Much work has gone into it for decades now, Madam Speaker. At some point we need to move on.

The Minister and I will continue in terms of consultation. We have concerns that still have to be ironed out, and I suspect that there will be [more]. To his credit, the Minister has gone through and given a comprehensive of some of the concerns which I have as well. That

was also received, but at some point like I said, we need to move forward and if there are changes to be made, just bring them back to this honourable House.

With that Madam Speaker, I would thank you all and I wish you all a good afternoon.

Suspension of Standing Order 10(2)

The Speaker: Members we have reached the hour of 4.30 p.m. May I have a motion to suspend the Standing Orders.

The Premier, Hon. G. Wayne Panton: Madam Speaker.

The Speaker: Honourable Premier.

The Premier, Hon. G. Wayne Panton: I rise to move the suspension of Standing Order 10(2) to allow the business of the House to continue beyond the hour of 4.30 p.m.

The Speaker: The question is that Standing Order 10(2) be suspended to enable the business of the House to continue beyond the hour of 4.30 p.m. All those in favour, please say Aye. Those against, No.

AYES.

The Speaker: The Ayes have it.

Agreed: Standing Order 10(2) suspended.

The Speaker: Does any other Member wish to speak in relation to the Bill?

The Honourable Member for Cayman Brac West and Little Cayman.

Mr. Moses I. Kirkconnell, Elected Member for Cayman Brac West and Little Cayman: Thank you, Madam Speaker.

Before I start, I seek your permission to read just a couple of lines from this.

The Speaker: Does the Honourable Member intend to Table it for all the other Members to see?

[Pause]

Mr. Moses I. Kirkconnell: Thank you, Madam Speaker.

Madam Speaker, I rise to give a short contribution on the Identification Register Bill, 2022. As the Member for Red Bay stated, both it and the Cayman Islands Identification Card Bill, 2022 are companion legislations, basically, so it will be on both.

I want to join voices with the Members on this side Madam Speaker, to again say to the Government, and the Minister, especially, to consider the request for

another two or three months of public consultation. The Member for Red Bay and the Deputy Leader, I think, made clear the importance and the view of the Opposition on the two pieces of legislation.

The Premier of the day has been part of our Government, we were together when the Legal Practitioners Bill was brought and it took quite a long time before it came back and we worked on it. Also, Members have been involved with the public consultation on the cruise dock and know the length of time it took and what happened when the public is not satisfied that they have had the opportunity to give information or understand what is being proposed.

I asked for permission, and before I go there I just want to bring up a timeline that was spoken about earlier, and that timeline was when the Honourable Leader of the Opposition sent a letter to the Minister who is bringing these Bills here today. In his letter he said, *I've suggested to the Minister that he should consider extending the public consultation period.*

Subsequently, he formally wrote to the Minister to ask for more public consultation. He said in his letter that, *despite the Government's attempts to educate the public on the two Bills, the concerns are not going away.* I can tell you that the Members on this side have had quite a bit of input and quite a few calls requesting more information, as we have heard from Government Members as well.

Mr. McTaggart also added, *some public concerns arise due to misunderstanding but some are valid and need attention. Given the importance of these Bills the Government should allow an extended public consultation period. The colleagues in the Opposition share that view, an extended public consultation period will help ensure that all valid concerns are aired and considered. It can also allow the public to become more familiar with understanding the purpose and benefits of both pieces of legislation. The success of the Bills depends on getting it as right as possible at the start, and ensuring the public trusts both the population register and the national IDs.*

Madam Speaker, that was at the end of November, when the consultation had basically just gotten started. Since that letter was written, there has been quite a bit of input given to us mainly wanting more information and truthfully time, from the Minister and his team, so that they become more familiar and understand any of the questions they might have.

The other part that I want the Minister to understand, in our request to look at another two or three months' of public consultation is the importance, we believe, of granting more time to ensure people get the information they want on the Bill itself, and to see that the Amendments we were told would come at Committee Stage, are coming.

I am just going to quote from a letter that was copied to the Leader of the Opposition. It is from a law firm and it said in the conclusion part, *notwithstanding the observations, we reiterate our primary position that*

the proposed legislation in its present form must now be withdrawn from the current parliamentary agenda to allow sufficient time for the proposed amendments to be published and the opportunity for public engagement and proper consultation to take place. This letter should not be treated as a letter before action in the context of any legal proceedings that may be commenced by our client in relation to the proposed legislation. UNVERIFIED QUOTE.

Madam Speaker, I thank you for permission to read that. I think it is extremely important because it registers the level of interest and concern from the community.

It has moved to another level with a large firm representing a client that is concerned about the legislation, not in a bad way but wanting more information. I mentioned the Legal Practitioners Bill and the cruise pier consultation periods because I want us to remember that there are avenues to pursue to slow legislation down; additional reviews, more questions from the firms. I think it would be a shame, for a matter of two or three months, to have legislation bogged down in some of the other ways that it can be slowed down.

I think that the Minister has heard our side's position; we tried to give him some more information and talked about informed information for a decision to be made. I reiterate our position on this side: We believe more time for public consultation is necessary before this moves forward.

Thank you very much, Madam Speaker.

The Speaker: Does any other Member wish to speak?
[Pause] Does any other Member wish to speak?
[Pause]

The Honourable Attorney General.

The Attorney General, Hon. Samuel W. Bulgin: Madam Speaker, I rise in support of the Bill and the proposal contained therein.

Madam Speaker, there will always be a request for more time; it is just the nature of the democratic process that we operate here. It doesn't matter sometimes how long a consultation process you have, there are those who will require more time to deal with these issues. Sometimes you can accommodate those requests, but certainly, in some instances, it wouldn't make a difference because you do so, you set up meetings, you publish things— and unfortunately people still don't read it. They don't take part for any number of reasons including people are distracted; they're busy doing their daily chores, and going about their lives.

The real issue Madam Speaker, is whether there are really any fundamental defects in the legislation itself. We examined this from a human rights perspective and we have not been able to find any fundamental problems with privacy, or any of those other rights that would have been engaged by the legislation.

You heard, for example, that there are two provisions in there that will make it quite clear that all of

this is optional, is voluntary. Persons will have the choice to opt in, if they want to. Once it comes on stream Madam Speaker, clauses 3 and 5 state persons *may* apply to be registered. Therefore, there is nothing mandatory about what is being done here. It is purely voluntary, so it is difficult to see how it is going to prejudice anybody's right.

The other point I wish to make Madam Speaker, which was touched on by the Honourable Deputy Premier, the data contained here is data that is already collected and stored not just by government, but multiple agencies in the private sector. Also, Madam Speaker, the way this legislation is written it is complemented, if you will, by the Data Protection Act (2021 Revision), which helps to undergird all the privacy safeguards that you would want to ensure legislation such as this, enjoys. There's really not much concern in terms of persons' rights being abused or potentially abused.

If persons have issues with the concept or the policy, well, that's entirely another issue; but from a privacy and human rights' standpoint, the legislation itself, in my view, meets all the tests, Madam Speaker.

The other point I wish to make, Madam Speaker, you also heard that there is going to be a delay in commencing the legislation, and I am sure, given the way the democratic process works, if there are issues that are considered fundamental enough to cause the Government to revisit legislation at some time down the road, then I'm sure Government would be open to doing so— it has happened before; but it certainly cannot be just a difference in terms of how we express things in the legislation or in terms of preference, Madam Speaker. It would have had to be something fundamental.

Quite a bit of effort has been made to address concerns and to ensure that the public views are taken into account. I, myself, while driving, listened to some of the consultations on the radio, Madam Speaker, persons voicing their views about it, et cetera. It's a democratic process.

For us lawyers, Madam Speaker, there is the saying that *there are as many opinions as there are lawyers*. That hasn't changed, Madam Speaker.

Thank you.

The Speaker: Does any other Member wish to speak?
[Pause] Does any other Member wish to speak?
[Pause] Does any other Member wish to speak?

The Honourable Premier.

The Premier, Hon. G. Wayne Panton: Thank you, Madam Speaker.

Madam Speaker, I rise to make a brief contribution in respect of the Identification Register Bill, 2022. I wish to thank and congratulate my colleague, the Minister of Innovation and Member for West Bay South for his excellent presentation of the Bill; and those Members who spoke in support.

Madam Speaker, the difficulty with speaking towards the end is that much has been said in support; but I want to speak very broadly on this and say that this matter— and I think other Members acknowledged it— has been under discussion for a long time. Why has it been under discussion? Well, we have unique circumstances. Not necessarily unique to Cayman, because we have other overseas territories that are in a similar situation, but we have difficulties with proving that we are who we say we are without having to put much ink to paper, and produce many papers on each occasion.

Madam Speaker, the proposal from 15 years ago in relation to this is even more relevant today, the impetus is even stronger. This is about the aspirational goal of moving our country forward; moving our people forward; being able to save them time; being able to provide them with more convenience.

Madam Speaker, the Minister has laid all of that out, it is a strong aspirational goal for this country to utilise technology and to be the best we can be. To enable our people to be able to access the convenience, the benefits, of technology that will improve the quality of their lives and the convenience around their existence.

Madam Speaker, I have heard the Members of the Opposition commenting on the fact that there are and have been people who have expressed concerns about this legislation. Originally, as it is now, this Bill would be mandatory but, as the Minister indicated, the position of the Government is that the Minister will introduce a Committee Stage amendment to make it optional.

Madam Speaker, for me, I find it hard to understand why people, perhaps wouldn't want to avail themselves of this scenario. I haven't had any of my constituents say to me that they have concerns about it, but I understand that with every Bill, particularly one which involves technology, there will be people who will have these concerns.

Madam Speaker, I marvel at the extent to which the Minister has engaged using both technology and the traditional ways of sitting face to face with people who have concerns. He has done a phenomenal job with that. To my mind, he and his team have done an excellent job of interacting, engaging, [and] patiently explaining; and I still hear some of the same comments coming from some of the same people despite having these types of engagements and these types of explanations and interactions.

Madam Speaker, I too, do not believe that additional time is going to change those individuals and I don't believe it's an extensive number. I believe it's a relatively narrow range of people who are concerned about this to the point of not being willing to listen to any explanations. I do agree that there was a point in time when some of the comments being made were gathering some degree of traction, or raising some degree of concern in the community; but again, I think that

the job that the Minister and his team have done day after day, of engaging with these people who have been expressing these concerns, has been excellent and I don't see those people changing their views.

I have had discussions with some members of the public who reacted to some of the comments and raised questions; once they had the explanation put to them, they were happy, so I don't see it changing, Madam Speaker. I agree with the Honourable Attorney General, we will always have loads of opinions on these things.

As has been pointed out by my colleagues, the Deputy Premier and the Minister, the approach here will be one that takes place over a period of time and no doubt, in the same way that there has been interaction on this Bill, there will be continuing interaction and engagement by the Ministry, the Minister, and his team of very capable people over that period of time, who will put the issues with a great deal of clarity to everyone who is interested in understanding what is happening. There will always be some, Madam Speaker, who will maintain their concerns. As I said, I don't see it changing.

Madam Speaker, my own experience in my former life as an attorney, my experience in business, my experience previously, when I was the Minister responsible for Commerce, all of it tells me, Madam Speaker, that this approach of using technology to minimise the degree of interaction required and maximise our people's time to allow them to be able to interact with the various government agencies, to interact perhaps with various parts of the private sector, all of these things, will prove very, very beneficial to them.

Up until months ago, I still had senior people from the financial services industry complaining to me about people asking them for updated information and what not. They say, *I've had a relationship with these folks for 35 or 40 years, how can they say they don't know who I am?* Well, technology is going to help this sort of thing, Madam Speaker. It is going to make a difference, and if it can make a difference for those people who can pay other people to worry about problems like that, it is going to make an even bigger difference for the average person who can't afford to do it, but who will benefit from opting into this registry and, ultimately, with the card which we will deal with later, under the [Cayman Islands Identification] Card Bill, 2022.

Madam Speaker, to my mind, this is an excellent piece of legislation and I want to thank the team again, but I agree [that] we should also thank all those people who have been involved, and give credit to those who have been involved previously, in bringing this to the stage and that includes Members of the current Opposition, previous administration and, specifically, the Member for George Town North.

Madam Speaker, I remember when I was a Minister for Commerce and we were dealing with things like renewing trade and business licences. Customers would have to come and get a form to apply for the

grant or renewal; they would have to go to the Police Records Department down in Walkers Road, which is where it was at the time, and apply to get the police clearance; then they would have to go the next day to pick it up, because that's when it was ready. I think subsequently they started charging an express fee for it.

Madam Speaker, at the time I challenged the then head of the Department of Commerce to change this approach, to make it a one-stop where people coming in to renew or to apply for licences could pay one set of fees, file one set of forms— whatever those forms were— and everything that government had to do would be done behind the scenes. That saved time and improved convenience, Madam Speaker. This is an extension of that, this is continuing to utilise technology to improve the lives of our people.

Thus, Madam Speaker, to everyone who has contributed, thank you; because I think that before this thing is fully rolled out, we will have people recognising the increasing value of it; and I think the Ministry will be busier than they anticipate, because they're going to get many people participating. I know I want to be one of the first ones— I will not try to exercise any kind of privilege, but I would love to be one of the first ones to get it.

Madam Speaker, with that, I say, thank you very much, and I, too, confirm support for this Bill.

The Speaker: Does any other Member wish to speak?
[Pause] Does any other Member wish to speak?
[Pause] Does any other Member wish to speak?
[Pause]

If not, does the mover of the Bill wish to exercise his right of reply?

Hon. André M. Ebanks: Yes, Madam Speaker, briefly.

Madam Speaker, I thank all Members for their comments and contributions to this Bill. I thank the Auditor General, as always, for prudently and wisely guiding this House in confirmation that on his Chamber's reading, there are no data protection issues or human rights concerns that should give us pause to withdraw the Bill and make amendments.

Gathering from what the Opposition Members have said, it seems that they too have no major difficulties with the provisions of the Bill, and that the proposed Committee Stage Amendments that I will bring cover most of the concerns that they heard from constituents, so the question of time is really just to continue to talk people through it, which will occur, Madam Speaker. It will occur in terms of, when the software and hardware are being rolled out, there will be even more extensive consultation, and if the Members of the Opposition would like to join us in the education process, we are more than happy to have them.

Madam Speaker, in terms of some of the examples that were raised for additional time, I think this Bill can easily be distinguished from exercises like the Port, which would irreversibly change our seafront or

mandatory provisions that would regulate lawyers. It is an optional, innovative tool that provides your identity with information which the Government already has, and is up to you to join when you'd like to join. I don't think those prior examples raised to the stakes of those concerns as this legislation.

I would take just a very brief moment to piggy-back on the Premier's and the Deputy Governor's comments about the extraordinary team in the Innovation Ministry. The work of the e-Government, not just its Director, Ian Tibbetts, but his entire staff has been phenomenal, working hard to bring this innovative tool to fruition.

Thanks also to the Acting Deputy Chief Officer, Charles Brown; Trevor Gibbs, Sean Whewell, Kendra Okonski and legal drafter Ryan Awai and his colleagues in the Chamber, who I think had to put up with the policy team over the last six months of going through stakeholder feedback— not just when the Bill was published, but the focus groups prior to that, for such extraordinary work.

Madam Speaker, if all we are talking about is continue to talk people through something and give illustrative examples and once they have heard it they are at ease, I think this House can go forward confidently in passing the Bill and providing more public consultation as it gets rolled out. There will be different consultative or commencement stages, but there won't be a commencement of the card and access to the register until at least July. With that, we can continue to lead our people into the digital era.

Thank you, Madam Speaker.

The Speaker: The question is that a Bill shortly entitled the Cayman Islands Identification Card Bill, 2022 be given a second reading.

All those in favour, please say Aye. Those against, No.

AYES and NOES.

The Speaker: The Ayes have it.

Hon. Roy M. McTaggart, Leader of the Opposition, Elected Member for George Town East: Madam Speaker, may we have a division?

The Speaker: Sure.

Division No. 6/2022-2023

AYES: 10

Hon. G. Wayne Panton
Hon. Christopher S. Saunders
Hon. Kenneth V. Bryan
Hon. Sabrina T. Turner
Hon. André M. Ebanks
Hon. Bernie A. Bush
Hon. Dwayne S. Seymour
Mr. Isaac D. Rankine

NOES: 6

Hon. Roy M. McTaggart
Hon. Joseph X. Hew
Hon. Sir Alden McLaughlin
Mr. Moses I. Kirkconnell
Ms. Barbara E. Conolly
Mr. David C. Wight

Ms. Heather D. Bodden
Hon. W. McKeever Bush

Absent: 2

Hon. Johany S. Ebanks
Hon. Juliana Y. O'Connor-Connolly

[Pause]

The Speaker: I have 10 Ayes, 6 Noes and 2 who were not in their chairs at the time, therefore the Ayes have it.

Agreed: The Identification Register Bill, 2022 was given a second reading.

CAYMAN ISLANDS IDENTIFICATION CARD BILL, 2022

The Speaker: The Honourable Minister of Financial Services and Commerce.

Hon. André M. Ebanks: Madam Speaker, I beg to move the Second Reading of a Bill entitled the [Cayman Islands] Identification Card Bill, 2022.

The Speaker: The Bill has been duly moved. Does the mover wish to speak thereto?

Hon. André M. Ebanks: Yes, thank you again, Madam Speaker.

Madam Speaker, I rise to present the Bill on behalf of the Government. The Cayman Islands Identification Card will operate upon the foundation of the Identification Register.

The card represents a tool to be used by individuals who are enrolled in the register to share their information when they need to, in a highly secure and efficient manner. There are, of course, other forms of government-issued documentation, and I will take a little time to explain why the Cayman Islands identification card is unique, and an improvement on any other government-issued document for the purpose of identifying oneself.

Madam Speaker, firstly, the identification card is created solely for the purpose of identification. That might sound obvious or perhaps even redundant, but it is an important distinction to make. A driver's licence may be used for identification purposes, but it is not an identification card. It's a card that confirms that an individual who has possession of it has permission to drive certain types of vehicles on the roads.

A British Overseas Territory Citizen passport which actually belongs to the Government of the United Kingdom and not to the Cayman Islands Government can be used for identification purposes, but it is fundamentally a document that permits an individual to travel.

A voter's ID may be used for identification purposes generally, but it's actually a document that confirms that you are a registered voter therefore, if you can't vote or do not vote, you won't have that card.

Madam Speaker, the Cayman Islands identification card would be the only government-issued document with the primary purpose of allowing the cardholder to reliably identify his or herself as laid out in the Deputy Governor's contributions on the Identification Register Bill.

Madam Speaker, not all IDs are created equal. There are limitations on the amount of information that a flat piece of plastic can communicate. Without the ability to verify or authenticate the information on the relevant register once the information changes, the card becomes obsolete and needs to be reprinted. Additionally, Madam Speaker, not all forms of ID are available to everyone who needs to verify their ID—features such as an expiration date entail revalidation of the holder's information by the entity holding the relevant register.

Furthermore, Madam Speaker, many documents do not feature the multiple, modern, security features that are included in the Cayman Islands identification card. The card's strong security features have been included not in the least because it's intended to be used to share personal information at your choice, and despite that information being minimal, it is still personal. As such, great lengths have been taken both in the Bill and in the design of the card to ensure high levels of security are being met at all times.

Madam Speaker, for these reasons I believe that this Bill is needed in this day and age to allow our people to securely and reliably identify themselves for the purpose of interacting mainly with the public sector, but also with certain sections of the private sector. It's also high time that the Government of this country lay the infrastructure for qualified digital signatures to become accessible to every resident of our country, giving rise to the opportunity for each and every one of us to participate in the digital age. In other words, it helps our people participate in the digital economy that is coming all around us.

At this time, Madam Speaker, I would like to go through the Bill to explain how we are going to deliver this identification solution. The Bill has several parts that I will take the House through now and a few key sections that I will highlight.

Part 1, starting with clause 1 provides a short title and commencement of the legislation.

Clause 2 defines certain terms that are used throughout the Bill.

Part 2, starting with clause 3 provides for the use of an identification card—which is quite straightforward but I can spell out the uses in clause 3(2) for clarity.

- a) Authenticating the individual's identity physically, or digitally, as the individual or another person may require;
- b) Accessing the identification information related to the individual in the register;
- c) Accessing information related to the individual by reference to the individual's identification code; and
- d) Enabling the digital signing of the individual.

Generally speaking Madam Speaker, an identification card is a tool that allows the cardholder to easily and securely share their identity information as and when needed, either in person or online.

Clause 4 specifies the eligibility criteria for the issuance of the identification card, which is effectively the same criteria as exists for enrolment in the register. In short, Madam Speaker, if someone is enrolled in the register then they are able to apply for the ID Card.

Clause 5 provides for the application for the issuance of an identification card, which is intended to be a very straightforward process and may require an individual to be in person to be photographed prior to issuance.

Clause 6 requires the Registrar to verify the identity of the individual who applies for the issuance of a card which as you might expect, Madam Speaker, is to ensure that the issuance of the card is done properly and to ensure the right person gets the right identification card.

Clause 7 sets out the conditions under which the Registrar may issue an identification card. As previously mentioned Madam Speaker, the identification card application process is intended to be straightforward and allow persons to collect the card in person, via delegate, or possibly by mail; confirmation of receipt of the card may also be necessary.

Clause 8 sets out the grounds on which the Registrar may refuse to issue an identification card, which are very limited, Madam Speaker.

Clause 9 enables the Registrar to issue an identification card to an individual who is incapacitated or is in the care and custody of a public institution. This clause is noteworthy, Madam Speaker, because it enshrines into the Act that the identification card is available to everyone, even those who have been institutionalised and may not qualify for a voter's card, a driver's licence, or passport, depending on their circumstances; because proof of ID is so important, the Bill contemplates ensuring that all residents have the ability to obtain it.

Clause 10 sets out the information that would be contained in the identification card which at present are:

- (a) Given names and surname;
- (b) Date of birth;
- (c) Sex;
- (d) Immigration status in the Islands;
- (e) Identification code;

- (f) Date of issue
- (g) Date of expiry;
- (h) Photo or facial image;
- (i) The signature or image of a signature; and at the moment
- (j) any other characteristics prescribed by regulations.

I will point out here, Madam Speaker, that as with the Identification Register Bill, 2022, I intend to bring a Committee Stage amendment to close this list so that additional categories can be prescribed by Cabinet, but they would have to come back to Parliament.

Clause 11 prescribes the circumstances under which an identification card is valid, which are very straightforward, Madam Speaker—essentially, that the card is valid as long as it has been issued in accordance with the legislation, is not expired, and has not been rendered invalid in any other way.

Clause 12 requires the Registrar to rectify errors that are discovered in order to ensure the data in the identification card is accurate.

Clause 13 prohibits the transfer of a person's identification card to another person; for obvious reasons, Madam Speaker, including for data protection and to maintain the integrity of the register and the card system.

Moving to Part 3, clause 14 requires the holder of an identification card to notify the Registrar of any inaccuracies in the data entered in the identification card and of any malfunction of any feature of the ID card.

Clause 15 requires the holder of an identification card to notify the Registrar as soon as practicable where the individual has reasonable cause to suspect that the identification card is lost, stolen, damaged, tampered with, used by any other person without permission, or destroyed.

Moving to Part 4 of the Bill, clause 16 requires that a person who is knowingly in possession of an identification card without having the lawful authority of the holder or permission from the Registrar, must notify the Registrar of the person's possession of the ID card and comply with directions from the Registrar. A person may also voluntarily surrender an identification card—so those who have come into the system and are uncomfortable for whatever reason, can notify the Registrar in a manner that is specified by regulations and voluntarily surrender the card.

Clause 17 empowers the Registrar to suspend an identification card upon being satisfied that, among other things: The identification card was based on inaccurate or incomplete information, the identification card was issued in error, or has been lost or destroyed or otherwise tampered with.

Clause 18 provides for the circumstances in which the Registrar may cancel an ID card, such as where the application for the identification card contained false or misleading information or there has

been an unauthorised modification of the information in the register in respect of the holder.

Clause 19 will give the Registrar the power to restore an identification card where the Registrar is satisfied that the issue in relation to the suspension, cancellation or other limitation has been resolved, or if there is an existing legitimate interest for doing so.

Clause 20 sets out the circumstances in which the Registrar may destroy an identification card and the procedures to be followed in relation to the proposed destruction.

Clause 21 provides that the identification card may be used to authenticate the identity of the holder, either in person or digitally. This clause, in its current form also states that the public authority may require the use of an ID card for the purposes of authenticating an individual's identity.

Clause 22 empowers the Registrar or law enforcement to demand that a person having possession or control of an identification card, including a document purporting to be an identification card, to surrender it to those authorities where there is reasonable grounds to suspect that it has been obtained by any false or misleading information, used in the commission of an offence under the legislation, falsified, or forged.

Clause 23 requires that the Registrar takes technical and organisational measures to implement necessary safeguards to ensure that the information in possession or in control of the Registrar, including information stored in the register and the card database is secured; protected against access, use or disclosure not permitted under the legislation or regulations; accidental or intentional destruction; loss or damage.

Madam Speaker, you may recall there is a very similar provision in the Identification Register Bill, 2022 that legislated that the Registrar is to ensure the security and integrity of the data held in the register. This is the same concept, Madam Speaker, except it relates to protecting the data actually held on the card and the access and/or sharing of information via the card.

Clause 24 stipulates that except under certain prescribed conditions, the identification information collected under the legislation may be disclosed only in accordance with the provisions of the Act and any regulations made hereunder.

Clause 25 imposes a duty of confidentiality on a person who has an official duty or is employed in the administration of the legislation, is a current or former agent or consultant of the Registrar, and creates an offence for breach of duty. Madam Speaker, this is the same duty of confidentiality that exists in the Identification Register Bill.

Part 6 is the part of the Bill that deals with offences and you will note that they are essentially identical to the offences in the Identification Register Bill, 2022, only slightly amended to reflect that they are ID cards. In that case, Madam Speaker, I will just cross refer to the presentation on the Identification Register

Bill, 2022 because those are set out there and they also derive from data protection.

Part 7, once again, the clauses are very similar to the provisions in the Identification Register, as I previously discussed.

Clause 34 provides for the liability of a director, secretary or similar officer of the body corporate or person who is purporting to act in any such capacity where an offence has been committed by a body corporate.

Clause 35 specifies, among other things, that no suit or other proceedings may be brought or instituted personally against the Registrar or any officer appointed by the Registrar in respect of any lawful act done, or mission made, in good faith, in the course of carrying out duties under the legislation.

Clause 36 also allows a person aggrieved by a decision of the Registrar to appeal the decision by submitting a written notice of the person's intentions to appeal to the Chief Officer of the Ministry in accordance with the procedure that will be prescribed by regulations.

Clause 37 enables the Cabinet to make regulations for the better carrying out of the objects and the purpose of the legislation. However, as per normal, Madam Speaker, regulations cannot go beyond the intent and purpose of the primary legislation.

With that, I commend the Cayman Islands Identification Card Bill, 2022 to this honourable House.

Thank you, Madam Speaker.

The Speaker: Does any other Member wish to speak?
[Pause] Does any other Member wish to speak?
[Pause] Does any other Member wish to speak?

That is good. Well, does the mover of the Bill wish to exercise his right of reply?

[Inaudible interjection]

Hon. André M. Ebanks: Yes, Madam Speaker, very briefly.

Madam Speaker, only to thank all of the staff again, the Attorney General's Chambers, all of the individuals behind this hard work. It has been enormous and incredible.

I truly believe it will transform our people's lives; educate our people, prepare us, again, for the digital economy that continues to face us every day, and grant an ID to those who feel forgotten, as the Deputy Governor referenced in his contribution to the debate on the prior Bill. We will provide social and financial inclusion, and for those who still have a hesitation or concern, it is totally voluntary— they will be able to decide when they feel comfortable applying for the card.

Thank you, Madam Speaker.

The Speaker: The question is that a Bill shortly entitled the Cayman Islands Identification Card Bill, 2022 be

given a second reading. All those in favour, please say, Aye. Those against, No.

AYES and NOES.

The Speaker: The Ayes have it.

Hon. Roy M. McTaggart, Leader of the Opposition: Madam Speaker.

The Speaker: Sorry.

Hon. Roy M. McTaggart, Leader of the Opposition: May we call for a division, please?

The Speaker: Sure.

Division No. 7/2022-2023

AYES: 8

Hon. Christopher S. Saunders
Hon. Kenneth V. Bryan
Hon. Sabrina T. Turner
Hon. Johany S. Ebanks
Hon. André M. Ebanks
Hon. Bernie A. Bush
Mr. Isaac D. Rankine
Hon. W. McKeever Bush

NOES: 6

Hon. Roy M. McTaggart
Hon. Joseph X. Hew
Hon. Sir Alden McLaughlin
Mr. Moses I. Kirkconnell
Ms. Barbara E. Conolly
Mr. David C. Wight

Absent: 4

Hon. G. Wayne Panton
Hon. Juliana Y. O'Connor-Connolly
Hon. Dwayne S. Seymour
Ms. Heather D. Bodden

[Pause]

The Speaker: I have 8 Ayes, 6 Noes, and 4 absent from the Chamber, therefore the Ayes have it.

Agreed: The Cayman Islands Identification Card Bill, 2022 was given a second reading.

MUSIC AND DANCING (CONTROL) (AMENDMENT) BILL, 2022

The Speaker: The Honourable Minister of Financial Services and Commerce.

Hon. André M. Ebanks: Madam Speaker, could I beg you for a five minute recess so I can have a comfort break.

The Speaker: Yes.

Members we will take this opportunity to break for some refreshments. We will resume at 6.15 p.m.

Proceedings suspended at 5.37 p.m.

Proceedings resumed at 6.18 p.m.

The Speaker: Proceedings are now resumed. You may be seated.

I call on the Honourable Minister of Financial Services and Commerce.

Hon. André M. Ebanks: Thank you for the break, Madam Speaker, which other Members took advantage of more than I did.

[Laughter and inaudible interjection]

Hon. André M. Ebanks: I didn't say older; don't start it. Madam Speaker, just to reiterate, I beg to move the Second Reading of a Bill entitled the Music and Dancing (Control) (Amendment) Bill, 2022.

The Speaker: The Bill has been duly moved. Does the Honourable Minister wish to speak thereto?

Hon. André M. Ebanks: Thank you, Madam Speaker. Madam Speaker, I rise to present the Bill on behalf of the Government. It seeks to amend the Music and Dancing (Control) Act (2019 Revision), which I will refer to hereon in as "the Act", in order to permit background music to be played on Sundays in stand-alone bars and on sea-going vessels with liquor licences.

Madam Speaker, we are all aware of the detrimental effect the pandemic had, and generally continues to have, on small businesses and the importance of economic empowerment for our people. With this in mind, during the 2022-2023 budget process my team in the Ministry and I, made it a priority task for 2022 to review the issues and make applicable changes to the Act that would be required to address the current inequity as best as possible; that inequity being, Madam Speaker, [that] under the Act, as it's written today, hotels and restaurants with bars can play background music on Sundays, but stand-alone bars cannot.

Madam Speaker, the Parliament may also recall that the Member for Red Bay submitted Private Member's Motion No. 3/2021-2022 entitled Allowing Background Music in Bars on Sundays, at the Third Meeting of the 2021/2022 Session of Parliament on the 9th June, 2022. In that presentation, the Member pointed out the challenges Caymanian-owned businesses have to endure given the lack of a level playing field, while still struggling to recoup their losses experienced during the period of the pandemic. There are approximately 40 or more bars in this category.

Madam Speaker, the Government had no fundamental difficulty with that Motion and accepted it as the Ministry team was working on the matter in any event and as such, there was no need to argue just for argument's sake.

Madam Speaker, following the sitting of Parliament, the Ministry team and I received representations from several sea-going vessel operators who were also prohibited from playing music for their passengers and permitting dancing on their vessels on Sundays.

This is owing to the fact, Madam Speaker, that within the context of the Liquor Licensing Act (2019 Revision), sea-going vessels fall within the definition of premises; and according to the Music and Dancing (Control) Act (2019 Revision), premises subject to this Act means premises which are licensed under the Liquor Licensing Act (2019 Revision), but do not include exempted premises. What that means in laypersons' terms Madam Speaker, is that bars and sea-going vessels in possession of a liquor licence require a music and dancing licence to play music and permit dancing.

This prohibition places these persons at a disadvantage which negatively impacts their bottom lines as patrons, local and international, can choose to go to hotels and restaurants where they can enjoy background music on Sundays.

In reviewing this legislation as far back as 1995 we noted that, prior to the 2019 Revision of the Act, all prior versions provided for a general prohibition in relation to the playing of music and dancing on Christmas Day, Good Friday and Sundays. All versions also provided the exception that music could only be played on those days at the airport and port areas in order to welcome passengers; and in restaurants or hotels between the hours of 9.00 a.m. and 11.45 p.m., provided that it was pre-recorded, of a soft background nature, and was not to be heard beyond the boundaries of the property in which it was played.

Over the years, Madam Speaker, there has been a gradual increase in the categories exempted from this prohibition. The 2019 Revision significantly brought in the categories, but this never extended to stand alone bars and sea-going vessels. Additionally, the 2019 Revision introduced the requirement for music not to be played in excess of prescribed noise levels, but still maintained the prohibition.

With that background, Madam Speaker, the Ministry continued and embarked on consultation undertaken with a number of internal government stakeholders, including the Department of Environmental Health, Department of Commerce and Investment, the Coast Guard, Department of Tourism, the Department of Children and Family Services and the Ministers Association, as well as a group of owners and operators of stand-alone bars and sea-going vessels.

Our aim was to be inclusive and ensure that as many key voices as practical were heard. The proposed amendments were largely accepted and feedback received was used to refine and finish the Bill.

Madam Speaker, the Bill being presented today seeks to equalise economic opportunities for the owners of stand-alone bars and sea-going vessels. The Bill also aims to balance the concerns of local business owners with the wider community and is mindful of the potential added duty this might place on enforcement agencies.

Madam Speaker, I will now summarise the key amendments in the Bill. The amendments will allow

business owners with liquor licences to expand services on Sundays, increasing their potential for profitability and business growth, and the subsequent growth of this sector of the economy, including some job creation. The amendments do not apply on Good Friday and Christmas Day, but Sundays only.

The requirement now is that music being played is of a low background nature and is not capable of being heard outside of the premises in which it is played. This amendment recognises that noise levels were previously prescribed or to be made in regulations, but that never happened. This way, with just using ordinary definition and be able to discern whether or not you can hear soft background music outside the premises should be sufficient. As such, references to the description of decibel levels have been removed as well as the requirement for music to be pre-recorded. The cut-off time has also been extended from 11.45 p.m. to 11.59 p.m.

The Amendment continues to apply to the airport and port areas welcoming arriving passengers, as defined under the Port Authority Act (1999 Revision), or restaurants or hotels that are premises subject to the Music and Dancing (Control) Act (2019 Revision). Sea-going vessels can operate on Sundays, but are subject to the requirement to be half a mile out to sea before music can be played and its permitted hours are between 11.00 a.m. and 11.59 p.m., Madam Speaker.

The reference to the making of regulations by Cabinet to prescribe noise levels has been removed. This in no way hampers the ability to provide for the making of regulations, but rather than having the regular making power be confined to that narrow issue of noise, it has now been extended to just general administration of the Act.

Ultimately, this Bill is intended to cause minimal disruption on Sundays, Madam Speaker, by allowing activity that is already taking place in the restaurant and hotel sectors to be extended to stand alone bars and sea-going vessels. The intention is to help to create a more level playing field, Madam Speaker, and enable these sectors to generate additional revenue.

Briefly, Madam Speaker, the Bill is arranged in four clauses:

Clause 1 of the Bill provides for the short title and commencement of the legislation.

Clause 2 amends section 2, the interpretation section of the principal Act, by inserting definitions of the following terms in the appropriate alphabetical sequence. The following specific amendments are being made:

Defined term of “bar” has the meaning assigned by section 2 of the Liquor Licensing Act (2019 Revision).

Definition of “Port Authority” means the body corporate established by section 3 of the Port Authority Act (1999 Revision).

Definition of “sea-going vessel” means a vessel—

- (a) Approved by the Port Authority as being a suitable vessel for the purposes of section 7(7) of the Liquor Licensing Act (2019 Revision); and
- (b) In respect of which a retail licence has been issued under section 7(7) of the Liquor Licensing Act (2019 Revision); and

“Stand-alone retail bar” means a bar which is not located in a hotel or restaurant, and in respect of which a retail licence has been issued under the Liquor Licensing Act (2019 Revision).

Clause 3 (a), Madam Speaker, amends section 3(2) of the Act to repeal and replace the current provision that requires music to not be played in excess of prescribed noise levels and provides instead, that music being played is of a low background nature and is not capable of being heard outside the premises in which it is played. The time during which music can be played is between 9.00 a.m. and 11.59 p.m.

Clause 3(b) Madam Speaker, introduces new subsections 3(2A) and (2B) which provide that stand-alone bars and sea-going vessels respectively, may play music or permit dancing on Sundays.

The new subsection 3(2A) provides that music may be played or dancing permitted at a stand-alone retail bar on Sundays, with the condition that the music is required to be of a low background nature and is not capable of being heard outside of the premises in which it is played and that such music is played between the hours of 11.00 a.m. and 11.59 p.m.

The new subsection 3(2B) provides that music may be played or dancing permitted on Sundays on a sea-going vessel, with the condition that the music only be played between the hours of 11.00 a.m. and 11.59 p.m. The music should not be played if the vessel is less than half a mile out to sea.

Clause 4 amends section 14, which establishes the regulation-making power of Cabinet for the purposes of administration of the Act rather than being confined solely to dealing with noise levels.

Madam Speaker, this winds up my presentation of the Bill. I would like to thank the Ministry of Financial Services and Commerce and the Department of Commerce and Investment, along with all of the internal and external stakeholders who provided consultation, insights, feedback and analysis. My thanks always to the legal drafting team who assiduously worked to ensure the Bill is ready for this Meeting, thereby meeting the objective of completing this matter in 2022.

With that Madam Speaker, I commend the Music and Dancing (Control) (Amendment) Bill, 2022 to this honourable House.

The Speaker: Does any other Member wish to speak?
[Pause]

The Honourable Elected Member for Red Bay.

The Hon. Sir Alden McLaughlin: Thank you, Madam Speaker.

Madam Speaker, I want to start by thanking the Honourable Minister and the Government of which he is a Member, for responding so swiftly to the resolution of this House that followed the Private Member's Motion which I moved about six months ago in relation to this matter. I don't recall the resolution of a Private Member's Motion returning to this House in the form of a Bill so swiftly ever, so I am most grateful to the Member and his team.

The Member has gone through the clauses of the Bill which I believe have the required effect of levelling the playing field for all licensed premises in these Islands. I am not going to belabour the matter or go through the clauses again; I'm simply going to say that I am sure the owners and patrons of these 40-plus local bars will be most thankful, particularly in this festive season, that patrons will have the benefit of listening to music on a Sunday afternoon and evening while they are sipping a few. I know because a number of them have spoken to me about the enforcement of the provision which has been in the law for ages.

The police coming around and saying, *you are breaking the law by playing music on Sunday*, has had a serious negative impact on some bars' Sunday business and the Sunday crowd that came there, so all I will say is thanks again to the Minister and to the Government on behalf of the owners and patrons of locally-owned liquor licensed premises which have music and dancing licences.

Happy Christmas!

The Speaker: Does any other Member wish to speak?
[Pause] Does any other Member wish to speak?
[Pause] Does any other Member wish to speak?
[Pause]

Does the mover of the Bill wish to exercise his right of reply?

Hon. André M. Ebanks: Thank you, Madam Speaker.

Very briefly, just to thank the Member for Red Bay for his comments. I think it's an example of the House recognising, when there is an inequity, to try to fix it, particularly in lean and struggling economic times. It was a pleasure to work on the Bill and to be able to achieve that result.

I would also like to highlight the Member for Red Bay's comments about the provisions in this Bill meeting and addressing the concerns, as it allows me to thank legislative drafter Bethea Christian for drafting in such a succinct manner as to be able to address this issue.

With that Madam Speaker, I share the Member for Red Bay's Christmas cheer.

The Speaker: The question is that a Bill shortly entitled Music and Dancing (Control) (Amendment) Bill, 2022 be given a second reading.

All those in favour, please say Aye. Those against, No.

AYES.

The Speaker: The Ayes have it.

Agreed: The Music and Dancing (Control) (Amendment) Bill, 2022 was given a second reading.

NATIONAL ROADS AUTHORITY (AMENDMENT) BILL, 2022

The Speaker: The Honourable Minister of Planning, Agriculture, Housing and Infrastructure.

Hon. Johany S. Ebanks, Minister of Planning, Agriculture, Housing and Infrastructure, Elected Member for North Side: Madam Speaker, I beg to move the Second Reading of the Bill entitled the National Roads Authority (Amendment) Bill, 2022.

The Speaker: The Bill has been duly moved, does the Honourable Minister wish to speak thereto?

Hon. Johany S. Ebanks: Madam Speaker, this Bill amends the National Roads Authority Act (2016 Revision) to facilitate the basis of funding for the National Roads Authority (NRA).

Madam Speaker, while it is a simple amendment, it is an important one in so much as it provides the necessary increase in funding for the NRA to be self-sustaining through a revenue scheme that was realised from the inception of the Authority. If I may, I would like to provide a brief overview to this honourable House and members of the general public.

Madam Speaker, the National Roads Authority was established on the 1st July, 2004 by the National Roads Authority Act. The Act provides for the collection of funds from road users into Central Government in the form of import duties on vehicles and fuels, and funds attained from the Department of Vehicle and Drivers' Licencing (DVDL) such as vehicle inspections, registrations and licences, and drivers' licence fees.

Madam Speaker, up until 2014 the NRA was funded by producing and selling outputs of Central Government, which in turn incurred expenditures for purchasing the outputs. Having said that Madam Speaker, while the original law provides for the establishment of a Road Fund intended to be used to fund the purchase of these outputs, such a facility was seemingly not established or utilised.

As a result, Madam Speaker, Appropriations by Central Government to fund purchases of NRA outputs was not uniform, and as such, distracted from the NRA's ability to plan and operate.

In August 2015, Madam Speaker, Parliament— then known to us as the Legislative Assembly— approved an amendment to the National Roads

Authority Act (2006 Revision), redefining the revenues that went into the Road Fund and authorised the Cabinet to transfer up to \$10 million of revenue to the Authority to fund its operations; in particular, Madam Speaker, the construction, upgrading and maintenance of public roads.

Madam Speaker, the net effect of the Amendment in 2015 was that the NRA now receives its funding from revenues collected by Central Government. Consequently, Central Government no longer incurred expenditures in funding the NRA.

While the Amendment was a welcome change to the NRA, particularly the increase in and consistency of funding, it was recognised that the arrangement would eventually have to be revised. For instance, Madam Speaker, since the 2014-2015 budget year, we have seen the revenue of the Road Fund steadily increase while the NRA has constantly received \$10 million. Conversely, Madam Speaker, and as expected, the Authority has seen its expenses rise over the years. In other words, the Authority has had to do more with the same.

Earlier this year, Madam Speaker, Cabinet approved an amendment in the NRA Act that authorised the transfer of up to \$14 million from the Roads Fund to the authority, to fund its operations. Once brought into effect, revenue to the Authority will be derived from the two main sources that contribute to the Road Fund; those being up to \$10 million from the fuel import duty collected under the Customs Tariff Act (2017 Revision), and up to \$4 million from the motor vehicles charges collected under the Traffic Regulations (2021 Revision). I should note, Madam Speaker, the Amendment allows for funds to be retroactive as of January 2022.

Madam Speaker, the effect of this Amendment will allow Central Government and the NRA to benefit proportionally from the growth in revenues from the road transport sector. For example, Madam Speaker, should these revenues decline, both government and the Authority can realise a decrease in funding together.

Madam Speaker, the Bill seeks to amend the National Roads Authority Act (2016 Revision) in order to amend the basis of the funding for National Roads Authority.

Clause 1, short title. This Act may be cited as the National Roads Authority (Amendment) Act, 2022.

Clause 2, amendment of section 19 of the National Roads Authority Act (2016 Revision) - revenue to be placed into the Road Fund and transferred to the Authority to fund its operational costs.

The National Roads Authority Act (2016 Revision) is amended in section 19 by repealing subsection (1) and substituting the following subsection:

“(1) The Cabinet, with effect from 1st January 2022, shall authorise the transfer of revenue not exceeding fourteen million dollars, to the Authority, via the Road Fund, for the purpose of funding the Authority’s annual operating cost, in particular, the

construction, upgrading, rehabilitation and maintenance of public roads.”

Madam Speaker, this extra funding for NRA is so important because throughout the years we have seen where NRA has always had to hire many “temps” [temporary employees] and can only keep them on for a period of time before we had to let them go because we were stuck at \$10 million and couldn't hire them as full-time staff.

With this \$14 million Madam Speaker, many of those temporary people, guys who work really hard out in the hot sun every day doing our road works, will be able to become full-time employees; and not only that, but their families will be able to have insurance, because as temps, insurance could not be offered to them— so this is a big win for the NRA, Ma'am.

I really look forward to the full support of the House for this Bill to pass.

Thank you, Madam Speaker.

The Speaker: Does any other Member wish to speak? *[Pause]*

The Honourable Deputy Leader of the Opposition.

Mr. Joseph X. Hew, Deputy Leader of the Opposition: Thank you, Madam Speaker.

Madam Speaker, I rise to offer a short contribution to the National Roads Authority (Amendment) Bill, 2022. I thank the Honourable Minister for his introduction to the Bill and his explanation on the background on the need for the Amendment.

Madam Speaker, the Opposition has absolutely no issue with this as, being the former Minister for the NRA, I certainly understand the challenges, needs, and in some instances the desires, that the NRA and the Minister have, versus the funding available to do so. This was an issue that we had also identified and we had prepared— in fact, I think we had submitted a proposal to the Ministry of Finance, prior to the pandemic.

That proposal, Madam Speaker, sought to address the issue with the uniform funding for NRA, by using a fixed percentage of the Road Fund as the level of funding that would be budgeted for the NRA. The thought process behind that Madam Speaker— and perhaps someone on the other side could say whether or not they looked at that— was that, as the Minister rightfully said, some of the main contributors to the Road Fund is the fuel tax, the motor vehicle licensing and certainly, import duties.

Now if we were to look at the issues we are facing with traffic at the moment caused, one would assume, by the large number of vehicles imported as we heard last week when we were debating the issue, then it would be reasonable to assume that as the importation of vehicles, the licensing of vehicles, the importation of fuel to service those vehicles go up, the demand would go up for the NRA to build roads, to maintain the roads in order to deal with the increases.

Then, Madam Speaker, if the demand goes down, the fuel importation reduces, the vehicle importation reduces, the licensing of vehicles reduces, then the NRA's budget would adjust itself back down in line with its needs. That was the thought process that we had when reviewing this issue and the idea as I said, was to affix a percentage of the Road Fund to the NRA budget.

Madam Speaker, I am happy that the Minister was able to get this through his Cabinet and bring it here this evening, because I have always maintained that the road network in the Cayman Islands is one of, if not *the* Government's largest fixed asset. If you were to look at the percentage of the budget for the NRA versus the value of that asset, it is minute, it's less than one per cent, Madam Speaker; so I am happy to see this.

I would not leave it at this, because you will always be coming back to the Parliament as the population changes, as the importation of vehicles changes, et cetera. I would humbly recommend that perhaps the Minister and his team have a look at the thought process that we were undertaking, where the NRA budget is affixed to a percentage of that Road Fund. Otherwise, we have absolutely no problem in supporting this Government Bill.

Thank you, Madam Speaker.

The Speaker: Does any other Member wish to speak?
[Pause] Does any other Member wish to speak?
[Pause] Does any other Member wish to speak?
[Pause]

Does the mover of the Bill wish to exercise his right of reply?

Hon. Johany S. Ebanks: Madam Speaker, just to thank the House for their full support on this Amendment to the National Roads Authority Act (2016 Revision); it's a great pleasure.

I'm pretty sure that people listening who work with the NRA, especially those who are "temps", are happy to know that this extra funding is coming.

[Desk thumping]

Hon. Johany S. Ebanks: To know that they no longer have to be on temporary [employment] alone, should be a Christmas gift to them; knowing that next year they will be full employees. For the families of those who need insurance to know that they are covered from here on out.

I want to thank everyone in this House for their support.

The Speaker: The question is that a Bill shortly entitled National Roads Authority (Amendment) Bill, 2022 be given a second reading.

All those in favour, please say Aye. Those against, No.

AYES.

The Speaker: The Ayes have it.

Agreed: The National Roads Authority (Amendment) Bill, 2022 was given a second reading.

UTILITY REGULATION AND COMPETITION (AMENDMENT) BILL, 2022

The Speaker: The Honourable Deputy Premier.

Hon. Christopher S. Saunders, Deputy Premier: Madam Speaker, I beg to move the Second Reading of the Utility Regulation and Competition (Amendment) Bill, 2022.

The Speaker: The Bill has been duly moved. Does the mover wish to speak thereto?

Hon. Christopher S. Saunders, Deputy Premier: Yes, Madam Speaker, briefly.

Madam Speaker, the Amendments primarily address some long-standing governance issues for the Utility Regulation and Competition Office otherwise known as OfReg, and allow for changes to the constitution of the Board of Directors.

Madam Speaker, as Members will recall, OfReg was formed in 2017 on the recommendation of the Ernst & Young (EY) Project Future report to amalgamate the Information and Communications Technology Authority previously known as ICTA; Electricity Regulatory Authority (ERA), and the Ministry's Fuels Inspectorate. Water and waste-water services were added to OfReg's remit at a later date.

Madam Speaker, unfortunately, the required change management process was not undertaken at the time of the amalgamation which led to little real integration of the regulated sectors. As a result, the efficiency and economies of scale which were predicted were never fully realised. A restructuring exercise is currently under way to achieve a "One OfReg" that will improve the organisation's efficiency and cost effectiveness. The end goal of the legal amendments is to ensure that OfReg is duly equipped to ensure that it can seamlessly fulfil its objectives, and that its supporting legislation is fit for purpose.

Madam Speaker, the amendments currently under consideration, constitute the initial stage of a total revision of the law with further amendments coming to this honourable House next year. The current changes that exist in law seek to correct non-compliance with the Public Authorities Act (2020 Revision), enact the recommendations of the Auditor General, and meet the overall need to improve corporate governance.

Madam Speaker, I would like to explain the five changes to the existing law, which are contained in the Amendment Bill.

At present, the Board consists of a chairperson and 5 non-executive members; under the first Amendment, OfReg's Board membership will increase to 11 members including the Chairperson, with nine non-executive members and the Chief Executive Officer (CEO) as an *ex officio* Member. This change will provide extra members to sit on the various sector committees that will be set up to deal with increasing business demands.

The second Amendment relates to section 18(2) of the Act, which will replace the Cabinet Secretary as the Chairperson of the Nominating Committee with the Chief Officer of the Ministry with responsibility for OfReg. Further consequential amendments to this effect were made in sections 19 and 21, effectively replacing references to Cabinet Secretary with Chief Officer.

The third Amendment, Madam Speaker, as per the recommendation of the Office of the Auditor General's (OAG) Report on the Efficiency and Effectiveness of OfReg 2020, removes the Executive Directors and Chief Fuel Inspector from the board membership. The Executive Directors of OfReg, except the non-voting CEO are to be removed from the Board and are to be advisors at the committee level—for example, on the regulatory committees.

The fourth Amendment will mandate that the Chairman of the Risk and Audit Committee shall be a member of the current board, and not come from outside the organisation, as is currently the case. The OAG's Report specified that the Chairperson of the Risk and Audit Committee should be appointed from the members of the Board. The rationale for this recommendation references international best practice, while also outlining the importance of the Chair of the Risk and Audit Committee fully knowing and understanding the context of the issues that he or she may be addressing. I believe this change will strengthen the work of this committee and the Enterprise Risk Management (ERM) regime which is currently being put in place.

Under the fifth Amendment of the law, the Government will indemnify the Board and staff of OfReg for actions taken in good faith during the delivery of their duties. Currently, section 110 of the Act leaves OfReg employees exposed to the expense and distress of the Civil Court process in the event that something adverse occurs during the course of their official duties, even if they act in good faith. The change will bring OfReg in line with other government regulators with regard to indemnity; one example being the Cayman Islands Monetary Authority.

Madam Speaker, as I have outlined, the amendments put forward to the Utility Regulation and Competition Act (2021 Revision) (URCA), address some critical governance and operational gaps in the functioning of OfReg. The Government recognises that being only five years old, OfReg is still in its infancy and some growing pains are inevitable.

In the coming months, there will be further proposed amendments to this legislation as the Ministry continues to mobilise recommendations from both the OAG and the Public Accounts Committee reports that will provide for greater regulatory oversight of the industries under OfReg's purview.

Madam Speaker, I believe that the changes that are being proposed to the existing law will improve corporate governance and further develop the regulator to be more efficient and effective. I therefore recommend the Utility Regulation and Competition (Amendment) Bill, 2022 for the favourable consideration of this honourable House.

Thank you, Madam Speaker.

The Speaker: Does any other Member wish to speak?
[Pause]

The Honourable Leader of the Opposition.

Hon. Roy M. McTaggart, Leader of the Opposition:
Thank you, Madam Speaker.

Madam Speaker, I rise on behalf of the Opposition to make a short contribution to the debate on this Amendment Bill entitled Utility Regulation and Competition (Amendment) Bill, 2022.

Madam Speaker, the Opposition has taken note of the five proposed Amendments that the Bill seeks to make. To be honest, they appear very straightforward and noncontroversial to us and don't cause us any concern, so I am very happy to say this evening [that] we will support the Amendments and the Bill as it is presently drafted.

Thank you, Madam Speaker.

The Speaker: Does any other Member wish to speak?
[Pause] Does any other Member wish to speak?
[Pause] Does any other Member wish to speak?
[Pause]

Does the mover of the Bill wish to exercise his right of reply.

Hon. Christopher S. Saunders, Deputy Premier:
Madam Speaker, thank you very much.

I just want to thank the Honourable Leader of the Opposition and all the Members of the Parliament for their tacit approval of this important Bill. As I said, it is the start of what is to come. The Government, and I am sure the public, is aware that there are challenges with OfReg that we will be looking to deal with.

At this point I also want to thank His Excellency the Governor for his support in helping us to get additional technical expertise from the United Kingdom that will help us to put some teeth in the current legislation so we can get OfReg to fulfil its mandate.

Thank you, Madam Speaker.

The Speaker: The question is, that a Bill shortly entitled the Utility Regulation and Competition (Amendment)

Bill, 2022 be given a second reading. All those in favour, say Aye. Those against No.

AYES.

The Speaker: The Ayes have it.

Agreed: The Utility Regulation and Competition (Amendment) Bill, 2022 was given a second reading.

CUSTOMS AND BORDER CONTROL (AMENDMENT) BILL, 2022

The Speaker: The Honourable Deputy Premier.

Hon. Christopher S. Saunders, Deputy Premier: Madam Speaker, I beg to move the Second Reading of the Customs and Border Control (Amendment) Bill, 2022.

The Speaker: The Bill has been duly moved. Does the mover wish to speak thereto?

Hon. Christopher S. Saunders, Deputy Premier: Yes, Madam Speaker.

Wow, I don't think this will be that brief.

[Inaudible interjection]

Hon. Christopher S. Saunders, Deputy Premier: No, the Bill is attached to it. As a matter of fact, let me remove the Bill from the back of these documents, so I don't frighten the Members.

Madam Speaker, we are in the midst of a crisis. The continued arrival of increasing numbers of irregular migrants to our shores, primarily from Cuba, is a crisis with serious economic and national security implications for our Islands, and it is a crisis that is worsening every day.

Madam Speaker, irregular migration of this nature is not new to us; in 1994, the Cayman Islands experienced an influx of over 1,100 irregular migrants from Cuba over a relatively short period. That experience overwhelmed our government agencies and left long-lasting financial and social consequences.

It was to prevent such a situation reoccurring, Madam Speaker, that the Cayman Islands Government signed a Memorandum of Understanding (MOU) with the Government of Cuba in 1999, that provided for the repatriation of Cuban migrants who enter the Cayman Islands irregularly. That document was expanded in 2015 to set up more detailed procedures, and a timeline for the exchange of information between our two governments to keep the time between arrival and repatriation as short as possible. This ensures that the migrants are repatriated to their families with the minimum delay, and the costs of maintaining migrants long-term are reduced.

I would like to inform the House, that just last week officials were engaged in talks with a visiting delegation from the Cuban government with respect to the current situation, and matters covered by the (MOU).

Madam Speaker, between 2015 and 2021 the number of migrants reaching our shores was little more than a trickle, ranging between one and five each year; however, that relative calm came to an end earlier this year. With Cuba's economic situation deteriorating and living standards falling and made worse by the devastation caused by Hurricane Ian in September, Cubans have again taken to the seas in large numbers to seek a better life elsewhere, and many are reaching our shores.

From April until now, Madam Speaker, 353 undocumented migrants from Cuba arrived in the Cayman Islands, 100 alone in October, and arrivals continue almost daily. As of today, there are a total of 350 migrants here, at various stages of processing. This significant increase in arrivals is putting a severe strain on the Customs and Border Control Agency from a logistical point of view, both in Grand Cayman and Cayman Brac. Several other agencies are also working quickly to create additional accommodation for these migrants.

From a financial perspective, there are serious implications. The cost of migrant maintenance and accommodation from January to the end of October 2022 is slightly over \$1.6 million. Given the increase in numbers, and the need for additional security measures, it is projected that the cost for November and December alone, will be an additional \$1.3 million, bringing the year an estimated total to over \$2.9 million. As a result, Madam Speaker, supplementary appropriations will be required in order to meet those costs.

It is imperative, Madam Speaker, that we shorten the average length of stay. The magnitude of the financial burden is directly related to the length of time that a migrant remains in the Cayman Islands. Although the MOU with the Cuban government sets out timelines for the exchange of information, the actual length of time that a migrant remains in the Cayman Islands depends on how long it takes to process the application for asylum, and any subsequent appeal to the Refugee Protection Appeals Tribunal.

It should be pointed out, that almost all migrants arriving in Cayman Islands exercise their ability to apply for asylum and their right of appeal where the application is refused. There is often a further delay after these matters have been concluded, while we await approval from the Cuban government for their transportation back to Cuba.

Currently, the average length of time that a migrant remains in the Cayman Islands is nine months. At an approximate monthly cost of \$1,300 per migrant, this amounts to a total average cost from arrival to repatriation of \$11,700 per migrant; this figure does not take into account the cost of inter-island travel and

transfer transportation back to Cuba. This can add significantly to the overall cost given that, for security reasons, it is often necessary to charter a Cayman Airways jet for the journey to accommodate the migrants, as well as the required two escorts per migrant from CBC.

While these processes are thorough, and in accord with our obligations under the United Nations (UN) 1951 Refugee Convention and the MOU with Cuba, they are laborious and not geared towards mass arrivals. Cabinet has therefore approved a number of important changes that will streamline the way in which asylum applications and appeals are processed, while continuing to observe our international obligations. Some of the changes in the Bill are also intended to act as a deterrent to those who may contemplate seeking refuge in the Cayman Islands, even though they are not fleeing persecution.

Madam Speaker, for the benefit of the public listening and watching, I will go through the main changes contained in the Bill.

The first important change is that the Director of CBC and the Refugee Protection Appeals Tribunal will be required to apply a higher standard when assessing whether an applicant for asylum has demonstrated a well-founded fear of persecution. Specifically, Madam Speaker, it must be determined on the balance of probabilities whether the asylum seeker has a characteristic which could cause them to fear persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, and if they do, in fact, fear such persecution in their country of nationality as a result of that characteristic.

Once this has been decided, it must be determined whether there is reasonable likelihood that if the asylum seeker was to return to their country, they would:

1. Be prosecuted as a result of that particular characteristic; and
2. They would not be protected from persecution by that country.

This new balance of probabilities standard, which mirrors a recent change in the UK, is higher than the standard used currently in the Cayman Islands which is a reasonable degree of likelihood.

The second change, Madam Speaker, is that the power to approve or refuse an application for asylum is being expanded. Currently, only the CBC Director has the legal authority to grant or refuse an application for asylum. In future, the Director will be able to delegate his decision-making powers to a CBC officer of the rank of Assistant Director or above. This will allow decisions to be taken much more quickly.

Further, Madam Speaker, a person granted asylum will no longer receive indefinite leave to remain in the Cayman Islands from the outset. They will instead be granted leave to remain for three years; towards the end of this period, they may apply for review

of their leave to remain, and if they still meet the criteria for refugee protection, this will be converted to indefinite leave to remain. If they do not meet the criteria, they will be required to leave the jurisdiction. This two-stage approach mirrors the UK model.

Madam Speaker, I want to pause there. Something that we recognised under the current system, is that the minute people have been granted asylum for different reasons, we found that they have been traveling regularly back and forth to Cuba. The question then is: you had feared all of this, then all of a sudden you are traveling back and forth? We realised that in itself showed a level of inconsistency, and it is one of the reasons why we looked at the UK model, in terms of what they were doing, and removed the indefinite leave to where it is actually reviewed periodically.

Madam Speaker, to prevent the appeals process being used to prolong a person's stay in the Cayman Islands where the Director of CBC is of the opinion that an application is without substance, he will have the power, when refusing an application, to certify it as clearly unfounded. This could be on the basis of information given during the migrant's initial interview upon arrival in the Cayman Islands, or after a full asylum interview; and where an application has been certified in this way, the applicant will not have a right of appeal to the Refugee Protection Appeals Tribunal.

These changes will reduce the number of persons who need to undergo a full asylum interview and subsequent assessment, thereby reducing the length of time they are in the Cayman Islands before repatriation. This certification mechanism, and absence of a right of appeal, mirrors the UK policy with respect to asylum applications. I should add, though, that individuals who have their asylum application rejected on this basis will still have access to the courts through judicial review.

Madam Speaker, another important change allows CBC to deem that a migrant has abandoned their asylum application where the person fails to attend their scheduled asylum interview without good reason, or avoids service of documents requiring them to attend an interview or appointment.

Offences are also being introduced relating to the giving of false or misleading information with respect to an application for asylum. When an applicant makes a false statement, fraudulently alters any document, or uses or possesses a forged or irregular passport, he or she will be liable on summary conviction to imprisonment for two years.

With regards to appeals, Madam Speaker, the sequence of events during the appeal process is being streamlined to allow for faster disposal of appeals. Under a change to section 111 of the Act, a person whose application for asylum has been refused will be given a full reason for the refusal at the time that they are notified of the refusal. They will therefore be expected to provide their detailed grounds of appeal at the time of lodging their appeal. The CBC Director will then have

14 days in which to lodge a written defence with the Refugee Protection Appeals Tribunal. Once this has been received, the tribunal will proceed with the appeal.

The composition of the Refugees Protection Appeals Tribunal is also being expanded, Madam Speaker. Currently, the tribunal only has five members; going forward, the tribunal will have a chairperson, up to five deputy chairpersons, and a panel of members—this will allow the tribunal to sit in up to six divisions simultaneously or otherwise. This change will significantly reduce the waiting time for appeals to be heard.

I should note, Madam Speaker, that the changes I have just explained will only apply to asylum applications and appeals that are received after the date on which this Bill is enacted and comes into force. All applications received before that date will be processed in line with the existing provisions of the Act.

Madam Speaker, in concluding my introduction of this Bill, I wish to thank all those individuals from as many parts of the Civil Service, and indeed the office of the Governor, who were involved daily in managing the many challenges that we are facing, both operationally and from a policy perspective, as a result of this migrant crisis. I want them to know that their dedication is fully recognised and appreciated.

I hereby recommend the Customs and Border Control (Amendment) Bill, 2022 for the favourable consideration of this honourable House.

Thank you, Madam Speaker.

The Speaker: Before I ask if any other Member wishes to speak, I would like to remind Members that although your microphones are not on, it's quite loud when Members are speaking, so please keep it down while someone is on the mic.

Does anyone else wish to speak? *[Pause]*

The Honourable Leader of the Opposition.

Hon. Roy M. McTaggart, Leader of the Opposition: Thank you, Madam Speaker.

Madam Speaker, I rise on behalf of the Opposition to make a short contribution to the debate on a Bill entitled Customs and Border Control (Amendment) Bill, 2022.

Madam Speaker, I note that the Bill seeks to amend the procedures relating to application for asylum with a view to facilitating faster decision making, while continuing to observe and meet our obligations under the convention relating to the status of refugees. In other words, Madam Speaker, the Bill seeks to allow Government to deal more effectively, fairly and efficiently with the growing influx of Cuban refugees and Cuban migrants arriving by boat on our shores.

This is an issue of grave concern to us, and I have no doubt, everyone else in this Parliament, and while not yet of the same magnitude and proportions, Madam Speaker, it is somewhat reminiscent of the massive Cuban refugee crisis that we experienced in the early 1980s.

Madam Speaker, amongst other things, the Bill seeks to allow the Director to delegate his powers under the Act to an officer of the rank of Assistant Director or above, which seems logical. It will enable applications to be dealt with more expeditiously, and allow migrants who do not qualify as political refugees to be repatriated to their homeland timelier. It also gives successful applicants leave to remain in the island for three years, and provides that applications for indefinite leave to remain be made after two.

Provision is also made for dealing with the unfounded applications and circumstances where applications may be treated as abandoned or withdrawn. Most importantly, the Director will now be required to give reasons why an application is refused at the time that the applicant is notified of the decision. I also note, Madam Speaker, the proposed increases in the membership of the Refugee Protection Appeals Tribunal to allow for up to six tribunals to sit simultaneously or otherwise, and each tribunal will be presided over by the Chair and no fewer than two other members.

Madam Speaker, in listening to the Minister's presentation of the Bill, I didn't hear him say whether in addition to the secretaries, additional resources will be required at the administrative level to support the significant expansion of the tribunals and I do suspect that it will. I wonder, therefore, if I could ask the Minister, on his wind up, if he could confirm that additional resources will be needed, and whether these resources exist internally or whether they will have to do some sort of recruitment to bring in the resources to deal with the situation that we are currently facing.

To the Opposition, these Amendments are timely and reflect a much-needed response to the growing Cuban refugee crisis; hardly a day passes, Madam Speaker, where we don't hear or read of another boatload of Cuban refugees arriving on our shores.

It is important that we have the proper processes and support in place, to allow the CBC to effectively discharge their duties and responsibilities. It is also important that we try to deal with these irregular migrants as expeditiously as possible and ensure that those who do not qualify to remain here are repatriated, and for those who do, their applications for asylum are dealt with quite expeditiously.

I know at the moment it can take many years beyond the three that we are looking to do here, before these applications actually make it before a tribunal for adjudication.

Madam Speaker, the Opposition supports the Bill and we commend it also.

Thank you, Madam Speaker.

The Speaker: Does any other Member wish to speak? *[Pause]* The Honourable Deputy Governor.

The Deputy Governor, Hon Franz I. Manderson: Madam Speaker, thank you. I will be brief. The Deputy

Premier did an outstanding job presenting the Bill— he covered the vast majority of the points that I wanted to make.

I do want to say, Madam Speaker, the Deputy Premier mentioned the Cuban refugee crisis we had in 1994. That number of 1,183 Cubans still stays in my mind because it was a real crisis, but what has changed since, is that back then we had no knowledge of how to deal with persons who were claiming refugee status. We had no legislation to govern the entire process; now we do.

The legislation enforced at the moment is a bit dated, and that's why this Bill is being brought today. It really modernises the provisions that we have in relation to the granting of refugee status and how we process persons who arrive in the island and claim asylum.

I want to commend the Deputy Premier, Chief Officer Howell, Mr. Clifford at CBC and all of his team who has worked really hard over the past year, to process the Cuban migrants. As you said, we had 100 Cubans arrive in the month of October alone.

Madam Speaker, the vast majority of those persons have been interviewed by CBC and that's a huge job, you know. You are not just asking a Cuban migrant or anyone who claims asylum five questions. You have to go into in-depth interviews to determine why that person is claiming asylum. Are they really fearing persecution for one of the UN Convention reasons, and you test their story. To get to where we are today, where I would say that every migrant who has arrived in the Cayman Islands has already been interviewed by CBC and the process is on now to get the decision letters out...

Many, many, persons have been refused and we are in the appeals process, but everything that we are doing today Madam Speaker, is designed to speed up the process, because what is going to reduce the number of economic Cuban migrants who come to these Islands, and say they are refugees, is when our system becomes very efficient. Then they will realise, *You know, it doesn't make sense for me to go to Cayman because I am going to claim asylum and 30 days later, if it's determined that I am not a genuine refugee, I'm gonna get sent back to where I came from, so it doesn't make sense for me to try a thing in the Cayman Islands.*

That's where we want to go, but we also want to live up to our obligations under the UN convention, Madam Speaker. The last thing we want, as a country, is to send back someone who is being prosecuted—you could possibly send someone back to their death. The Government takes our obligation under the UN Convention very seriously and, again, that is why we are bringing the Bill today.

Madam Speaker, I have been hearing much recently about the Cubans; it has been on talk shows becoming somewhat of a vexed issue. Persons have been saying, *why don't we just give them some food and water and push them on their way.* Well, Madam

Speaker, in my early days at Immigration [Department], that's exactly what we did, and it caused numerous issues. One was, we were running the risk as a jurisdiction, of being branded as a country that supported illegal immigration because that's what we would be doing.

If someone turned up at our shores and we gave them food and water, fixed their boats and said, *on you go to another jurisdiction*, we are supporting illegal immigration, and we certainly wouldn't want anyone to do that to us. If the Jamaican authorities had 600 Haitians arrive, and they fixed their boats and said, *go ahead down to Cayman, you'll be okay there*, we certainly would be complaining.

Number one, we have an international obligation to be a responsible jurisdiction; an obligation to be a responsible neighbour to the countries around us and not support illegal immigration.

Number two, we are talking about safety. We don't know whether persons whom we have allowed to repair their vessels are going to make it past the reef. We are putting persons' lives in jeopardy if we sort of say, *sorry, can't stay here; let me give you some food and water and I hope you make it to your next jurisdiction.* I want the public to realise that the Government is doing the responsible thing.

I pay close attention to this particular area; I think it is still in my blood from my days at Immigration [Department]. Recently, I've seen other countries being named as supporters of illegal immigration because they are not doing enough to be responsible, to police their borders, but also to prevent persons from using their jurisdiction as an in-transit point to enter other countries illegally.

Madam Speaker, this Bill is innovative and brings our legislation up to date with the latest thinking on asylum and immigration. I thank the Minister, the Deputy Premier; he has been a proponent of this from day one. He recognised the issues and has brought this Bill to Parliament, and I want to congratulate him and his Ministry, and like I said, I do want to give a big shout out to the members of CBC, who have been working night and day dealing with these migrants in Grand Cayman and in Cayman Brac.

We have seen a total joined-up approach. We have members of the Prison Service, the Regiment, the Police; everyone has been working together for one common cause, and that is to meet our international obligations, so as Head of the Civil service I do want to thank everyone who has been involved in dealing with these migrants.

I think it is safe to say that with these Amendments, we will be able to process persons who come into our Islands, who claim asylum, quicker, and in a very modern way.

I thank you.

The Speaker: Does any other Member wish to speak?
[Pause] Does any other Member wish to speak?
[Pause] Does any—

The Honourable Attorney General.

The Attorney General, Hon. Samuel W. Bulgin:
Thank you, Madam Speaker.

Madam Speaker, I rise to briefly lend my voice to the proposed Amendments as reflected in the Customs and Border Control (Amendment) Bill, 2022.

Madam Speaker, much has been said in terms of the trigger, if I may put it that way, for these Amendments. We heard staggering statistics outlined by the Honourable Deputy Premier—353 since the beginning of April, 100 in October alone; running expenses of \$1.6 million so far, and a potential \$1.3 million through the end of December, add to a grand total of close to \$3 million. For a small jurisdiction like ours, it is staggering.

It is true, Madam Speaker, that the Cayman Islands has shown enormous generosity, if I might put it that way, dealing with these migrants. There is much sympathy in the community for them and understandably so, Madam Speaker. There are persons who are genuinely fleeing because they have well-founded fear of persecution; there are others who are fleeing, as you heard others say, economic reasons—neither of which are easy or acceptable, Madam Speaker.

The fact of the matter is that there are hardships being felt all around. Understandably, there is a pull-and-push factor causing these people to make these dangerous trips across the seas to get to other places. Madam Speaker, there is just so much a country can take and no more and what is clear, is that some of the generosity being displayed here is at times being abused.

What the Government is attempting to do is to strike the right balance, Madam Speaker, in dealing with those who have demonstrated well-founded fear of persecution and those who are not in that boat, but who have made the journey across and are sort of abusing, if you will, the generosity being offered by the Cayman Islands Government and its people.

Madam Speaker as I said, the measures being put in place are really aimed at striking the right balance. The asylum applicant will now be required to demonstrate or meet a much higher standard of proof in order to be able to qualify for asylum. It is more like a two-stage test which is consistent with what the United Kingdom itself has done for asylum seekers. It is no more a case of simply saying I have a well-founded fear of persecution. They will have to demonstrate a bit more than that, Madam Speaker, and not only that, but there are persons who fall into the category who would be subject to such a well-founded fear or subject to persecution, Madam Speaker.

I'm sure there are those who will be able to do so, but there are those, as you heard Madam Speaker, whose application is without merit and hence the need for the certification process. What that certainly does is,

when they are first engaged, if the information that they provide is clearly devoid of any merits as it relates to well-founded fear of persecution, then their case will be certified as totally devoid of merit and there will not be an appeal.

Madam Speaker, they would then be fast-tracked for return, if I might put it that way, but of course they have another remedy; if they wish, they can still file an application for judicial review in the Grand Court. In addition to that, Madam Speaker, even if they are returned to their homeland, they can still pursue their judicial review from abroad, there is nothing to prevent them from doing so, so they are not totally devoid of redress.

However, Madam Speaker, whatever is being done, as you heard, we have to ensure that the UK/Cayman Islands international obligations are observed, and where applicable, the relevant Bill of Rights safeguards are in place to deal with these applicants. All of those matters have to be borne in mind when dealing with these applicants and these applications.

Madam Speaker, there will no longer be this indefinite leave but instead will be subject to periodic review and you heard one of the reasons for that being articulated by the Honourable Deputy Premier—it is not unheard of, that once they are granted asylum, then they are on a fortnightly trek back and forth to Cuba and involved in commerce, among other things, Madam Speaker, and so it begs the question whether in fact there was any well-founded fear of persecution in the first place.

I spoke about the certification earlier on; about not having any merits. Madam Speaker, I am advised that it is not unheard of that when they are first questioned, their story is invariably heavily weighted in favour of persons who are economic migrants or economic refugees, if I might put it that way, and under the current construct we have, Madam Speaker, once they are put in the queue to be dealt with, by the time they get to the appeal stage, somehow that story has morphed into a well-crafted, well-honed, ground of appeal with all the relevant jargon and everything that you would expect to find in an asylum application.

Somehow the story changed dramatically, and nothing that was said initially finds its way into the appeal brief. It is a completely different brief altogether, and it begs the question what has happened between then and the time it gets to the appeal stage. Thus, it is not an unreasonable position being taken by the Government, Madam Speaker, because it seems to be that their memory and their understanding of the well-founded fear seems to improve with the passage of time between being interviewed initially and the time of the filing of their grounds of appeal.

The issue of trying to provide adequate reasons at the very outset, once the application is dismissed, is another commendable move on the part of the Government, Madam Speaker, as section 19 of the Constitution states that persons who are affected by

adverse decisions of public authorities should be provided with written reasons if they demand it.

Of course, in this case they are still given the reasons which is quite commendable; they have the reasons and so they have the basis on which to make a decision whether to file an appeal or whether they need to file judicial review. Madam Speaker, having been so informed, it seems that some of them are fairly reasonably resourced, because they end up with legal representation which again, they ought not to be denied, which is also commendable. All is not lost for them, Madam Speaker.

What is also happening is that somewhere along the way, once they get to a certain stage where they are supposed to be served with certain documents from the Secretariat to prosecute their appeal, it appears they then start to evade the service, Madam Speaker, and you are unable to find them. What is happening is that they buy time in doing so. They are unable to be found, can't be served, and so it lengthens their stay and causes the process to be dragged out indefinitely, Madam Speaker.

Thus, the idea of deeming them to have abandoned their appeal or abandoning the process is, again, not an unreasonable way to treat with the matter provided, Madam Speaker, that there is demonstrable evidence to prove that every effort has been made to serve them, either their known address, or some of their known places or otherwise, and those attempts have been well documented and are available, Madam Speaker. That is also a move that will help to expedite the process. There is no longer an incentive for them not wanting to prosecute [sic] their appeal.

Madam Speaker, finally, in terms of the expansion of the appeals tribunal, that again is an extremely sensible, common-sense way to deal with the matter. There is a growing number of migrants on the ground, and even though some of the provisions of the Bill will not be retroactive, the aspect of it that deals with the expansion of the numbers of persons who sit on the appeals tribunal will not be affected by those considerations. It has nothing to do with evidence and what have you. This is just administratively having more bodies being able to deal with the number of appeals, so it will help to expedite the hearing of appeals where there are appeals to be heard.

All in all, Madam Speaker, it is a commendable effort to deal with a growing crisis. The assurance that I want to leave the public with, is that all of this is being done while ensuring that the necessary obligations under the Convention are being observed and where applicable, the necessary provisions of the Bill of Rights are also being observed, so there are all the usual safeguards for due process, Madam Speaker.

I thank you.

The Speaker: Does any other Member wish to speak.
[Pause] Does any other Member wish to speak?

[Pause] Does any other Member wish to speak?
[Pause]

Does the mover of the Bill wish to exercise his right of reply?

Hon. Christopher S. Saunders, Deputy Premier:
Yes, Madam Speaker, briefly.

Madam Speaker, I would like to thank the Honourable Leader of the Opposition, the Honourable Deputy Governor, and the Honourable Attorney General for their contributions to the Amendments to this Bill. I would also like to thank my colleagues, and all other Members in this honourable House, for their tacit support of this Bill.

Madam Speaker, I just want to put two things out there, so people can understand: One, the Government deliberated very heavily on this topic and the reason for that, Madam Speaker, is that the Government is mindful of the number of Cubans who have made the Cayman Islands their home and have contributed greatly to our society. Many of them who the Honourable Deputy Governor referenced back from the days of Tent City are now good, upstanding, decent Caymanians who have contributed both within the public and private sectors.

Two, the Government also remains cognisant Madam Speaker, of the Cayman Islands' strong historical ties with the island of Cuba. Some Members may not know, but my grandmother on my father's side migrated to the Cayman Islands from Cuba in the early 60s, having decided not to return to Jamaica. After the whole Cuban Revolution issue, she decided to make the Cayman Islands home and it was when she moved here that she sent for my father, so we understand the historical and traditional ties that many people in the Cayman Islands have with the island of Cuba.

We are also cognisant, Madam Speaker, of Cuba's very heavy reliance on the Russian economy. Russia is at war with Ukraine at this point, and as such, much of the assistance that was normally provided to Cuba by the Russian government now has its own issues; between that, the COVID pandemic and the recent hurricane, Madam Speaker, we recognise that Cuba's economic challenges and economic situation are quite dire. As a parent, when we look at some of the boats that people arrive here in, you have to ask yourself, *what can motivate someone to take a craft of that size to traverse the waters, to make a better life?*

We are very cognisant and aware of the plight of the Cuban people and we genuinely sympathise with them and pray for them, but Madam Speaker, we are still a small island; our resources are limited and as such, first and foremost we have a responsibility to the people of the Cayman Islands. We can no longer allow the issue in Cuba to impact the Cayman Islands as a financial burden that is being felt now, when the Government needs those resources to care for our own people.

As the Attorney General noted we are cognisant of our international obligations, and so we were careful in terms of the actions that we are looking at. At the end of the day, Madam Speaker, we are cognisant of the fact that the Cayman Islands people are still good, decent, giving people and we wanted to make sure that we did right by all people—and this is not just about Cuba; there was a time when Caymanians had to make their living in Cuba and elsewhere across the Caribbean.

We are cognisant of those historical ties, but it has reached a point where it is a crisis that needs to be dealt with. As such, this is one step forward in managing that crisis.

I thank you all.

The Speaker: The question is, that a Bill shortly entitled the Customs and Border Control (Amendment) Bill, 2022 be given a second reading. All those in favour, please say Aye. Those against, No.

AYES.

The Speaker: The Ayes have it.

Agreed: The Customs and Border Control (Amendment) Bill, 2022 was given a second reading.

SUPPLEMENTARY APPROPRIATION (JANUARY 2020 TO DECEMBER 2020) BILL, 2022

The Speaker: The Honourable Deputy Premier.

Hon. Christopher S. Saunders, Deputy Premier: Madam Speaker, I beg to move the Second Reading of a Bill shortly entitled the Supplementary Appropriation (January 2020 to December 2020) Bill, 2022.

The Speaker: The Bill has been duly moved. Does the mover wish to speak thereto?

Hon. Christopher S. Saunders, Deputy Premier: Yes, Madam Speaker, briefly. At least I think it's briefly.

Madam Speaker, the purpose of this Bill is to seek the Parliament's approval for supplementary expenditure, equity investment, executive assets, loans made, and borrowing appropriation changes in respect of the financial year ended the 31st December, 2020.

Madam Speaker, there was an earlier Supplementary Appropriation Act with respect to the 2020 financial year but this earlier Act, presented to Parliament by the previous administration, was in respect of appropriation changes that took place during the period 1st January to 31st July, 2020. The Bill now being considered by the House is in respect of appropriation changes for the period 1st August 2020 to 31st December, 2020. Once an Appropriation Bill has been approved by the Parliament, it becomes an Appropriation

Act for the particular financial year. That Act then establishes what is commonly referred to as "the budget for the financial year".

There are three ways, Madam Speaker, in which the budget amounts contained in an Appropriation Act can be changed during the course of a financial year:

- Firstly, section 11(5) of the Public Management and Finance Act (2020 Revision), otherwise known as the PMFA, allows the Cabinet to make such changes;
- Secondly, section 12(2) of the PMFA allows Finance Committee to approve changes to an established Appropriation Act; and
- Thirdly, section 25 of the PMFA permits Parliament to authorise changes to an already approved Appropriation Act.

Madam Speaker, the majority of the items in the Schedule to this Bill arise in respect of past government use of one section of the PMFA—section 11(5)—with respect to approvals made by Cabinet during the period 1st August, 2020 to the 31st December, 2020. Additionally, the Bill also includes items relating to the 2020 Financial Year that have been approved by Finance Committee in October 2022, with respect to appropriations under the ambit of the Ministry of Health.

Madam Speaker, section 11(6) of the PMFA states that when a government utilises section 11(5) to make changes to an Appropriation Act, those changes made by Cabinet under subsection 11(5) are to be included in a Supplementary Appropriation Bill which must be presented to Parliament. Additionally, changes approved by Finance Committee under section 12 of the PMFA also need to be included in a Supplementary Appropriation Bill for a financial year.

Madam Speaker, these two source changes explain the existence of the Bill now before the House. It satisfies a legal requirement, that changes to an already approved Appropriation Act must be incorporated in a Supplementary Appropriation Bill, and that Bill must be presented to the Parliament for scrutiny and possible approval, even though the items in the Bill have already been approved by the Finance Committee and the Cabinet.

Madam Speaker, I wish to make two additional points: Firstly, the changes set out in the Schedule to the Bill already occurred in 2020 and 2022. The changes were approved by Cabinet under section 11(5) of the PMFA, and by Finance Committee under section 12 of the PMFA.

Secondly, it is a reasonable expectation, given the circumstances explaining the origin of this Supplementary Appropriation Bill, that Finance Committee's consideration of the items in the Schedule to the Bill will be very swift.

Significant financial transactions included in the Bill are:

1. \$3.7 million additional expenditure incurred for geriatric services, which was approved by Finance Committee in October 2022;
2. \$2.2 million additional expenditure incurred on medical care for persons who were underinsured or required medical care beyond their insurance coverage, also approved by Finance Committee in October 2022;
3. \$1.2 million for reclamation and remediation of the Kaibo Public Beach;
4. \$800,000 to support growth and recovery of our sports programme;
5. \$600,000 to support the completion of the hurricane shelter in Bodden Town; and
6. \$500,000 to cover additional costs related to preschool education grants for students who qualify for financial assistance.

The Bill consists of three main parts, Madam Speaker:

Clause 1 provides the name of the proposed act.

Clause 2 speaks to the appropriation authority of the Cabinet.

The Schedule to the Bill, which shows the individual items of appropriation changes that the Parliament is being asked to approve.

It is also important that I point out that not all supplementary appropriations involve expenditure increases—a number of decreases to expenditures are contained in the Bill.

I therefore respectfully ask all Honourable Members to support the Bill. It is a legal tidy up of an administrative exercise.

Thank you, Madam Speaker.

The Speaker: Does any other Member wish to speak?
[Pause]

The Honourable Leader of the Opposition.

Hon. Roy M. McTaggart, Leader of the Opposition:
Thank you, Madam Speaker.

Madam Speaker, just to give recognition to what the Deputy Premier said in presenting the Bill. I know that it will get to Finance Committee, but I expect as well that the approval process will be quite swift given the nature and the time of these transactions.

On behalf of the Opposition, we fully support the Bill before the House at this point.

The Speaker: Does any other Member wish to speak?
[Pause] Does any other Member wish to speak?
[Pause] Does any other Member wish to speak?
[Pause]

Does the mover of the Bill wish to exercise his right of reply?

Hon. Christopher S. Saunders, Deputy Premier:
Thank you, Madam Speaker.

I want to thank the Honourable Leader of the Opposition and all Members of this honourable House for their tacit approval.

Thank you.

The Speaker: The question is that a Bill shortly entitled the Supplementary Appropriation (January 2020 to December 2020) Bill, 2022 be given a second reading. All those in favour, please say Aye. Those against, No.

AYES.

The Speaker: The Ayes have it.

Agreed: The Supplementary Appropriation (January 2020 to December 2020) Bill, 2022 was given a second reading.

SUPPLEMENTARY APPROPRIATION (JANUARY 2021 TO DECEMBER 2021) BILL, 2022

The Speaker: The Honourable Deputy Premier

Hon. Christopher S. Saunders, Deputy Premier:
Madam Speaker, I beg to move the Second Reading of a Bill shortly entitled the Supplementary Appropriation (January 2021 to December 2021) Bill, 2022.

The Speaker: The Bill has been duly moved. Does the mover of the Bill wish to speak thereto?

Hon. Christopher S. Saunders, Deputy Premier:
Yes, Madam Speaker, briefly.

Madam Speaker, the purpose of this Bill is to seek the Parliament's approval for supplementary expenditure, equity investment, executive assets, loans made, and borrowing appropriation changes in respect of the financial year ending 31st December, 2021. Once an appropriation Bill has been approved by Parliament, it becomes an Appropriation Act for a particular financial year, and that Act establishes what is commonly referred to as "the budget for that financial year".

Madam Speaker, there are three ways in which the budget amounts contained in an Appropriation Act can be changed during the course of a financial year.

- Firstly, section 11(5) of the Public Management and Finance Act (2020 Revision), otherwise known as the PMFA, allows the Cabinet to make such changes;
- Secondly, section 12(2) of the PMFA allows Finance Committee to approve changes to an established Appropriation Act; and
- Thirdly, section 25 of the PMFA permits Parliament to authorise changes to an already approved Appropriation Act.

Madam Speaker, this Bill arises in respect of the Government's use of two sections of the PMFA; section 11(5) and section 25.

Madam Speaker, section 11(6) and section 25 of the PMFA state that when a Government utilises section 11(5) or section 25 of the PMFA, respectively, to make changes to an Appropriation Act, those changes made by Cabinet under section 11(5) and the proposed changes approved by Cabinet pursuant to section 25 of the PMFA are to be included in a Supplementary Appropriation Bill which must be presented to Parliament.

Madam Speaker, this explains the existence of the Bill now before the House. It satisfies a legal requirement that, changes to an already approved Appropriation Act must be incorporated in a Supplementary Appropriation Bill, and that Bill must be presented to Parliament for scrutiny and possible approval.

Madam Speaker, I wish to make two additional points: Firstly, the vast majority of changes set out in the Schedule to the Bill have already occurred. The changes are processed shortly after they are approved by Cabinet under section 11(5) of the PMFA.

Secondly, it is the Government's reasonable expectation, that given the circumstances explaining the origin of the supplementary Appropriation Bill, Finance Committee's consideration of the items in the Schedule to the Bill will be efficient.

Madam Speaker, this Bill indicates changes that can be categorised as follows:

1. Items on the Schedule to the Bill that were approved by Cabinet for presentation to the Parliament and Finance Committee for its review, scrutiny, and possible approval which is being done in accordance with section 25 of the PMFA; and
2. Items on the Schedule to the Bill where Cabinet, as it is legally empowered to do under section 11(5) of the PMFA made changes to the budget during the 2021 financial period.

Madam Speaker, the Government always endeavours to match a request in an increase in expenditure with a corresponding reduction to expenditures though this is not possible 100 per cent of the time. The supplementary request arises mainly as a result of a specific government decision taken in response to the COVID-19 pandemic.

Significant financial transactions included in the Bill are as follows:

1. \$63.7 million financial assistance to displaced tourism workers and non-Caymanian residents affected by the closure of the Islands' borders due to COVID 19;
2. An additional \$49.6 million for purchase of supplies to mitigate COVID-19, including other

specific government decisions taken in response to COVID-19;

3. \$28.9 million for tertiary medical care at local and overseas institutions;
4. \$10 million for operational support for Cayman Islands Airports Authority;
5. \$8.8 million to fund remaining commitments for the long-term residential mental health facility;
6. \$8.5 million for local and overseas scholarships;
7. \$7 million for operational support for Cayman Airways Limited;
8. \$4 million to assist small and micro businesses that have been negatively impacted by the economic effects of Tropical Storm Grace;
9. \$4 million for upgrades to existing roads;
10. \$3.1 million for the Public Schools Meal Programme; and
11. \$3 million to assist residents in need of housing repairs as a result of Tropical Storm Grace.

Madam Speaker, the Bill consists of three main parts:

Clause 1 provides the name of the proposed Act.

Clause 2 speaks to the appropriation authority of the Cabinet.

The Schedule to the Bill, which shows the individual items of appropriation changes that the Parliament is being asked to approve.

Madam Speaker, it is also important that I point out that not all supplementary appropriations involve expenditure increases, a number of decreases to expenditures are contained in this Bill. I therefore respectfully ask all Honourable Members to support this Bill.

Thank you, Madam Speaker.

The Speaker: Does any other Member wish to speak?
[Pause]

The Honourable Leader of the Opposition.

Hon. Roy M. McTaggart, Leader of the Opposition:
Thank you, Madam Speaker.

Briefly, to express our support for the Supplementary Appropriation now before this honourable House; recognising too that we will discuss it again in Finance Committee once House proceedings are completed.

Thank you, Madam Speaker.

The Speaker: Does any other Member wish to speak?
[Pause] Does any other Member wish to speak?
[Pause] Does any other Member wish to speak?
[Pause]

Does the mover of the Bill wish to exercise his right of reply?

Hon. Christopher S. Saunders, Deputy Premier:
Thank you, Madam Speaker.

Just to thank the Honourable Leader of the Opposition and all Members of this honourable House for their tacit support and approval.

Thank you.

The Speaker: The question is that a Bill shortly entitled Supplementary Appropriation (January 2021 to December 2021) Bill, 2022 be given a second reading.

All those in favour, please say Aye. Those against, No.

AYES.

The Speaker: The Ayes have it.

Agreed: The Supplementary Appropriation (January 2021 to December 2021) Bill, 2022 was given a second reading.

**CRIMINAL JUSTICE
(OFFENDERS ASSISTING INVESTIGATIONS
AND PROSECUTIONS) BILL, 2022**

The Speaker: The Honourable Attorney General.

The Attorney General, Hon. Samuel W. Bulgin: Thank you, Madam Speaker.

Madam Speaker, I beg to move the Second Reading of a Bill short titled the Criminal Justice (Offenders Assisting Investigations and Prosecutions) Bill, 2022; the long title, a Bill for an Act to provide for immunity from prosecution and for reduced sentences in certain circumstances; and for incidental and connected purposes.

The Speaker: The Bill has been duly moved. Does the mover wish to speak thereto?

The Attorney General, Hon. Samuel W. Bulgin: Yes, Madam Speaker, thank you.

Madam Speaker, I rise on behalf of the Government to present the Criminal Justice (Offenders Assisting Investigations and Prosecutions) Bill, 2022; it is a relatively short Bill, but of some importance.

The purpose of this legislation, Madam Speaker, is to provide a statutory framework which, among other things, would empower the Director of Public Prosecutions to grant immunity from prosecution in certain cases, to allow the Court to make sentence reduction on guilty pleas in certain circumstances, and to facilitate a review of certain sentences by the Courts.

Madam Speaker, I think it is common knowledge that the Cayman Islands have for some time been undergoing a change in crime dynamic and a cultural shift where unfortunately, Madam Speaker, violence and the use of firearms have radically impacted the willingness of persons to provide information to the Police and to otherwise assist in certain investigations.

On a number of occasions, the progress of criminal investigations and prosecutions have been stymied as a result of witnesses fearing reprisals and as a consequence, Madam Speaker, refusing to assist the Police in bringing criminals to justice.

Madam Speaker, in 2010, to address the issue regarding the failure to engage witnesses, this Parliament enacted the Criminal Evidence (Witness Anonymity) Act. Among other things, that Act provides for the protection of witnesses by permitting the making of an investigation anonymity order by a magistrate in relation to a person who is willing and able to assist the police with criminal investigations into certain types of crimes, where the person would not otherwise do so for fear of harm.

Madam Speaker, the Criminal Evidence (Witness Anonymity) Act has successfully been used in offences of murder or possession of unlicensed firearms and robbery, or possession of an imitation firearm with intent. However, Madam Speaker, that piece of legislation is not always appropriate in cases where, for example, the witness is said to have been “on the fringes” of gang association.

In response to a request from the Director of Public Prosecutions (DPP), as well as public comments on the need to find varied ways of stemming the growth of crime in the Islands, the Law Reform Commission undertook a review of the statutory regulation of Accomplice Evidence, also referred to as King’s Evidence— King’s Evidence now, Madam Speaker, but when the exercise started and during the consultation period, it was labelled Queen’s Evidence.

Madam Speaker, for the benefit of Members, King’s Evidence is really evidence from someone who has been accused of committing a crime. That person gives evidence against the person who is accused with them, which could result in that person’s sentence being reduced by having provided that assistance, Madam Speaker. I think in some places it is called “plea bargain.”

Madam Speaker, in the Cayman Islands, as in most Commonwealth countries, a prosecutor has the power to secure the cooperation of potential co-defendants in an informal manner, as well as the power to determine whether or not to bring criminal charges, and if so, what charges to bring.

It is argued, Madam Speaker, that the statutory codification of King’s Evidence would allow prosecutors to be more effective not only in obtaining accomplice evidence, but also in securing convictions where appropriate— where the evidence exists— and of course, allow the process to be transparent and well-regulated, as it obtains in dealing with the cooperation of an accomplice.

It was on this basis that the Law Reform Commission carried out a comprehensive review of the law relating to King’s Evidence. The review of the Commission comprised the preparation of a scoping paper and a consultation draft Bill. Thereafter, Madam Speaker, a

discussion paper and a further consultation draft Bill were published for stakeholders' and public consultation.

Madam Speaker, the discussion paper gave a summary of this area of the proposed law in the Cayman Islands; also the state of the law in the UK, the USA and Jamaica, among other places. That discussion paper, Madam Speaker, also summarised the main points of the proposed Bill.

The Cayman Islands' position, Madam Speaker, was examined against the background of the United Kingdom's approach, which was to codify the use of King's Evidence. We also examined the "plea deal" system that was adopted in the United States of America.

Madam Speaker, in the Cayman Islands currently, a prosecutor has the power to secure the cooperation of potential co-defendants in an informal manner and to determine whether or not to bring criminal charges and what charges to bring. This discretion of the DPP is of course, enshrined in section 57 of the Cayman Islands Constitution.

Madam Speaker, the existing practice is that, should an accomplice inquire of the police as to any benefit if the accomplice assists the Crown, the police will usually advise that person that no agreements or promises can be made, and that it is a matter for the Courts to decide on sentencing of the accomplice; however, the Police will undertake to bring to the attention of the Court any such assistance by way of a sealed envelope containing the Memorandum from a Senior Police Officer.

The sealed envelope procedure endeavours to protect the cooperating accomplice; the extent of the assistance provided cannot be stated in open court, as it may have implications for the safety of the cooperating accomplice.

While such informal procedures have yielded positive results it has been argued, quite properly, that the broad discretion afforded to the police and the Courts can lead to inconsistency. Although there is no evidence of such inconsistency in this jurisdiction, Madam Speaker, there is perhaps a need for more formality to ensure transparency and accountability of the process, and so it is noteworthy that both the United Kingdom and Jamaica have codified their practices in relation to accomplice evidence in recent years.

Madam Speaker, the Commission's review process culminated in a final report submitted to the Attorney General (AG) on the 30th November, 2021 and was accompanied by the Criminal Justice (Offenders Assisting Investigations and Prosecutions) Bill, 2022 which is currently before the House.

Madam Speaker, against that background, I will now briefly mention the relevant clauses of the Bill.

Clause 1, as usual, speaks to the short title and commencement of the legislation.

Clause 2 is the interpretation clause, and defines some of the important terms used throughout the

legislation such as the types of offences covered and the definition of "immunity notice", as well as the definition of the term "negotiation", Madam Speaker.

Clause 3 provides that nothing in the legislation shall affect the right of an accused to plead guilty to a charge without having to enter into any undertaking under the legislation—in other words, Madam Speaker, an accused person is not under any obligation to enter into any agreement with the Prosecution. Clause 3 also provides that, save as expressly agreed otherwise by the DPP, nothing in the legislation affects the powers conferred upon the DPP by section 57 of the Constitution.

Clause 4 empowers the DPP to offer a person immunity from prosecution in exceptional circumstances. In such a case, Madam Speaker, an immunity notice is given to the person, and where an immunity notice is given, no proceedings that relate to the offence specified in the notice can be brought against that person, except in circumstances that are spelled out in the notice itself. It is critical to note, Madam Speaker, that an immunity notice will cease to have effect if there is non-compliance with any of the conditions specified in the notice.

Clause 5 provides that the Director may offer an offender something that is known as a restricted use undertaking. A restricted use undertaking Madam Speaker, prevents information that is described in that undertaking from being used against a person in the proceedings to which the clause applies. This includes not only criminal proceedings, but also civil forfeiture proceedings under the Proceeds of Crime Act (2020 Revision). Madam Speaker, for an immunity notice, a restricted use undertaking ceases if the person fails to comply with any conditions specified in the undertaking.

Clause 6 deals with a reduction in sentence where the defendant has pleaded guilty to the relevant offence and has, Madam Speaker, under a written agreement made with the DPP, assisted or offered to assist the investigator or prosecutor in relation to that or any other offence. Clause 6 also allows a Court to consider the extent and nature of the defendant's assistance in determining the appropriate sentence; if the Court discounts the sentence because of the defendant's assistance, the Court must state in open court that the sentence was discounted, and what the greater, usual sentence would have been, Madam Speaker.

Clause 7 deals with the review of a sentence where the convicted person subsequently provided assistance, or further assistance, to the investigator or prosecutor of an offence. The provision allows the DPP to refer the case back to the Court that imposed the sentence initially, for a review.

Madam Speaker, clause 8 empowers the Court to exclude the public from proceedings relating to review of a sentence under clause 7; the Court may also prohibit the publication of any matter relating to the proceedings. This operates to protect the convicted person

from reprisals for providing further assistance, Madam Speaker.

Clause 9 requires the DPP to inform the accused person of their right to legal representation and to apply for legal aid when negotiating an immunity, reduced sentence or restricted use undertaking. This clause obviously seeks to recognise the “equality of arms principle” by ensuring that an individual is accorded the right to legal representation as provided for under section 7 of the Constitution when engaging in such negotiations, Madam Speaker, so the appropriate safeguards are in place.

Madam Speaker, clauses 10 and 11 are intended to ensure confidentiality of matters relating to agreements under the Act. This is understandably of utmost importance in this context. Clause 10 also empowers the Court to seal the records of negotiations or agreements in the interest of the effective administration of justice.

Clause 11 requires that all persons involved in the administration of this legislation will keep the information, records and documents relating to the agreements confidential, Madam Speaker.

Clause 12 empowers the DPP, before giving an immunity notice or a restricted use undertaking, or before agreeing to a reduced sentence, to permit a victim of the relevant offence to make written representation on the matter.

I am sure Honourable Members will agree, that in seeking to secure convictions using this mechanism provided by the legislation, the interests and views of the victims should always be taken into account. Clause 12 expressly allows the Director to take a victim's representation into consideration when concluding the agreement, and he must, in certain circumstances, inform a victim of the substance and the reason for the immunity notice, restricted use undertaking, or an agreement for a reduction in the sentence.

Madam Speaker, the legislation is not intended to encroach on the independence or the discretion of our Judges and Magistrates, as clause 13 provides that the Court is not bound by an immunity notice, restricted use undertaking or an agreement for a reduced sentence, Madam Speaker; it is ultimately a matter for the court.

Finally, Madam Speaker, clause 14 provides that the Cabinet, after consultation with the DPP, may make regulations to give effect to this Act.

Madam Speaker, as the nature and extent of violent crime in the Islands evolves, it is important for our laws and legal processes to evolve to meet emerging challenges. The Government believes that this Bill will enhance the ability of prosecutors to secure convictions, as well as provide the transparency and consistency that is lacking in the current informal approach to offenders assistance. I think, and I urge Members to find, that this is a common-sense approach, in seeking to deal with the issue.

Accordingly, Madam Speaker and Honourable Members, I now seek this Parliament's approval in approving the Criminal Justice (Offenders Assisting Investigations and Prosecutions) Bill, 2022.

Madam Speaker, before I take my seat I want to thank the Law Reform Commission's Mr. José Grifith and his team; the Chairman of the Commission, Mr. Hector Robinson, KC, and his team of Commissioners, as well as all those who took time to comment during the various consultation processes.

As I said, I think this is a common-sense approach to dealing with certain violent crimes and criminals, and I certainly commend the Bill to this Parliament.

Thank you.

The Speaker: Does any other Member wish to speak?
[Pause] Does any other Member wish to speak?
[Pause]

The Honourable Member for Red Bay.

The Hon. Sir Alden McLaughlin: Thank you, Madam Speaker.

Madam Speaker, I wish to thank the Honourable Attorney General for his comprehensive presentation of this important Bill. As I think he said during the presentation, this is formalising for the Cayman Islands what I think the Americans call “plea bargain arrangements”.

The Bill goes much further than that, it deals with consequential matters; but in this day and age, where the crimes being committed are increasingly complex, and the threat to persons who give evidence is ever more serious and real, I do believe that we have to—I hate to use the word resort—but we have to resort to measures such as these, to encourage the giving of evidence by persons who are accomplices or may be accomplices in particular crimes in order to get the principal offenders properly convicted and sent away for the required period.

Madam Speaker, I will not go into the clauses, as I didn't see anything that sprang out at me as being potentially problematic. I think I can safely indicate, on behalf of the Opposition, our support for the Bill.

The Speaker: Does any other Member wish to speak?
[Pause] Does any other Member wish to speak?
[Pause] Does any other Member wish to speak?
[Pause]

Does the mover of the Bill wish to exercise his right of reply?

The Attorney General, Hon. Samuel W. Bulgin: Thank you, Madam Speaker.

I understand that we wish to thank the Honourable Member for Red Bay for his support on behalf of the Opposition, and all Honourable Members for their support, as well.

Thank you.

The Speaker: The question is that a Bill shortly entitled Criminal Justice (Offenders Assisting Investigations and Prosecutions) Bill, 2022 be given a second reading.

All those in favour, please say Aye. Those against, No.

AYES.

The Speaker: The Ayes have it.

Agreed: The Criminal Justice (Offenders Assisting Investigations and Prosecutions) Bill, 2022 was given a second reading.

CONTEMPT OF COURT BILL, 2022

The Speaker: The Honourable Attorney General.

The Attorney General, Hon. Samuel W. Bulgin: Thank you, Madam Speaker.

Madam Speaker, I beg to move the Second Reading of a Bill short titled Contempt of Court Bill, 2022; long title, a Bill for an Act to codify certain contempt of court offences; and for incidental and connected purposes.

The Speaker: The Bill has been duly moved. Does the mover wish to speak thereto?

The Attorney General, Hon. Samuel W. Bulgin: Yes, thank you, Madam Speaker.

Unfortunately this [Bill] is a little longer than the last, so I crave Members' indulgence as I make my way through it, Madam Speaker.

Madam Speaker, I present the Contempt of Court Bill, 2022 on behalf of the Government. The purpose of the proposed legislation is to streamline measures to ensure the integrity of the judicial process; ensure that it is preserved, while at the same time seeking to safeguard the rights of an individual to a fair trial and freedom of expression as enshrined in the Constitution, in circumstances where, of course, a person is accused of contempt of court.

Madam Speaker, this Bill was informed by the Law Reform Commission's final report on contempt of court. It is a matter which came by way of referral from the Attorney General back in 2003, Madam Speaker.

[Inaudible interjection]

The Attorney General, Hon. Samuel W. Bulgin: Nineteen years, Madam Speaker; it has been a while.

Madam Speaker, for the benefit of those in the public arena who might not be familiar with the terminology, contempt of court refers to *any action or inaction, for that matter, amounting to interference with or obstruction of, or having a tendency to interfere with or obstruct, the due administration of justice*; so Madam

Speaker, we are essentially dealing with the protection of the integrity of the court process.

Madam Speaker, two developments justified an examination of this branch of the law. The first is the increasing use of the internet as a method of communication, not just on a personal basis, Madam Speaker, but as a means of conveying information to the world at large. The internet, Madam Speaker, has replaced newspapers and broadcasts as the principal source of information and has brought with it, the "citizen journalist".

As a result Madam Speaker, it has also brought with it one particular aspect of juror contempt. That is, Madam Speaker, the risk that jurors, despite the traditional warning from the judge, will be tempted to surf the internet hoping to find some item relevant to the case in respect of which they are sitting as jurors. This act alone, Madam Speaker, could potentially influence the outcome of court proceedings.

Madam Speaker, the second development, which came later, was the enactment of Part 1 of Schedule 2 of the Cayman Islands Constitution Order 2009, which is the Bill of Rights, Freedoms and Responsibilities. The pertinent sections Madam Speaker, are sections 7 - the right to a fair trial, and section 11 - freedom of expression. These sections, Madam Speaker, are particularly relevant to any consideration of the present law of contempt, as while we may seek to safeguard the integrity of the court process, we must not be seen to be encroaching on the fundamental rights of the individual.

Madam Speaker, the Law Reform Commission produced three consultation papers on the subject of contempt. The first consultation paper sought to address the impact of the developments concerning the internet and the Bill of Rights; it also considered whether any, and if so which parts of the current law of contempt merited codification, amendment, or indeed, repeal.

The second consultation paper, Madam Speaker, dealt with the "*sub judice*" rule, that is, the rule restricting or postponing publications commenting on pending court proceedings until after those proceedings are concluded. Madam Speaker, the issue examined in this paper was how to achieve a balance which recognised the right to freedom of expression and the right to a fair trial.

Madam Speaker, the third consultation paper, done in July 2016, sought to determine whether the existing law should be substantively left as it is by retaining the court's summary power to preserve the integrity of the proceedings before it, but with some new statutory provisions applicable to the majority of cases that ensure that contempt proceedings are conducted fairly; comply with section 7 of the Bill of Rights; and afford the alleged contemnor the formal protection under the criminal procedure code.

In preparing these papers, Madam Speaker, the Commission was informed by the work of other law

reform commissions in jurisdictions such as Hong Kong, Australia and the United Kingdom. These consultation papers were made available for public consultation, following which, the Commission finalised its recommendation and submitted the final report on the draft Contempt of Court Bill.

Madam Speaker, I must add that there is a very short companion Bill, the Penal Code (Amendment) Bill, 2022. It's a companion proposed amendment to the Contempt of Court Bill, 2022.

Madam Speaker, the final report of the Commission primarily recommends:

- a) The restriction and codification of what is termed "the strict liability rule"— and I will discuss this rule further, Madam Speaker, when I examine the various clauses of the Bill.

Simply put, the strict liability rule stipulates that conduct may be treated as contempt of court regardless of an intent to act in a contentious manner. In other words, Madam Speaker, you can be guilty of contempt of court whether or not you had intended to obstruct the proceedings. That is strict liability.

It also speaks to the introduction of a provision to ensure that on application for committal or where the court acts of its own motion, the Court, Madam Speaker, will not proceed to consider the guilt or otherwise of the alleged contemnor unless it is first satisfied that the contemnor has been accorded of protections afforded by section 7 of the Constitution. This is the provision alluded to earlier, about fair trial.

Madam Speaker, I will try to summarise the provisions of the Bill and in doing so, to point out that the Bill as I said, seeks to codify the strict liability rules along the lines of sections 1 to 7 of the UK Contempt of Court Act 1981, with the necessary modifications to reflect the Cayman Islands' procedures.

Clause 1, as usual, speaks to the short title.

Clause 2 is a definition clause which features key terms that are pertinent to the issue being considered. These include the "Constitution" of course, the "court", and the definition of "proceedings".

Clause 3 deals with the strict liability to rule. Under the strict liability rule, Madam Speaker, conduct may be treated as contempt of court if it interferes with the course of justice in the particular proceedings, and this is regardless of whether the person had intended to interfere with the proceedings or not.

Madam Speaker, by way of example: The offence committed by breach of the *sub judice* rule is an offence of strict liability. The *sub judice* rule, Madam Speaker, is something that we all in this Parliament are quite familiar with. It requires restriction or postponement of publications commenting on pending court proceedings until after those proceedings are concluded. Madam Speaker, it is not necessary for the prosecution to establish that the publisher intended to interfere with

the conduct of the proceedings in question. Nor is it defence, Madam Speaker, for the publisher to establish that he or she had no such intention; again, that is because it is a strict liability offence and so, it is sufficient that when objectively viewed there is a risk that the publication will have that effect. That is the state of the current law.

Madam Speaker, there is no doubt that this represents the law of the Cayman Islands at the moment and even in the UK. The principle of strict liability was retained by the UK's Contempt of Court Act 1981, although as indicated in the consultation paper of the Commission, the scope of the *sub judice* rule was restricted in certain respects, Madam Speaker.

Madam Speaker, the Bill and the clauses to follow seek to identify the respects in which the scope of the *sub judice* rule will be applicable, and will be restricted, Madam Speaker, to accord with fair due process.

Clause 4 limits the scope of the strict liability rule in several instances.

First, Madam Speaker, the strict liability rule will only apply to publications. Publication includes any writing, speech, or other communication which is addressed to the public, or a section of the public, or which, having regard to the nature of the communication or the identity of the person or persons to whom the publication was addressed, the person who is doing the publication should have been aware that it would come to the attention of the public or a section of the public.

Madam Speaker, the strict liability rule will apply to a publication which creates a substantial risk, so it's not just any publication. It is one which will create a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced if the publication is done.

Strict liability rule will also apply, Madam Speaker, to publications made when proceedings are active within the meaning of clause 5. I will deal with what is considered active in a moment, Madam Speaker. In cases where the strict liability rule applies Madam Speaker, the court may order any publisher or distributor of the publication to take such steps as may be specified in the order to ensure that the publication does not come to the further attention of the public so long as those proceedings remain active. Madam Speaker, we have seen instances of that right here in this very jurisdiction, where the Court has put an embargo on publication of certain proceedings.

Madam Speaker, a strict liability rule will not, however, apply in the case of a publication in existence before the proceedings became active. Nonetheless, Madam Speaker, it is still within the inherent powers of the court to order the removal of the publication.

As far as penalty goes, Madam Speaker, a publisher or distributor who fails to comply with an order of the court commits an offence of contempt of court

and will be dealt with accordingly. I will discuss the penalty for contempt under the legislation in a bit, Madam Speaker.

Madam Speaker, I mentioned active proceedings earlier and said I would deal with that. Madam Speaker, clause 5 of the Bill defines when proceedings are to be considered as active. In this regard, Madam Speaker, proceedings are categorised into whether it's an appellate proceeding, or as a criminal or other proceedings. Criminal proceedings become active if:

- (a) There is an arrest without a warrant; or
- (b) The issue of a warrant for an arrest; or
- (c) The issue of a summons or a warrant to appear; or
- (d) The service of an indictment or the other document specifying a charge.

In contrast, Madam Speaker, criminal proceedings are inactive where the person has been acquitted or upon the giving of any other verdict, whether by jury or by the court, or the proceedings have been discontinued by operation of law. In those circumstances, the proceedings are no longer active Madam Speaker, and there can be no contempt in those circumstances.

Madam Speaker, in the case of appellate proceedings relating to criminal proceedings, the strict liability rule would apply where the court remits a case to the court below and orders a new trial. Madam Speaker, in the case of a trial in the Grand Court, the proceedings are active when the action is set down for trial until those proceedings are disposed of, discontinued, or withdrawn.

Clause 6 provides for defences to the strict liability rule. It is a defence to the strict liability rule, where a person can prove that at the time of the publication or distribution, he or she took all reasonable care and did not know, or had no reason to suspect that relevant proceedings were still active. In addition, Madam Speaker, it is a defence if having taken all reasonable care, the person did not know or had no reason to suspect that the publication or distribution contained a matter which would compromise an active proceedings.

Clause 7 deals with the contemporaneous publication of a report of proceedings held in public, and the limits of such publication.

Generally, a person does not commit an offence of contempt of court under the strict liability rule in respect of a fair and accurate report of legal proceedings held in public, published contemporaneously, and published in good faith, Madam Speaker; so no offence at all where the proceedings have been held in public and the publication was done in good faith. However, Madam Speaker, the court may, where it appears to be necessary for avoiding a substantial risk of prejudice to the administration of justice in those proceedings, or in any other proceedings pending or imminent, order that the publication of any report of the proceedings, or any

part of the proceedings be postponed until such time as the court has seen fit.

Again, Madam Speaker, I mentioned that this is not something new. It happens now depending on certain proceedings, especially if they're sensitive, relate to children or vulnerable persons, *et cetera*; or for some other reasons the court can order that publication be embargoed.

Clause 8 deals with the discussion of public affairs and provides that a publication made as or as part of a discussion in good faith, of public affairs or other matters of general public interest is not to be treated as a contempt of court under the strict liability rule if the risk of impediment or prejudice to particular legal proceedings is merely incidental to the discussion itself, not substantial risk, Madam Speaker.

Clause 9 is a savings clause and provides that nothing in sections 3 to 8 of the legislation prejudices any defence available at common law to a charge of contempt of court under strict liability rule. Madam Speaker, those defences that are available at common law still retain, even though the law is being codified.

Clause 10 sets out the requirements for instituting contempt proceedings— and this is quite important as well, Madam Speaker, because we spoke about the issue of ensuring proper due process. Thus, [under] clause 10, before proceedings for a charge of contempt of court under the strict liability rule may be instituted, the consent of the Director of Public Prosecution or a motion of the court having jurisdiction to deal with the contempt is required.

Clause 11 deals with publishing information relating to proceedings conducted in private. Madam Speaker, the publication of information relating to proceedings before courts, sitting in private— some of us lawyers refer to that as “in chambers” proceedings, Madam Speaker— will not of itself be contempt of court, except where the proceedings relate to certain specified matters such as the wardship or adoption of a child, or where the proceedings are brought under the Mental Health Act, or under section 14 of the Grand Court Act, Madam Speaker.

These are matters dealing with persons who are concerned with mental incapacity, Madam Speaker. In circumstances where the matters are conducted in private, and there are publications, it will be deemed to be a contempt of court— adoption and wardship of children, proceedings under the Mental Health Act or persons with mental incapacity. Madam Speaker, this provision deals with the guardianship and conduct of affairs of persons suffering from such illnesses. The reason for the restriction on publication in those circumstances is obviously due to the sensitive nature of any such proceedings.

Clause 12 sets out the procedure for dealing with contempt of court. This clause is especially important as I mentioned earlier, in that it seeks to ensure compliance with the fundamental rights for fair trial as enshrined in section seven 7 of the Bill of Rights. Under

the clause, the court can no longer deal summarily with contempt proceedings. The court will not be permitted to proceed to determine whether or not a person is guilty of contempt of court unless it is first satisfied that the alleged contemnor:

- (a) Is provided with full details of the nature and cause of the accusation;
- (b) Has had adequate time and facilities to prepare his or her defence;
- (c) Has access to legal representation, and legal aid where the person is unable to afford legal representation;
- (d) Has had an opportunity to examine witnesses and where necessary, to seek to obtain the attendance and examination of such witnesses on that person's behalf; and
- (e) Has had the free assistance of an interpreter if the alleged content contemnor cannot understand or speak the language used in court.

Madam Speaker, in conducting contempt proceedings, the court will continue to have jurisdiction to exercise its powers with respect to attendance of witnesses, refusal to give evidence, or penalties for non-attendance, or refractory witnesses. Madam Speaker, for example, if a witness is called to give evidence and the witness goes into the witness box, and having been sworn refused to answer questions, the court still retains the power to deal with that witness, Madam Speaker. It has not been taken away.

Clause 15 *[sic]* [13] Madam Speaker, sets out the penalty for contempt of court. A person who commits an offence of contempt of court is liable on conviction to a fine, or to imprisonment for a term of two years or both, Madam Speaker. The court has the power, Madam Speaker, if it believes that it is in the interest of justice to do so, it may order the early discharge of a person who has been imprisoned for contempt of court.

Madam Speaker, there are other minor clauses in the Bill, but section 27 of the Grand Court Act (2015 Revision) provides for the summary powers of the court to deal with contempt of court. Under the current section 27, the court has the power to order the arrest of, and try summarily any person who is accused of any contempt of court, or any act insulting to or scandalising the courts, or disturbing the proceedings. With the repeal of section 27, Madam Speaker, the Grand Court can no longer try a matter without according the accused person all the rights attached to a fair trial, Madam Speaker. Of course, the court will retain its inherent jurisdiction otherwise, Madam Speaker.

Finally, Clause 15 contains transitional provisions.

Madam Speaker, the Government believes that this piece of legislation will streamline the matters that surround the preservation of the courts' inherent jurisdiction to protect the integrity of its process; but

Madam Speaker, importantly, protecting the fundamental rights of individuals, ensuring that they are entitled to, and afforded due process, Madam Speaker, if seeking to prosecute them for contempt.

Madam Speaker, it took 19 years, there has been quite a bit of discussion not just with members of the public; newspapers and others have been asking for the law to be clarified; and so this is an attempt to codify the provisions, provide certainty as to what will and will not be contempt, and most importantly, Madam Speaker, if there is an allegation of contempt, how the matter will be dealt with by the court.

The contemnor will now have to be given all the protections under the Bill of Rights. We'll have to make sure that they have access to an attorney, and if they can't afford one then there's legal aid; to make sure that they have access to witnesses, being able to examine those witnesses, be given time to prepare their defence, be given an interpreter if there's a language barrier, among the other safeguards, Madam Speaker. Of course, all of that still requires the careful eye, if I might put it that way, of the DPP to ensure that it is a matter that ought properly to proceed while we have contempt, Madam Speaker.

I'm sorry for the length of the Bill, Madam Speaker, but the background is important and, having set it out so carefully so that Members can understand the full import of it, I commend the Bill to this honourable House.

The Speaker: Does any other Member wish to speak?
[Pause] Does any other Member wish to speak?
[Pause]

The Honourable Elected Member for Red Bay.

The Hon. Sir Alden McLaughlin: Thank you, Madam Speaker.

Madam Speaker, thanks to the Honourable Attorney General for his comprehensive presentation of this important Bill, the Contempt of Court Bill, 2022. I can't believe that we have actually been working every month of those last 19 years to produce something as short as this.

Madam Speaker, I think it is a commendable effort to codify an area of the law where there is a great deal of controversy as well as confusion. Increasingly, this belief that there should be no restrictions on freedom of speech and freedom of expression, continue to collide with an accused's, for lack of a better word, right to be treated fairly in the conduct of court proceedings.

I believe that codification of the law—well, by and large codification, is not proposed, I don't think, by virtue of this Bill, to repeal the inherent jurisdiction of the court to punish for contempt, and I think clause 14 expressly preserves that inherent jurisdiction but—*by and large* to codify the law relating to contempt, so that it will become increasingly difficult for those who step over the line, to say they were unaware of what the law

was in relation to, for instance, publications that affect matters which are *sub judice*.

Madam Speaker, overall, I believe the Opposition supports this Bill. I have one concern, though, Madam Speaker, if the Honourable Attorney General could comment on it when he rises to respond.

Clause 13, Penalties for contempt, clause 13(1) provides “**a person who commits an offence of contempt of court, is liable on conviction in a court of competent jurisdiction to a fine or to imprisonment for a term of two years, or to both**”. That to me is somewhat unusual, that there is no limit provided in respect of the fine. It seems to be an unlimited fine. I am not sure that it is something that we want to give to the court—the ability to fine an unrestricted sum; and it runs, I think, counter to practice in relation to other pieces of legislation.

I would ask the Honourable Attorney General if he would speak to that particular point. Other than that, Madam Speaker, I think I am content with the provisions of this Bill.

The Speaker: Does any other Member wish to speak? *[Pause]* Does any other Member wish to speak? *[Pause]* Does any other Member wish to speak? *[Pause]*

I call on the mover of the Bill to exercise his right of reply.

The Attorney General, Hon. Samuel W. Bulgin: Thank you, Madam Speaker.

Madam Speaker, I am trying to find the equivalent UK provision.

[Inaudible interjection]

The Attorney General, Hon. Samuel W. Bulgin: I know, not at all.

However, it is part of the court's inherent jurisdiction, Madam Speaker, to treat with those sort of contempt and there is a provision in the Penal Code which sort of set the limits depending on the amount of the fine. I'll find it for the Honourable Member. [I promise to find it for \[the\] Honourable Member.](#)

There is a range of fines, Madam Speaker, starting from \$100, I think, to \$1 million and that sets out the concomitant alternative sentence whether it is six months, 12 months, 18 months, *et cetera*. Madam Speaker, [I'll certainly find that for the Honourable Member and provide it to him before we get to Committee](#), if that's okay. Thanks.

Other than that, Madam Speaker, I certainly thank the Honourable Member and indeed, the House, for the support of the Bill.

Thank you.

The Speaker: The question is that a Bill shortly entitled the Contempt of Court Bill, 2022 be given a second reading. All those in favour, please say Aye. Those against, No.

AYES.

The Speaker: The Ayes have it.

Agreed: The Contempt of Court Bill, 2022 was given a second reading.

PENAL CODE (AMENDMENT) BILL, 2022

The Speaker: The Honourable Attorney General.

The Attorney General, Hon. Samuel W. Bulgin: Thank you, Madam Speaker.

Madam Speaker, I beg to move the Second Reading of a Bill shortly entitled the Penal Code (Amendment) Bill, 2022; the long title Madam Speaker, is a Bill for an Act to amend the Penal Code (2022 Revision) in relation to offences against the administration of lawful authority; and for incidental and connected purposes.

The Speaker: The Bill has been duly moved. Does the mover wish to speak thereto?

The Attorney General, Hon. Samuel W. Bulgin: Yes, Madam Speaker.

Madam Speaker, during my presentation for the Contempt of Court [Bill, 2022] I mentioned that there was a companion piece of legislation which is this Penal Code (Amendment) Bill, 2022. It's fairly short and is part of the effort to reform the law of contempt; as such, it is consequential amendments arising from the proposed Contempt of Court Bill, 2022.

It seeks to streamline and strengthen some of the offences for the punishment, and at the same time Madam Speaker, to ensure that there is built-in Bill of Rights protection under the law.

Clause 1 is, of course, the usual short title.

Clause 2, inserts a definition of “summons” and “summoned”.

Clauses 3 and 4, Madam Speaker, amend section 107 of the Penal Code (2022 Revision) which contains the offences of conspiracy to defeat justice and interference with witnesses; and repeal and substitution section 111 of the Penal Code which relate to judicial proceedings.

Madam Speaker, with regards to section 107, clause 3 of the Bill provides for the repeal and substitution of (1)(d) which makes it an offence to do “**anything in order to obstruct, prevent, pervert or defeat the course of justice**”. Madam Speaker, this provision, like section 27 of the Grand Court Act (2015 Revision), is expressed in very broad language, but unlike section 27, it currently carries a maximum sentence of seven years.

Arguably, Madam Speaker, the provision includes much of the common law of contempt, such as contempt in the face of the Court, as well as the strict liability rule. However, Madam Speaker, it does not

carry the limitations to which those forms of contempt have been now subjected by judicial decisions, nor does section 27 give the accused person the benefit of the modification that I just outlined in respect of the Contempt of Court Bill that is proposed here.

Therefore, Madam Speaker, the repeal of subsection (1)(d) will not result in any person who might have been successfully prosecuted under this paragraph escaping criminal liability, given the overlap with the various forms of common law contempt, but as far as the penalties are concerned, Madam Speaker, seven years is clearly excessive, thus the Bill is proposing four years for the maximum for contempt, which would be similar to offences under Part IV of the Penal Code (2022 Revision).

The only exception to these four years, Madam Speaker, would be where there is perjury or subornation of perjury, or where a person deliberately fabricated evidence. In those circumstances, the maximum is still seven years. Madam Speaker, what is being proposed is a reduction of penalties; for general interference, five years and two years for conspiracy.

Madam Speaker, clause 4 of the Bill replaces the existing section 111 that I spoke about earlier, as it relates to offences relating to judicial proceedings. It now proposes a new section 111 (1)(a) and (b) of the proposed section replacing paragraphs (a), (b) and (i) of the new *[sic]* section 111 and section 39 of the Summary Jurisdiction Act which is repealed by clause 5 of this Bill.

These provisions Madam Speaker, deal with conduct which might otherwise constitute contempt in the face of the court, so the proposed new paragraph is similar to the existing paragraph (d), but it is expressed in language which is derived from sections 28 and 29 of the Summary Jurisdiction Act, and also from sections 42 and 45 of the Criminal Procedure Code (2021 Revision). These sections, Madam Speaker, deal with what we call “defaulting witnesses” but provide for a summary disposal.

It is desirable, Madam Speaker, that under the present law, the court retains the option to simply refer the matter to the relevant prosecuting authority, namely the DPP, rather than exercising its summary powers, particularly, as the latter will need to be qualified by reference to protections contained in 7(1).

Translation, Madam Speaker: Although the court has the inherent jurisdiction there, what is proposed is that in all those circumstances the court will still refer the matter to the DPP’s office for them to determine whether or not there should be a prosecution. That, in return, will entitle the person to all the protections outlined earlier.

Madam Speaker, clause 6 deals with the transitional provisions. Again, the court believes that the real crux of this, is to codify the law relating to contempt of court and to ensure that, in treating with persons for contempt of court, there are the necessary constitutional safeguards as it relates to a fair trial, including the

right to legal representation and to legal aid where the person is unable to afford such.

Thank you.

The Speaker: Does any other Member wish to speak?
[Pause]

The Honourable Leader of the Opposition.

Hon. Roy M. McTaggart, Leader of the Opposition:
Thank you, Madam Speaker.

I rise on behalf of the Opposition to make a very short contribution to the debate on this Bill, noting that it is a companion bill to the Contempt of Court Bill, 2022 that we just finished dealing with and passing.

Madam Speaker, on behalf of the Opposition just let me state that we have no issue at all with the Bill and what it is seeking to achieve. I thank the Attorney General for addressing the issue of the reduction in penalties and prison terms for those two offenses. That was really the only question that we had regarding the Bill, so I am grateful to him for addressing it.

Madam Speaker, with those few words, the Opposition is happy to support the Bill.

The Speaker: Does any other Member wish to speak?
[Pause] Does any other Member wish to speak?
[Pause] Does any other Member wish to speak?
[Pause]

Does the mover of the Bill wish to exercise his right of reply?

The Attorney General, Hon. Samuel W. Bulgin: I thank you, Madam Speaker.

I do thank the Honourable Leader of the Opposition for the support on behalf of the Opposition and, of course, thanks to the entire Government and House for the support of the Bill.

Thank you.

The Speaker: The question is that a Bill shortly entitled the Penal Code (Amendment) Bill, 2022 be given a second reading.

All those in favour, please say Aye. Those against, No.

AYES.

The Speaker: The Ayes have it.

Agreed: The Penal Code (Amendment) Bill, 2022 was given a second reading.

ANTI-CORRUPTION (AMENDMENT) BILL, 2022

The Speaker: The Honourable Attorney General.

The Attorney General, Hon. Samuel W. Bulgin:
Thank you, Madam Speaker.

Madam Speaker, this is my final act for the night.

[Laughter]

The Attorney General, Hon. Samuel W. Bulgin:

Madam Speaker, I beg to move the Second Reading of a Bill, short titled the Anti-Corruption (Amendment) Bill, 2022; and the long title, a Bill for an Act to amend the Anti-Corruption Act (2019 Revision) in order to designate the Anti-Corruption Commission as a law enforcement agency in the Islands; to provide for additional powers of investigating officers; to clarify the circumstances in which the Commission shall investigate reports; and for incidental and connected purposes.

The Speaker: The Bill has been duly moved. Does the mover wish to speak thereto?

The Attorney General, Hon. Samuel W. Bulgin: Yes, Madam Speaker.

Madam Speaker, I rise to present this Bill on behalf of the Government and in doing so, Madam Speaker, it will be helpful if I provide some context on how most of these proposed amendments came about.

Madam Speaker, the Anti-Corruption Act was first enacted in 2008 and came into effect in 2010. Since then Madam Speaker, it has been administered by the Anti-Corruption Commission as well as the Office of the DPP which ultimately handles rulings and prosecution under the Act.

Madam Speaker, the interfacing by the Anti-Corruption Commission (ACC) and the DPP's office with the Act has provided them with a unique opportunity of observing the working of the legislation, including observing areas, Madam Speaker, in which they think the legislation can and should be amended to improve effectiveness and efficiency.

This prompted the Anti-Corruption Commission to submit a number of suggested amendments to the Act, Madam Speaker. Amendments which primarily formed the basis of the Anti-Corruption (Amendment) Bill, 2022. Accordingly, Madam Speaker, the amendments in the Bill consist in large part of recommendations from the ACC, Madam Speaker. The following are the clauses of the Bill.

Clause 1 as usual deals with the commencement as well as the short title.

Clause 2 deals with definition of "financial year" which is now 31st December of each year.

Clause 3 amends section 3 of the Act to clarify that the ACC is in fact, a law enforcement agency. This is particularly important, Madam Speaker, because we are advised that in interfacing with other ACC bodies, the Anti-Corruption Commission faces questions to clarify whether it is in fact a law enforcement agency or otherwise; that is important in terms of international co-operation and mutual legal assistance.

Clause 4, again very important, if agreed by Parliament, would enable the Anti-Corruption Commission manager to be able to delegate to a senior investigating officer the task of accepting and acknowledging complaints made to the Commission. As it is now, the administrative manager, ordinarily a civilian person, has the responsibility of receiving, accepting and acknowledging complaints made to the Commission.

This is simply saying that that person, (at the moment a "she"), will be able to delegate a senior investigating officer to accept such complaints, Madam Speaker. Of course, notwithstanding the delegation, the manager will still retain the ability to carry out this task, should it become necessary.

Clause 5 empowers the ACC officer to search an arrested person, where the person has been arrested at a place which is not a police station, but only if the arresting officer has reasonable grounds to believe that the arrested person could present a danger to himself, herself or others, including the arresting officer.

Madam Speaker, the draft Bill also understandably, contemplates that the arresting officer would be able to enter and search, without a warrant, any premises in which the arrested person was, immediately before he/she was arrested, for the purpose of securing evidence relative to the offence for which the arrest is made—if I might just clarify this, Madam Speaker, because I think there were some questions around it.

Madam Speaker, what I am saying here is, where the Anti-Corruption Commission has information or reason to arrest a person other than at a police station, the officer has the authority—as is the case under the Police Act at the moment—to search that person to see whether he/she has anything; and it makes sense, Madam Speaker, because he could have a weapon or something on him, so the officer ought to be able to search, to ensure there is no such item.

Also, Madam Speaker, if the person is seen exiting a particular premises and the officer has reason to believe that there is evidence in that particular premises which is relevant to the offence for which a person has just been arrested, this is saying that the investigating officer has the authority, again as under the Police Act, to simply for the purpose of preserving the evidence, enter the premises and search for that particular evidence to secure it—and you can understand why, Madam Speaker. If the officer had to leave and go somewhere, find a judge, swear a warrant, come back to find that evidence, then clearly by the time all of that is done that evidence is gone, but it's only in respect of the thing that is relevant for that purpose.

Clause 6 amends section 4 of the Act to clarify that the Commission does not have to investigate every report made to it. Instead, it only needs to investigate where they believe that an offence has been committed, including where there is an attempt or conspiracy.

Clause 7 is aimed at substituting the current section 17 which is the offence of abuse of office

Madam Speaker, to among other things, make it an indictable offence and increase the penalty to up to five years in certain circumstances. The language has also been amended to make it clear, Madam Speaker, that whereas previously, a mental element was implied and the magistrate being alerted or the person who is learned would be aware of that, the case will now be dealt with by jurors Madam Speaker, and therefore it was thought advisable to expressly provide the amended language that there has to be a mental element to the offenders intent.

This is a standard provision Madam Speaker, in a criminal offence, unless of course it is a strict liability offence. Madam Speaker, some countries use the word wilfully, knowingly or intentionally and again, Madam Speaker, I understand that there are concerns in some quarters about some article which says that the effect of this Amendment is to make it harder to prosecute MPs for corruption.

Madam Speaker, I am not so sure, unfortunately, how one makes that quantum leap, because the legislation speaks about public officers and Members of Parliament, so it speaks about the thousands of civil servants [including] those who serve on boards, those who serve in Statutory Authorities, [and] the 19 Elected Members; but there seems to be some unfortunate misunderstanding of some of these proposals.

The current section 17 Madam Speaker, is a summary offence. I think I better read it, if I can. It says Madam Speaker:

“Abuse of office

17 (1) A public officer or a Member of the Legislative Assembly who does or directs to be done, in abuse of the authority of his office, any arbitrary act prejudicial to the rights of another commits an offence and is liable on summary conviction to imprisonment for a term of two years.

(2) If the act under subsection (1) is done or directed to be done for purposes of a loan, reward, advantage or other benefit such person commits an offence and is liable on summary conviction to imprisonment for a term of three years.”

Again, summary offence, Madam Speaker. The proposed provision would say, a public officer or a member of the Legislative Assembly [*sic*] [Parliament] who intentionally does, or directs to be done... so the word “intentionally” has been inserted.

Madam Speaker as I mentioned, it's a summary offence which is triable by a magistrate at the moment and who is a trained, legal mind, so a magistrate will readily understand that it's a criminal offence and therefore a mental element is required unless it's a strict liability offence, which it is not.

The proposed change Madam Speaker, will now make it an indictable offence to be heard by a jury and who are not legally trained. Madam Speaker, what we are attempting to do here is to make what was always implied, now expressly stated in the legislation. Thus, Madam Speaker, when dealing with the matter, the court, the judge, will now have to remind the jury that it requires intent for the offence to be committed.

Madam Speaker, it was always to be taken that a trained magistrate as I said, would understand that position, but it cannot be assumed that the jury would understand that or that it is implied.

Madam Speaker, one of the articles sought to suggest that there is a distinction between simply proving a corrupt act and, in addition, Madam Speaker, having to now prove that at the time of doing the act, the accused person intended to corruptly abuse his office. Madam Speaker, this line of reasoning, unfortunately, tells me that there is a misunderstanding of the law around this issue.

The writer, Madam Speaker, is unfortunately suggesting that there are two separate tests to be fulfilled. Madam Speaker, you can't have a corrupt act without a state of guilty mind; that is what makes it corrupt. The word corruption in itself means dishonest, vain; that's what it means, so you can't decouple them. If you do a corrupt act it means you have a guilty mind; that's what it means. Madam Speaker, anyone who Google's corruption, will see that it means dishonest, nefarious, without integrity, *et cetera*, so it's not two separate acts Madam Speaker, it's one and the same thing.

Madam Speaker, what I would also like to point out to the writers of those articles, is that the persons are those who conceived of the offence Madam Speaker, as outlined in the *UN Guide for Anti-Corruption Policies* which is one of the very useful literature dealing with it.

Madam Speaker, I will just lay the relevant page on the Table so that the public can have a read of it. Madam Speaker, the title is the *United Nations Office on Drugs and Crime: UN Guide for Anti-Corruption Policies*, and I am reading in particular from page 33 where it deals with Article 19, Abuse of functions; and this is the genesis, Madam Speaker, of the current section 17 of the Anti-Corruption Act.

I'll just read quickly what it says, Madam Speaker. It says, **“Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.”**

Madam Speaker, this is the genesis of section 17 of the law. It expressly states that “...**when committed intentionally, the abuse of functions or position...**” so we are not making it up. This is what they intended, and so Madam Speaker, I think, unfortunately, those who are commenting on the provision might not have the benefit of these literature and are taking the position that what was being done is something which is, in fact, new or unique to certainly what obtains elsewhere.

As I said Madam Speaker, unless it is a strict liability offence—driving without a driver's licence—every criminal offence requires a mental element. There has to be *actus reus* and the *mens rea*, Madam Speaker— that's the act of doing something and also the accompanying mental element that goes along with that. Madam Speaker, that is the genesis of it. I hope I have managed to clarify the position for the readers and the authors of those articles, Madam Speaker.

Clause 8 is intended to amend the current section 20 to provide an obligation for any public officer, a Member of Parliament to whom any loan or reward or benefit in breach of the Act, that public officer and Member of Parliament should report that fact to the Anti-Corruption Commission at the earliest opportunity. Again, Madam Speaker, this is one of those things that the Commission has been asking for since 2019 or 2020, I think.

Clause 10, Madam Speaker, this is a very important provision aimed at enabling the anti-corruption senior investigating officers in order to prevent, detect or for proceedings relating to a crime, Madam Speaker, to request in writing from the Information and Communications Technology (ICT) provider in the form of a record, message or document certain information relating to the investigation. It is an offence Madam Speaker, not to comply without reasonable excuse or it is an offence to destroy or alter the records. Again, similar to powers that the Police enjoy Madam Speaker.

Clause 11 seeks to make it clear that it is the collective body, that is, the Commission and not the investigating officer, who has the ultimate power to decline to investigate the matter after the DPP has been consulted and in instances where there is satisfaction that the allegation is frivolous, vexatious, trivial or not made in good faith.

Clause 13 [*sic*] [Clause 15] provides that section 35 will be amended to clarify that when applying Proceeds of Crime Act (2020 Revision) (PoCA) to any proceeds of corruption, the reference in PoCA to an appropriate officer will also include an investigating officer of the Anti-Corruption Commission.

Madam Speaker, in my view, pretty straightforward provisions which will strengthen the position of the Anti-Corruption Commission investigators and basically align it with what currently obtains for the police under the Police Act, Madam Speaker, so that there does not have to be, for obvious reasons, reliance on

the Police to deal with certain offences or seek assistance from them.

Madam Speaker, I commend this Bill to Honourable Members and I will be happy to answer any questions.

I thank you.

The Speaker: Does any other Member wish to speak?
[Pause] Does any other Member wish to speak?
[Pause] Does any other Member wish to speak?

The Honourable Premier.

The Premier, Hon. G. Wayne Panton: Thank you, Madam Speaker.

Madam Speaker, I want to thank the Honourable Attorney General for his very clear and able presentation of this Bill, the Anti-Corruption (Amendment) Bill, 2022.

Madam Speaker, I think the Honourable Attorney General has made it very clear as to the substance of the Bill and the intentions of the Bill in strengthening the Anti-Corruption Commission and that's obviously very important from a public perspective.

Madam Speaker, it is from that perspective that I will just briefly comment and that is, there were a couple of really important points that the Attorney General mentioned. One was the genesis of the proposed amendments; that effectively these came about as a result of the operations of the Anti-Corruption Commission since the legislation had commenced and the experiences of both the council and the investigators.

Madam Speaker, the very unfortunate articles that the Honourable Attorney General referred to—

An Hon. Member: Written by a lawyer, no less.

The Premier, Hon. G. Wayne Panton: Apparently.

I think, tended to undermine the objectives of the Amendments, the Anti-Corruption Commission itself and very unfortunately suggested again—counter to the clear indications that we have now had as to the origin of these proposed Amendments—that this Bill might contain provisions which reflect an attempt by politicians by Members of Parliament to prevent the successful prosecution of Members of Parliament if there was ever any sort of wrongdoing.

Madam Speaker, it is particularly unfortunate for that kind of representation to be made and it was not just one article, but two; and the interesting thing Madam Speaker, was that there was not just the representation that there was this nefarious intent, but at the same time, in terms of the first article, there was absolutely no mention of the fact that the sentence was being extended in order to strengthen—the deterrent factor was being increased.

Hence, not only was there an attempt to suggest that there was an untoward reason for the Amend-

ment and the suggestion that the requirement was being changed from effectively one of strict liability to now requiring intent, which the allegation was that [such] was difficult to prove, but there was not even any suggestion in the article in relation to the increased sentences so, Madam Speaker, I am very happy that the Honourable Attorney General was able to specifically address those points.

I think they have been addressed by others in the press and I have certainly tried to address it myself, but I get particularly concerned Madam Speaker, when there is an attempt to try to undermine the work of Parliament and to imply, or suggest, that Parliamentarians are trying to look after themselves and look after each other in such an untoward way. I think that is very unfortunate, Madam Speaker, and I think the record, and this Bill, and the very able presentation by the Honourable Attorney General very clearly puts an end to that interpretation, Madam Speaker.

With that, I indicate my full support. Thank you, Madam Speaker.

The Speaker: Does any other Member wish to speak?
[Pause] Does any other Member wish to speak?
[Pause] Does any other Member wish to speak?
[Pause]

I now call on the mover of the Bill to exercise his right of reply.

The Attorney General, Hon. Samuel W. Bulgin: Thank you, Madam Speaker.

Madam Speaker, I thank the Honourable Premier for his contribution and all Honourable Members, Madam Speaker, for their support of the Bill.

Thank you.

The Speaker: The question is that a Bill shortly entitled the Anti-Corruption (Amendment) Bill, 2022 be given a second reading.

All those in favour, please say Aye. Those against, No.

AYES.

The Speaker: The Ayes have it.

Agreed: The Anti-Corruption (Amendment) Bill, 2022 was given a second reading.

The Speaker: Members, this looks like a good place for us to take the adjournment. I call on the Honourable Premier to move the adjournment.

ADJOURNMENT

The Premier, Hon. G. Wayne Panton: Thank you very much, Madam Speaker. I was going to encourage that if you didn't indicate so.

Madam Speaker, this conveniently deals with all outstanding Bills today and you know it is a very appropriate time. The hour is late, and I suspect that some of us probably still have work to do and visits to make to constituents, *et cetera*, so I won't keep anybody any longer. I want to thank all Members very much for the contributions made and the progress in getting through the agenda for Bills today.

With that Madam Speaker, I move the adjournment of this honourable House until 10.00 a.m. Wednesday morning.

The Speaker: The question is that this House do now adjourn until 10.00 a.m. on Wednesday morning.

All those in favour, please say Aye. Those against, No.

AYES.

The Speaker: The Ayes have it.

This honourable House now stands adjourned until 10.00 a.m. on Wednesday morning.

At 9.42 p.m. the House stood adjourned until Wednesday, 14th December, 2022 at 10.00 a.m.