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2016/17 SESSION

21 March 2017

*Eleventh Sitting of the Third Meeting
(Pages 1-58)*

**Hon Juliana Y O'Connor-Connolly, JP, MLA
Speaker**

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PRESENT WERE:

SPEAKER

Hon Juliana Y O'Connor- Connolly, JP, MLA
Speaker of the Legislative Assembly

MINISTERS OF THE CABINET

Hon Alden McLaughlin, MBE, JP, MLA
Hon Moses I Kirkconnell, JP, MLA

Hon D Kurt Tibbetts, OBE, JP, MLA
Hon Marco S Archer, MLA
Hon Osbourne V Bodden, MLA
Hon G Wayne Panton, MLA
Hon Tara A Rivers, MLA

The Premier, Minister of Home Affairs, Health and Culture
Deputy Premier, Minister of District Administration,
Tourism and Transport
Minister of Planning, Lands, Agriculture, Housing and Infrastructure
Minister of Finance and Economic Development
Minister of Community Affairs, Youth and Sports
Financial Services, Commerce and Environment
Minister of Education, Employment and Gender Affairs

EX OFFICIO MEMBERS OF THE CABINET

Hon Franz I Manderson Cert. Hon., JP

Hon Samuel W Bulgin, QC, JP

Deputy Governor, ex officio Member responsible for the
Portfolio of the Civil Service
Attorney General, ex officio Member responsible for the
Portfolio of Legal Affairs

ELECTED MEMBERS

GOVERNMENT BACKBENCHERS

Mr Roy M McTaggart, MLA
Mr Joseph X Hew, MLA

Second Elected Member for George Town
Sixth Elected Member for George Town

OPPOSITION MEMBERS

Hon. W. McKeeva Bush, OBE, JP, MLA
Mr Bernie A Bush, MLA
Capt. A Eugene Ebanks, JP, MLA

Leader of the Opposition, First Elected Member for West Bay
Third Elected Member for West Bay
Fourth Elected Member for West Bay

INDEPENDENT MEMBERS

Mr Anthony S Eden, OBE, JP, MLA
Mr Alva H Suckoo, MLA
Mr Winston C Connolly, Jr, MLA
Mr D Ezzard Miller, MLA
Mr V Arden McLean, JP, MLA

Deputy Speaker, First Elected Member for Bodden Town
Fourth Elected Member for Bodden Town
Fifth Elected Member for George Town
Elected Member for North Side
Elected Member for East End

OFFICIAL HANSARD REPORT
THIRD MEETING 2016/17 SESSION
TUESDAY
21 MARCH 2017
10:32 PM
Eleventh Sitting

[Hon. Juliana Y. O'Connor-Connolly, Speaker, presiding officer]

The Speaker: Good morning.

I will invite the Honourable Minister responsible for Sports to say prayers this morning.

PRAYERS

Hon. Osbourne V. Bodden, Minister of Sports: Let us pray.

Almighty God, from whom all wisdom and power are derived: We beseech Thee so to direct and prosper the deliberations of the Legislative Assembly 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 Lady, Queen Elizabeth II; Philip, Duke of Edinburgh; Charles, 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 among us. Especially we pray for the Governor of our Islands; the Premier, the Speaker of the Legislative Assembly, the Leader of the Opposition, Ministers of the Cabinet, ex-officio Members and Members of the Legislative Assembly, 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.

The House is now resumed.

**ADMINISTRATION OF OATHS
OR AFFIRMATIONS**

The Speaker: None

**READINGS 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
MEMBERS AND MINISTERS
OF THE CABINET**

The Speaker: I recognise the Honourable Minister responsible for Sports.

Hon. Osbourne V. Bodden: Madam Speaker, I rise to elaborate on the Ministry of Community Affairs, Youth and Sports supplementary appropriations for the Financial Years of 2014/2015 and 2015/2016, in accordance with section 11(6) of the Public Management and Finance Law. I will also be doing 2016/2017 after this, Madam Speaker.

Madam Speaker, in regards to the 2014/2015 Financial Year, as you are aware, the former Ministry of Home and Community Affairs underwent a change in political leadership in January 2015. At this time the Ministry was renamed the Ministry of Community Affairs, Youth and Sports to reflect the addition of Youth

and Sports as new subject areas. Based on this change, the Department of Sports, Youth Services Unit and Cayman Islands Cadet Corps transfer budgets were approved and reflected in the revised 2014/2015 budget for the new Ministry.

In addition to this transfer of the subject areas Madam Speaker, there was further Cabinet approval to increase TP 47 – Ex Gratia Payments to Seamen by \$70,444, so that the pending applications for spouses of deceased seamen could be processed. This increase was offset by a decrease in TP 45 – Youth Aftercare Payments of \$19,844 and \$50,600 from TP 48 – Benefit Payments to Ex-servicemen.

Madam Speaker, I will now discuss the supplementary appropriations for the 2015/2016 Financial Year by subject area, beginning with Community Affairs.

During the 2015/2016 Financial Year, Madam Speaker, the demand to assist persons with basic needs such as electricity, water, rent and food increased. Based on the trends observed, the Ministry identified that the allocated funding was insufficient for the Needs Assessment Unit to provide these services through to the end of the financial year. Hence, the Ministry reshuffled its budget to increase funding to areas in welfare that were projected to be overspent and offset this by decreasing funding in welfare areas that were not being fully utilised.

As a result, Cabinet's approval was obtained to decrease NGS 63 – School Lunches and Uniform Programs \$300,000, TP 50 – Pre-school assistance \$100,000, TP 60 – Housing assistance \$250,000 for a total decrease of \$650,000. In turn, approval was given to increase NGS 68 – Rental Assistance for \$300,000, TP 43 – Poor Relief vouchers for \$150,000 and TP 75 – Needs Assessment Support for \$200,000, for a total increase of \$650,000.

Madam Speaker, during the 2015/2016 financial Year the Ministry also had a request for additional funding from the Children and Youth Services Foundation better known as CAYS. As you are aware, the CAYS Foundation assists the Government in meeting its legal obligations under the Children Law and the Youth Justice Law for children placed on court orders.

The CAYS Foundation, Madam Speaker, is continually evaluating its therapeutic programs and services to ensure that they are providing the best possible care. In February 2016, as a result of its efforts to further strengthen its services, the CAYS Foundation completed the Frances Bodden Children's Home expansion, which allowed for the separation of males and females in need of care and protection. This expansion was made possible through the efforts of the Chairman and the Board of Directors, who advocated for and received donations from several private sector companies.

Despite the generosity of the private sector however, the CAYS Foundation was not in a financial position to hire the additional staff required to operate

the new expansion at the Frances Bodden Children's Home.

The CAYS Foundation projected a surplus of \$354,491 at the end of 2015/2016 Financial Year; however, Madam Speaker, this would have been insufficient to hire the additional staff to operate the expansion. As a result, the request for additional funding of \$336,513 was submitted to the Ministry in order to ensure that the CAYS Foundation could hire the additional staff needed to provide therapeutic services to up to eight males placed on care orders.

Madam Speaker, at the same time, the Ministry also had to address the matter of residential care for the elderly. As we are all aware, the Ministry purchases residential care services for the elderly from the Pines Retirement Home and its services are monitored through a purchase agreement; however, during the 2015/2016 Financial Year the Pines projected an annual operating loss of \$225,854.

The two primary reasons for this projected deficit were:

1. The government had not increased the care rate since 2007 which was \$3,100 per month for regular care and \$6,500 for heavy care; and
2. Persons who were placed at the Pines as regular care patients became heavy care patients due to experiencing more complicated health issues over time. The government continued to pay for these patients at the regular care rate. Hence, during the 2015/2016 Financial Year, the Pines had approximately nine residents who received heavy care but for whom the government was only paying for at the regular care rate.

Madam Speaker, it was acknowledged that in order for the Pines to cover its operating cost, it would require additional funding to cover the provision of services to government residents of approximately \$225,854; additionally, given that the Pines would continue to provide heavy care services to government residents during the 2016/2017 Financial Year, the Ministry decided to contribute supplementary funds to offset expenses incurred by these heavy care residents during the upcoming Financial Year. This resulted in a total of \$400,000 being identified as necessary to stop the Pines Retirement Home from operating at a loss.

Therefore Madam Speaker, in order to fund the increase of \$736,513 to the CAYS Foundation (CAY 2) and the Pines Retirement Home (NGS 64), the Ministry identified savings of \$736,513 from TP 41 – Poor Relief Payments of \$375,000, TP 48 – Benefit Payments to Ex-servicemen of \$50,000 and TP 60 – Housing Assistance of \$311,513 that would not have been spent during the 2015/2016 Financial Year.

Madam Speaker, turning to Sports, I will now look at the supplementary appropriations for that area.

As you are aware, during the 2015/2016 Financial Year, the government and I made the decision to seize funding to the Cayman Islands Football Association, better known as CIFA, until further notice. It was not my intention to disadvantage the sport of football—especially our young footballers—and therefore, towards the end of 2015/2016 Financial Year, when I was advised that the preliminary qualifications for the FIFA under 20 World cup competition was set to begin on the 29th June, 2016, and that the Cayman Islands were included in group 3, I agreed to fund the team's preparation expenses.

As the governing body for football in the Cayman Islands, Madam Speaker, CIFA is the only body permitted to enter a team in the World Cup Competition. CIFA therefore authorised a group of professionals to prepare the Cayman Islands team for this competition; the group included an individual who had experience in managing national football teams in previous overseas competitions but was not an employee of CIFA. In addition, the head coach was one of the Department of Sports community coaches.

Madam Speaker, the group was also authorised to accept and expend funds on behalf of the team and to account for those funds independently of CIFA. Hence, they approached the Ministry for assistance to meet to cost of their efforts to prepare the Cayman Islands team for competition. In order to honour this request, the Ministry received approval to decrease the appropriation of NGS 60 – Sports Programs by \$27,775 and increase appropriation TP 72 – Other Youth and Sport Programs by \$27,775.

In closing, Madam Speaker and Members of this honourable House, I have explained the exceptional circumstances that made it necessary for the approval of the supplementary appropriations in the 2014/2015 and 2015/2016 Financial Years for the Ministry of Community Affairs, Youth and Sports.

I thank you for your indulgence as the Ministry works to support its agencies and continues to provide essential human and social services to the people of the Cayman Islands.

Madam Speaker, with your permission I would like to also do a supplementary appropriation for the 2016/2017 Financial Year.

The Speaker: Permission granted.

Hon. Osbourne V. Boddén: Thank you.

Madam Speaker, following the approval of the 2016/2017 budget year, the Ministry received requests from the Hope for Today Foundation and the Bridge Foundation. With your indulgence, Madam Speaker, I will not outline in more detail these requests and the subsequent need for supplementary appropriations.

The Ministry received a request from the Hope for Today Foundation for funding to assist with the operation of their facility. As you may be aware

Madam Speaker, the Hope for Today Foundation is a non-government organisation which provides a half-way house for recovering addicts and alcoholics to facilitate their transition from treatment to community life. It is funded primarily through fund raising initiatives and donations. As Minister responsible for Community Affairs Madam Speaker, I supported the request by obtaining Cabinet's approval via s11(5) for \$10,000. The funding of this new purchase agreement was offset against TP 49 – Youth Programs and Other Non-government Organisations.

Madam Speaker, in addition to this, the Chairman of the Bridge Foundation also approached the government to request the secondment of a counsellor from the Caribbean Haven Residential Centre to work with the Bridge Foundation for a period of six months. Again, as you may be aware, the Bridge Foundation is a non-profit, non-governmental and non-denominational company that provides transitional or half-way house accommodation to recovering addicts from alcohol and other drugs, Madam Speaker. The Bridge Foundation promotes sober and structured living, educational opportunities, life skills development, self-determination, independence, physical and mental well-being and spiritual development.

The aforementioned request came as a result of the former programme manager falling ill and not being able to provide the necessary oversight of the halfway houses. In order to prevent closure, Madam Speaker, the Bridge Foundation requested government support and technical assistance through the secondment of one of our employees. The secondment of this counsellor from Caribbean Haven Residential Centre however, has reduced the staff complement at the centre to below acceptable levels necessary to meet their programme demands.

In addition to providing counselling to clients who reside full time at the Caribbean Haven Residential Centre Madam Speaker, counsellors also complete drug and alcohol assessments in the prisons to assist the Conditional Release Board and the drug and Summary Courts to determine the appropriate treatment for persons with a history of substance abuse. Given this, Madam Speaker, it is necessary to fill the vacancy created by the secondee's absence, since it is highly unlikely that a qualified counsellor can be found who would be willing to accept the position on a part time basis. Consequently, it would be necessary to fund a position for one year.

Madam Speaker, in order to facilitate this, Cabinet's approval was obtained to decrease TP 48 – Benefit Payments to Ex-servicemen or Veterans by \$50,000 and increase HCA 30 – Counselling and Support Services by \$50,000.

In closing, Madam Speaker and Members of this honourable House, I have explained the circumstances that made it necessary for the approval of supplementary appropriations in the 2016/2017 Financial Year for the Ministry of Community Affairs,

Youth and Sports. Once again I thank you for your indulgence, as we work to support our Agencies and NGO services that work to improve the quality of life in these Cayman Islands.

Thank you, Madam Speaker.

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

The Public Management and Finance (Amendment) (No. 2) Bill, 2016

The Speaker: I recognise the Honourable Minister responsible for Finance.

Hon. Marco S. Archer, Minister of Finance & Economic Development: Thank you, Madam Speaker.

Madam Speaker, I beg to move the Second Reading of a Bill entitled The Public Management and Finance (Amendment) (No.2) Bill, 2016.

The Speaker: The Bill has been duly moved.

Does the Honourable Minister of Finance wish to speak thereto?

Hon. Marco S. Archer: Yes thank you, Madam Speaker.

Madam Speaker, I rise to present the Public Management and Finance (Amendment) (No. 2) Bill, 2016 on behalf of the government, which I shall refer to hereafter as "the Bill".

Madam Speaker, Cabinet approved the appointment of the Public Management and Finance Law Review Committee, which I will refer to as "the Committee", to scrutinise the Public Management and Finance Law (PMFL) and its accompanying Financial Regulations. The Committee comprises:

- Mr. Roy M. McTaggart, MLA - Chairman of the Committee;

- Mr. Kenneth Jefferson - Financial Secretary;
- Mrs. Debra Welcome - Former Accountant General;
- Mr. Alastair Swarbrick - Former Auditor General;
- Ms. Dorine Whittaker - representative of the government's Chief Officers;
- Mr. Vinton Chinsee – Chief Financial Officer, representative of the Chief Financial Officers;
- Mr. Taron Jackman – representative, Cayman Islands Institute of Professional Accountants; and
- Mrs. Patricia Estwick – a qualified Accountant and private sector representative.

The Committee made 40 recommendations and conclusions for possible amendments to the Law and Regulations, which are intended to improve the efficiency and effectiveness of the government's Financial Management framework.

Madam Speaker, on the 15th October, 2015, the Legislative Assembly approved the Public Management and Finance Amendment Law 2015, which included some of the 40 recommendations made by the Committee. Those recommendations incorporated in the 2015 Law were:

1. Changing the Financial Year from a 1st July to 30th June financial year to a 1st January to the 31st December financial year. The revised financial year starts on the 1st January, 2018;
2. Adopting multi-year budgets and appropriations;
3. Changing the deadlines for the tabling of the Strategic Policy Statement in the Legislative Assembly and changing the date by which the timing of each budget is to be published in the Government's Gazette;
4. Changing the holding period for Trust Assets from six years to four years; and
5. Prohibiting Ministries and Portfolios from waving Government Revenue, an ability that now rest solely with the Cabinet.

Madam Speaker, let me present details with respect to the items that are in the Bill now before this House.

Number 1 — specifying accountability roles for the Chief Officer for Finance, and to monitor compliance with the Law.

Madam Speaker, the Committee reported that section 54 of the law outlines the responsibility of the Ministry of Finance, but does not specify which officer within the Ministry should be held accountable for these very important functions. The Committee recommended that the Chief Officer for Finance be recognised in law as the overall leader of the govern-

ment's Financial Accounting and reporting functions, for carrying out the functions outlined in section 54, and for monitoring compliance with the law. The law is therefore being amended accordingly.

The Committee also found that accounting policies and procedures were inconsistent across the government and should be consolidated into an accounting manual that sets out financial management and reporting policies that are consistent with generally accepted accounting practices for all public entities, as required under section 4 of the law. The law is therefore being amended to hold the Chief Officer for Finance accountable for establishing, and publishing, the Public Finance Manual.

Section 54 of the law is also being amended to hold the Chief Officer for Finance accountable for monitoring compliance with the requirements of the law, reporting contraventions to the law and making recommendations for actions to be taken against those responsible for such contraventions.

Number 2 — defining the role of the Minister of Finance, the Financial Secretary, Chief Officers and Chief Financial Officers.

Madam Speaker, the Committee reported that there was ambiguity in the Law with respect to the roles and responsibilities of the Minister of Finance, the Financial Secretary, Chief Officers and Chief Financial Officers. The Committee therefore recommended that the law be amended to provide further clarity to these roles. Madam Speaker, the definition section of the Bill, clause 2 along with clauses 12-14 and 20-23, defines these roles and responsibilities to ensure that they are consistent with the Constitution, the Public Service Management Law and job descriptions.

With respect to empowering the Financial Secretary to deliver the government's quarterly and annual reports, Madam Speaker, as the overall leader of the government's financial reporting function, the Committee stated that the Financial Secretary does not have any authority under the law to request financial information from public entities for the preparation of the government's budget and financial reports. The Committee therefore recommended that section 56(1) of the law be amended to give the Financial Secretary the authority to request information from public entities for the preparation of the government's budget and financial reports.

The Committee also observed that section 56(2) of the law states that, in the event of any non-provision of the information requested by the Ministry of Finance for the preparation of government budgets and reports, the Governor is the independent arbiter for determining whether or not the requested information is relevant. However, Madam Speaker, the committee recommended that it would be more appropriate to have the Minister of Finance be the independent arbiter in the event information requested for the preparation of budgets and financial reports is not

provided. The law is proposed to be amended by clause 23, which would change section 56(1) and (2) to reflect the recommendations of the Committee.

Madam Speaker, with respect to approval of a supplementary appropriation bill before the end of the respective financial year, currently section 11(6)(b) of the law requires emergency supplementary funding to be approved in the next supplementary appropriation bill introduced in the Legislative Assembly. In the past, emergency supplementary funding has been approved in the Legislative Assembly up to three to four years after the funding was spent. The Committee therefore recommended that emergency supplementary funding be approved in the same year that the funds are spent.

Madam Speaker, section 11(6)(b) is being amended to require all emergency supplementary funding to be approved by the Legislative Assembly in a supplementary appropriation bill before the end of the financial year to which those transactions relate. This is proposed by clause 4 of the Bill.

Section 12(3) of the law is also being amended to require advance approval of executive expenses and capital expenditures to be approved by the Legislative Assembly before the end of the financial year to which they relate. This is sought by clause 5 of the Bill.

With respect to reintroduction of quarterly reporting for core government, Madam Speaker, the law currently requires government to table audited financial statements on an annual basis. The Committee reported that the Legislative Assembly and the public should be provided with more frequent updates on the Government's financial performance. The Committee therefore recommended the reintroduction of quarterly reporting for core government.

Madam Speaker, section 29 of the law is being amended to require core government to publish unaudited quarterly financial statements within six weeks after the end of each of the first three quarters. It should be noted that quarterly reporting was previously a requirement under the law but it was removed due to reporting challenges faced by public entities. Quarterly reporting is proposed to commence on the 1st January 2018, which will allow government agencies sufficient time to implement robust reporting management systems.

Madam Speaker, as a publication of the unaudited quarterly financial statements may not coincide with the Meeting of the Legislative Assembly, the law is being amended to allow the report to become a public document once they have been published by a notice in the Gazette. The unaudited quarterly financial statements will also be placed on the government's main website. The unaudited quarterly financial statements will also be presented to the Legislative Assembly at its next Meeting.

Madam Speaker, sections 29, 44 and 52 of the law are also being amended to require public enti-

ties and the entire public sector to prepare annual reports that provide the details of performance during each financial year. These proposed changes are dealt with in clauses 11, 16 and 19 of the Bill. The Chief Officer for Finance will be accountable for publishing and tabling the government's unaudited quarterly financial statements and the entire public sector's annual report.

The timeline for preparing the annual reports for the Office of the Auditor General (OAG) to express audit opinions on the financial statements and presenting the annual reports in the Legislative Assembly have not changed. With respect to the Ministries, Portfolios and Statutory Authorities and Government Companies (SAGCs) annual reports, Chief Officers and managing directors will still have two months, after the end of each financial year, to have the annual reports prepared and submitted to the OAG, and the OAG still has two months, after receiving the annual reports, to express an opinion on the financial statements. Chief Officers will then have one month to present and report the audit opinion to Cabinet. The annual reports will become public documents when they are presented to the Legislative Assembly at its next meeting.

With respect to the entire public sector's annual report, the Chief Officer for Finance still has up to four months after the end of the financial year to prepare the annual report and submit it to the OAG. The OAG still has one month, after receiving the annual report, to express an opinion on the financial statements therein. The annual report will be published by a notice in the Gazette within six months after the end of the financial year. The entire public sector annual report will become a public document when it is presented to the Legislative Assembly at the next meeting.

Madam Speaker, with respect to clearer and simpler pre-election and financial updates, currently section 26 of the law requires a pre-election economic and financial update to include two years' information with respect to economic forecast and forecasted financial statements. The Committee reported that a two-year forward outlook, beyond or after a current financial year, was inherently uncertain and risky and that a one-year forward outlook beyond or after a current financial year of economic forecast and forecasted financial statements would be sufficient, and was likely to become more certain and less risky.

Madam Speaker, as you are aware, the information in the pre-election economic and financial update gives an unbiased overview of the state of the Cayman Islands economy, and the financial position of the government, prior to a general election. The Bill proposes to amend the provisions of section 26 of the law to require the Financial Secretary to issue and Gazette—no more than 42 days or six weeks, and no less than 28 days or four weeks—before the date of a General Election, economic forecasts for the current

and following financial year, forecast financial statement for the current and following financial year, and the most recent unaudited quarterly financial statements that are available at the time of the preparation of the report.

Madam Speaker, as the release of the pre-election economic and financial update may not always coincide or occur with a Meeting of the Legislative Assembly, the Chief Officer for Finance is responsible for publishing the update by a notice in the Gazette and posting to the government's website. The changes proposed to the law with respect to pre-election economic and financial update are detailed in clause 10 of the Bill.

Madam Speaker, with respect to removing the Office of the Auditor General from the ambit of the Internal Audit Unit and permitting internal audits and control review of the OAG to be conducted; section 57 of the law presently includes the OAG within the ambit of the Internal Audit Unit. The Committee reported that this arrangement raises issues around the oversight and independence of the OAG. In terms of good governance, it is unusual that government's internal auditors have the power to audit the government's independent external auditor, that being the OAG.

The key issues with this section are as follows:

1. The OAG is accountable to the Legislative Assembly, specifically the Public Accounts Committee, and not the Government;
2. The Internal Audit Unit could be seen as a method used by government to constrain, influence or undermine the work of government's independent auditors;
3. As the independent external auditor, auditing standards require the OAG to consider the work of Internal Audit as a source of assurance. This involves the assessment of the competence and ability of the Internal Audit Unit and the quality of their work. The fact that the law provides the Internal Audit Unit with the ability to examine the OAG, potentially creates significant conflicts in this relationship; and finally
4. The independence of the OAG from government is undermined.

The Committee agreed that the OAG should be subjected to internal audits, but to be in line with the principles of good governance, these should be performed by an entity independent of the government with the reporting relationship to the Auditor General and the Public Accounts Committee.

Madam Speaker, sections 57, 60 and 69 of the law are being amended to remove the OAG from under the ambit of the Internal Audit Unit and to require an independent auditor, from the private sector, to conduct internal audits and control reviews of the

OAG. These changes are proposed by clauses 24-26 of the Bill.

Madam Speaker, in addition to the changes to the law that I just outlined, and which resulted from the recommendations of the Committee, the following are further changes being made to the Law:

Allowing for additional and voluntary debt principal repayments without causing an increase to the debt servicing ratio.

Madam Speaker, the current definition of the debt service ratio in section 14 of the law means that government cannot make additional and voluntary debt principle repayments without causing an increase to the debt servicing ratio. Increasing the debt servicing ratio puts the government at risk for not complying with the principles of responsible financial management and the Framework for Fiscal Responsibility.

Madam Speaker, Members will recall that in November 2016 the Honourable Premier, the Financial Secretary and I met with the Foreign and Commonwealth Office in London and it was agreed that the early repayment of debt should not have an impact on the debt servicing ratio of the country. Section 14(3)(c) of the law is being amended to allow the government and the entire public sector to make principal repayments of debt which are not legally required to be made, without impacting the debt servicing ratio. This change is proposed in clause 8 of the Bill.

With respect to accounting for the pension funds and the operating expenses of the Public Service Pension Board, Madam Speaker; one of the reasons that the government is receiving an adverse opinion in its entire public sector consolidated financial statements is the omission of both the pension funds and the operating expenses of the Public Service Pension Board (PSPB), from the entire public sector consolidated financial statements.

Madam Speaker, for clarity, the pension funds include the judicial pension fund, the parliamentary pension fund and the public service pensions' fund. The Office of the Auditor General has opined that the entire public sector consolidated financial statements should include the pension funds and the operating expenses of the Public Service Pension Board, primarily due to the government having control over the PSPB's consolidated and separate financial statements, as defined by the Independent Parliamentary Standards Authority (IPSA) 6.

Madam Speaker, the Government agrees that the operating expenses of the Public Service Pension Board should be included in the entire public sector consolidated financial statements; however, the government is of the opinion that the assets of the pensions fund should be excluded from the entire public sector consolidated financial statements and [instead] referenced as disclosures in the notes to the financial statements. The assets of the pensions fund are for the direct benefit of current and retired public servants and not the government therefore, they should not be

included in the entire public sector consolidated financial statements. The Attorney General's Office prepared a legal opinion which concluded that amendments had to be made to the PMFL in order to exclude the pensions fund from the entire public sector consolidated financial statements.

Madam Speaker, I intend to present a Committee Stage amendment to the Bill, which will allow the government to exclude the pension funds from the entire public sector consolidated financial statements, and include the operating expenses of the Public Service Pension Board.

Madam Speaker, a number of consequential changes and corrections are being proposed to the Bill, including:

1. Correcting the names of public agencies, for example amending the name of the Portfolio of Internal and External Affairs to its correct and current name of Ministry of Home Affairs;
2. Correcting the names of budget documents to remove the reference to annual. Madam Speaker, as you know, the government has moved from annual budgets to two-year budgets;
3. Repealing and substitution of the sub-heading "Transitional Arrangements, Repeals and Consequential Amendments" in Part VIII and sections 82 and 83 of the law; and
4. Defining the role and clarifying the powers of the Director of Internal Audit and the Internal Audit Unit.

Madam Speaker, the Bill achieves the proposed amendments to the law that I have just detailed. The clauses of the Bill are as follows:

Clause 1 provides for the short title and commencement of the resulting law.

Clause 2 amends section 2 to replace the definition "entire public sector" and to insert several new definitions, most notably "Chief Officer of finance", "Financial Secretary" and "published by notice in the Gazette". The clause also omits the unnecessary definition "Government", which is already covered by section 124 of the Constitution and section 3 of the Interpretation Law (1995 Revision). The definition "entire public sector" is to the same effect as the existing one, but is simplified. Clause 2 also amends section 2 consequentially on other amendments.

Madam Speaker, I intend to bring a Committee Stage amendment to the House that will amend clause 2 to allow government to exclude the pensions fund from the entire public sector consolidated financial statements and include the operating expenses of the Public Service Pension Board.

Clause 3 amends section 7 to include a necessary cross-reference previously overlooked.

Madam Speaker, I intend to bring a Committee stage amendment to the House that will make an

amendment to clause 3. The intention of the Committee Stage amendment is to allow the government to exclude the pension funds from the entire public sector consolidated financial statements and include the operating expenses of the Public Service Pension Board.

Clause 4 amends section 11 to provide that supplementary Appropriation Bills for authorisation of transactions in advance of appropriations are to be introduced in the Legislative Assembly before the end of the financial year to which those transactions relate.

Clause 5 amends section 12 to provide that supplementary Appropriation Bills for advance approval of executive expenses and capital expenditure are to be introduced before the end of the financial year to which those expenses relate.

Clause 6 relocates the effect of existing sections 13(3) and (4) (about the Legislative Assembly's power to extend certain periods under the law) as a new section 12A in Part II. Those subsections are currently incorrectly located. Section 12A will also add a power for the Legislative Assembly to extend the period required under the law to introduce a Bill. The clause also includes changes consequential on other amendments.

Clause 7 amends section 13 to make an amendment consequential on other amendments, require a supplementary Appropriation Bill for emergency expenditure and to repeal subsections (3) and (4) (which are to be relocated, as mentioned for clause 6).

Clause 8 amends section 14 to allow for additional and voluntary debt principle repayments without increasing the debt servicing ratio.

Clause 9 amends section 24 to change the requirement to present a plan and estimates for each financial year to each budget period. This is because, under the Public Management and Finance Amendment Law, 2015, the plan and estimates document were changed from being annual to two-yearly.

Clause 10 amends section 26 to provide that the pre-election economic and financial updates are to be for the next financial year, rather than two financial years, and are to include the most recent Government quarterly report under the new section 28.

Clause 11 replaces section 29 with the new sections 29 and 29A. New section 29 will require the Chief Officer of finance to prepare unaudited quarterly reports for the core government, provide for Cabinet review of them and for presentation to the Legislative Assembly. New section 29A will require the Chief Officer of Finance to prepare Government annual reports and provide for the auditing of their financial statements and schedule of appropriations, Cabinet review of them and their presentation to the Legislative Assembly.

Madam Speaker, I intend to bring a Committee Stage amendment to the House that will make an amendment to clause 11 to allow the government to

exclude pension funds from the entire public sector consolidated financial statements and include the operating expenses of the public service pension board.

Clause 12 amends section 32 to make amendments consequential on the change in functions under the amendment to section 54 from the Ministry of Finance to the Chief Officer of Finance and for a new section 29.

Clause 13 inserts a new section 38 which will require Ministries and Portfolios to have a Chief Financial Officer and provides for the officer's function.

Clause 14 makes amendments to section 41(5) consequential in amendments to section 54.

Clause 15 amends section 42 to clarify that ministry and portfolio budget statements are two-yearly and that the procedures for their making only need to be done once, for the first year of each statement. The clause also omits provisions which would be covered by new sections 82 and 83.

Clause 16 replaces section 44 about ministry and portfolio annual reports. Replacement section 44 will clarify and streamline the procedures and timelines for making the reports.

Clause 17 amends section 49 to change purchase agreements for statutory authorities and government entities from annual to two-yearly. The clause also omits provisions which will be covered by new sections 82 and 83.

Clause 18 amends section 50 to change ownership agreements for statutory authorities and government entities from annual to two-yearly. The clause also omits provisions which should be covered by new sections 82 and 83.

Clause 19 replaces section 52 about statutory authority and government entity annual reports. Replacement section 52 will clarify and streamline the procedures and timeline for making reports.

Madam Speaker, I intend to bring a Committee Stage amendment to the House for clause 19 to allow the government to exclude the pension funds from the entire public sector consolidated financial statements and include the operating expenses of the Public Service Pension Board.

Clause 20 replaces the Part heading to Part VI and inserts new sections 53A and 53B. New section 53A will provide for the Financial Secretary's functions (other than for the one already provided for under the Constitution). New section 53B will provide for who is the Chief Officer of Finance and for that officer's functions.

Clause 21 amends section 54 to change functions under that section from the Ministry of Finance to the Chief Officer of finance. Clause 21 also adds a function of preparing and publicising a manual about how, under section 4, entities are to comply with generally accepted accounting principles. The manual will replace certain provisions of the Regulations which are out-of-date and will be repealed. The manual is a better means of providing detailed advice about the

practice as the relevant international standards change frequently. The clause also adds functions for the Chief Officer of Finance to monitor compliance with the law generally, to report contraventions and recommend action about such contraventions and for Regulations under the law or a job description under the Public Service Management Law (2013 Revision) to confer additional detailed functions on the Chief Officer of Finance.

Clause 22 amends section 55 to make an amendment consequential on the amendments to section 54 and correct an error.

Clause 23 replaces section 56, about the power to request information for government reporting, with section 56 and 56A, and the new Part VIA heading for the Director of Internal Audit (which office the existing law mentions in section 35(i), but does not provide for or explain).

Replacement of section 56 in line with amended section 54 will change the repository of the power to require information from the Minister of Finance to the Chief Officer of Finance. It also clarifies that the power applies for all of the functions under section 54 and that the Chief Officer of Finance can also require entities to prepare and give documents needed for the functions. Rather than the Governor, the Minister of Finance is to be the arbiter of whether or not requested information or documents are relevant to the functions of the Chief Officer of Finance.

A new section 56A will provide for there to be a public officer called the Director of Internal Audit and for an Internal Audit Unit of public officers to help the Director perform the Director's functions. That section will also provide for the Director's functions and for a job description to confer other functions on the Director. The Audit Office's management systems are to be independent of review by the Director of the Internal Audit Unit.

Madam Speaker, I intend to bring Committee Stage Amendment to the House for clause 23. The intention of the Committee Stage amendment is to allow the government to exclude the pension fund from the entire public sector consolidated financial statements and include the operating expenses of the Public Service Pension Board.

Clause 24 amends section 57 to clarify the powers of the Director of Internal Audit and that of the Internal Audit Unit.

Clause 25 amends section 60 to make amendments consequential on the new and replacement sections 29, 29A, 44 and 52.

Clause 26 amends section 69 to provide that, for the auditing of the audit office under section 44, the independent auditor may also conduct—

Hon. W. McKeever Bush, Leader of the Opposition: Madam Speaker.

The Speaker: Honourable Leader of the Opposition.

Hon. W. McKeever Bush, Leader of the Opposition: I would just like clarification on the matter; I don't want to stop the Minister.

The Speaker: Honourable Minister will you give way?

Hon. Marco S. Archer: Yes, ma'am.

Hon. W. McKeever Bush, Leader of the Opposition: I am trying to follow but I am having difficulty as it was repeated several times. It is one amendment Bill we have, right? In other Bills we had like three amending Bills, but you are dealing with one? I am just trying to follow.

The Speaker: Honourable Minister of Finance.

Hon. Marco S. Archer: Yes, Madam Speaker, it is one Bill with various amendments.

The Speaker: Honourable Leader of the Opposition.

Hon. W. McKeever Bush, Leader of the Opposition: I figured that because I only have one Bill, but I am still—I don't want to say lost, because they will jump up too quick and say we all get lost, but I am trying to follow where you're at with this.

The same thing is repeated several times, so maybe you could explain that.

The Speaker: Honourable Minister of Finance.

Hon. Marco S. Archer: Thank you, Madam Speaker.

I thank the Honourable Leader of the Opposition for the question of clarification.

The Bill is being amended and one of the amendments will impact the pension funds and the expenses of the Public Service Pension Board, but the amendment affects various clauses within the Bill.

Hon. W. McKeever Bush, Leader of the Opposition: Okay. Thank you.

The Speaker: Please continue Honourable Minister.

Hon. Marco S. Archer: Thank you, Madam Speaker; clauses within the Bill are sections within the law.

Madam Speaker, clause 26 amends section 69 to provide that for auditing the Audit Office under section 44, the independent auditor may also conduct periodic internal audits and control reviews of that office.

Clause 27 replaces the sub-heading "Transitional Arrangements, Repeals and Consequential Amendments" in Part VIII and repeals sections 82 and 83 replacing all of them with a new subheading and new sections 82, 83 and 84. The existing sections 82 and 83 are spent transitional provisions that are no longer needed; section 25(2) of the Interpretation Law

(1995 Revision) will save their ongoing operation for things that have already happened.

Replacement section 82 will group together all of the documents under the law that becomes public documents on their notification in the Gazette or presentation to the Legislative Assembly. Replacement section 83 will require the relevant Chief Officer to publicly notify those documents on an appropriate Government website for public access to such documents. New section 84 will be a transitional provision to defer the new provisions about Government quarterly returns from applying until the first quarter of 2018.

Clause 28 amends Schedule 4 to correct an error and to omit a spent provision.

Clause 29 makes miscellaneous consequential amendments for the new definition “Chief Officer of finance”, to update “Governor in Cabinet” to “Cabinet”, to correct some minor errors, to repeal section 23(3), section 24(6), section 25(4), section 26(3) (all of which will be covered by new sections 82 and 83) and to update a reference to the “Portfolio of Internal and External Affairs”.

Madam Speaker, the remaining recommendations of the Committee, which were accepted by Cabinet, require further research by the Ministry of Finance and will be incorporated in a future Bill. These recommendations are to:

- a. Eliminate the distinction between ‘entity’ and ‘executive’ transactions;
- b. Discard output budgeting and adopt input budgeting; and
- c. Simplify the budget documents.

Madam Speaker, I commend the Public Management and Finance (Amendment) (No. 2) Bill, 2016 to this honourable House and I thank you, Madam Speaker.

The Speaker: Does any other Member wish to speak?

I recognise the Honourable Leader of the Opposition.

Hon. W. McKeever Bush, Leader of the Opposition: Madam Speaker, I had no intention to speak.

I just have a question: is the Minister intending to give a pre-election update of the budget as agreed in the last Finance Committee? If he could answer that Madam Speaker, I would appreciate it.

The Speaker: I take it that concludes your debate?

Hon. W. McKeever Bush, Leader of the Opposition: No ma’am. I don’t have very much but I am asking him because I would like an indication before I go on.

The Speaker: The difficulty the Chair has with that, Honourable Leader of the Opposition, is that on Bills, each Member is allowed to debate for two hours and

we are not into question time. If you could turn your question into part of your debate, then in his reply he would reply to you.

Hon. W. McKeever Bush, Leader of the Opposition: I understand the position of the Chair Madam Speaker, but it is not a difficult thing for him to get up and say he is going to do it or he is not going to do it, and then I can go on. I know it’s not a difficult thing and I would hope the Chair would understand that.

The Speaker: Honourable Minister of Finance, while you are on your feet perhaps you can put the question that a question be put during debate time so that I can get the will of the House and I would not be setting precedent. I will put the vote—

Hon. W. McKeever Bush, Leader of the Opposition: Don’t go that far, Madam Speaker.

Madam Speaker, do not go that far. I know it is not a precedent; I have been here 32 years and I know it’s not. I am not trying to be insulting to you. I am not going to go contrary to what you have stated. Let me just continue and hope that he is going to reply. I will listen and see where he is at by that point.

The Speaker: Thank you.

Hon. W. McKeever Bush, Leader of the Opposition: Madam Speaker, I can tell you, you won’t be setting a precedent.

The amendment to put an update in the Gazette would simply mean that there would be no scrutiny by Members, and I would rather hope that the pre-election update would be given at the last Meeting of the House. The law could reflect that; the last meeting of the House before prorogation would mean then, that Members would have ability to scrutinise what has been presented in the Legislature, where the Government would be answerable. I thought that he said that the update was going to be put in the Gazette in the case where there is no Meeting of the House, but that could be easily organised by any government, not just this one, so that it—

[Inaudible interjection]

Hon. W. McKeever Bush, Leader of the Opposition: I thought the Minister said that it would be put in the Gazette if there was no Meeting of the House. What I am saying is that the law should say that the update would be given at the last Meeting of the House before prorogation, because of course that Meeting would happen and that is when Members could scrutinise.

[Inaudible interjection]

Hon. W. McKeever Bush, Leader of the Opposition: Madam Speaker, I will wait to hear the Minister's response when he rises.

The Speaker: Does any other Member wish to speak?

Does any other Member wish to speak?

Does any other Member wish to speak?

I recognise the Honourable Minister responsible for Finance, should he wish to exercise his right of reply.

Hon. Marco S. Archer: Thank you, Madam Speaker.

Madam Speaker, section 26 of the current law makes it clear that the pre-election economic and financial update is to be released no more than 42 days and no less than 28 days before the General Election. It is on that basis that it has to be done, because we won't have the time to do so. That's just how it is, Madam Speaker.

The Speaker: Honourable Leader of the Opposition.

Hon. W. McKeever Bush, Leader of the Opposition: But Madam Speaker, I thought he was winding up the debate. I don't know if he understood that.

The Speaker: Honourable Minister of Finance, was that the extent of your reply for the winding up of the debate?

Hon. Marco S. Archer: Sorry Madam Speaker.

Madam Speaker, please forgive me. I am—

[Inaudible interjection]

Hon. Marco S. Archer: Madam Speaker, I am a victim of those who are caught up in the election, if you will.

[Laughter]

Hon. Marco S. Archer: Madam Speaker, as I have said, section 26 of the law requires that the pre-election economic and financial update be published by Gazette no more than 42 days before the General Election, and no less than 28 days before the General Election. There isn't much more that can be said, other than for me to ask that all Members support the Bill. Thank you.

Hon. W. McKeever Bush, Leader of the Opposition: Madam Speaker, before the Member sits.

The Speaker: Honourable Leader of the Opposition.

Hon. W. McKeever Bush, Leader of the Opposition: Madam Speaker, I did ask the Member about the agreement, when we did the two-year budget, that he

would give an update to the House on where the budget stood. Is the Minister reneging of that agreement?

The Speaker: Honourable Minister, I take it as a point of elucidation and your debate is continuing? If that's not the case, please indicate.

Hon. Marco S. Archer: Madam Speaker, I am at a loss as to what Leader of the Opposition is speaking about.

Hon. W. McKeever Bush, Leader of the Opposition: You can't be lost.

Hon. Marco S. Archer: I do not understand what he is asking.

Hon. W. McKeever Bush, Leader of the Opposition: What?

Hon. Marco S. Archer: I don't have any memory of making the statement. If he can prove to me that I said it, then perhaps that may be the case, but to just say that I said so — I don't recall making a statement.

Hon. W. McKeever Bush, Leader of the Opposition: Madam Speaker, please allow.

The Speaker: Honourable Leader of the Opposition.

Hon. W. McKeever Bush, Leader of the Opposition: Madam Speaker, as the House knows, we all stood concerned about a two-year budget but, not wanting to stand in the way of Government's progress and what they intended to do, I agreed. However, in Finance Committee— well, in my Budget debate also but certainly in Finance Committee— we asked the Minister whether he would give us an update on the two-year budget at this point. The Minister agreed.

I know the short time and the amount of work that we've got; again, I am not wanting to stand in Government's way and hold them up in any shape or form, as evidenced by my limited debate on certain matters, but I know that that was agreed. One thing I have is a good memory; if we can't go to the *Hansards*, I know that's what was agreed.

The Speaker: Honourable Minister of Finance, did that cause you to remember?

Hon. Marco S. Archer: Madam Speaker, we are both trying to clarify.

The Honourable Leader of the Opposition mentioned something about how I would give an update on the two-year budget? For the sake of clarification, Madam Speaker, is that what the Honourable Leader of the Opposition is asking— for an update on the two-year budget?

The Speaker: Honourable Leader of the Opposition.

AYES.

Hon. W. McKeeva Bush, Leader of the Opposition: Yes, Madam Speaker, we wanted to know where we would be as far as the budget is concerned.

The Speaker: The ayes have it.

The Speaker: The Honourable Minister of Finance.

Agreed: The Public Management and Finance (Amendment) (No. 2) Bill, 2016 was given a second reading.

Hon. Marco S. Archer: Madam Speaker, it may perhaps be more efficient if we took a two-minute break and I spoke to Leader of the Opposition to understand exactly what he is asking; at that stage I could perhaps answer for the record, because I understand he is saying I will report on the two-year budget and currently we are in an 18-month budget cycle.

The Foundation Companies Bill, 2016

Hon. W. McKeeva Bush, Leader of the Opposition: Madam Speaker, so that we are not wasting time.

The Speaker: I recognise the Honourable Minister of Financial Services.

The Speaker: Honourable Leader of the Opposition

Hon. G. Wayne Panton, Minister of Financial Services: Thank you very much, Madam Speaker.

Hon. W. McKeeva Bush, Leader of the Opposition: That's what I am talking about; the current period. That's why I say two-years, because I am thinking when we presented it until now.

Madam Speaker, I beg to move the Second Reading of a Bill shortly entitled the Foundation Companies Bill, 2016.

[Inaudible interjection]

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

Hon. W. McKeeva Bush, Leader of the Opposition: Eighteen months.

Hon. G. Wayne Panton: Madam Speaker, thank you very much.

The Speaker: Minister of Finance, do you still need the break?

I rise to present a Bill on behalf of the Government, which seeks to introduce a very interesting and novel new type of company called a Foundation Company in the Cayman Islands.

Hon. Marco S. Archer: Madam Speaker, a break would be good. Give me a short time to confer and get a clarification on the point.

Thank you, Madam Speaker.

The Foundation Companies Bill, 2016 will introduce a special new type of company that is essentially free of the current perceived draw-backs of a company or trust in certain circumstances; it will offer certain clients, in particular trust and estate planners, a much more flexible and useful structure with appropriate characteristics from their perspective. It is felt that this new structure will be a very valuable addition to the list of legal structures that are currently available in the Cayman Islands.

The Speaker: The House will now take its morning break.

Proceedings suspended at 11:45 a.m.

Proceedings resumed at 12:06 p.m.

The Speaker: Please be seated. Proceedings are resumed.

Honourable Minister of Finance, I take it that you have concluded your wind-up?

Madam Speaker, this Foundation Companies Bill bridges a gap between current legal structures so that a company which may have no shareholders may entrench its objectives— which a company under our existing Companies Law cannot accomplish— and thus, Madam Speaker foundation companies will open up an interesting range of estate and other planning possibilities which are not all, and certainly not limited to, the private client field. As I said, it avoids the draw-backs and uncertainties which apply to the normal type of company and trust but also very specifically, Madam Speaker, in relation to foundation legislation that has been implemented in recent years in other jurisdictions.

Hon. Marco S. Archer: Yes. Thank you, Madam Speaker.

Effectively, we have looked at the rationale and the objectives behind this type of new company and sought to ascertain how effective it has been done in other jurisdictions and what particular issues may have arisen in their context and sought to learn from them Madam Speaker, sought to improve this type of product.

The Speaker: The question is that a Bill shortly entitled the Public Management and Finance (Amendment) (No. 2) Bill, 2016 be given a second reading.

All those in favour please say Aye, those Against, No.

Madam Speaker, it is anticipated this type of company, a foundation company, will be used in a very wide range of situations including commercial, philanthropic and other private purposes. As I said, we have sought to create a type of company that reflects all of the features which are thought to be desirable and to offer the type of flexibility that would be appropriate in these types of applications. Importantly, we sought to not unduly restrict the uses of foundation companies or to limit the founders' ability to grant rights, to grant powers and duties as he/she might see fit. Of course, Madam Speaker, that is always going to be subject to appropriate provisions which guard against abuse [and] the use of these types of vehicles for criminal purposes.

Madam Speaker, under our existing Companies Law, a company has to have at least one shareholder and that shareholder or the shareholders in general are typically empowered to change the memorandum of association by special resolution and of course the memorandum sets out the objectives of a company.

Madam Speaker, except in a case where the monies of a company have been devoted exclusively to charity, the founding shareholder [of] an ordinary company has absolutely no assurance that when he or she is no longer in control of the company—whether that's by reason of death or by reason of mental incapacity—the company will continue to uphold and carry out the desired objectives of the company. In an ordinary company, Madam Speaker, surviving shareholders may change the memorandum of association to take the company in a completely different direction. Of course, that may be totally at odds with the original intention or the original plan of the founder.

Madam Speaker in the past, estate planners or persons who were structuring a vehicle for philanthropic purposes, for example, might use Special Trust (Alternative Regime) Law, or STAR Trust, that we have in the Cayman Islands and apply that on the shareholders of a company, and they can sort of achieve the same objectives with an ordinary company. However, that is a relatively complex approach and it does suffer a number of weaknesses, not least of which is [that] in other jurisdictions trusts are not popular, certainly not universally popular, and there are issues with users and advisors from civil law jurisdictions.

Another concern, Madam Speaker, is that some advisors are just not confident at all that STAR trusts would be recognised and enforced entirely by foreign courts.

Another point is that, unless you have this underlying company with limited liability, the trustees of a STAR trust, their personal liability or personal credit ends up getting committed to the trust transactions and liabilities.

Madam Speaker, there are a number of other concerns relevant to that type of structure which could be utilised to achieve those objectives; those reasons in total underline a significant part of the rationale for the creation of a new type of structure called a foundation company. It will hopefully address all of those deficiencies and concerns.

Madam Speaker, the main distinguishing features of a foundation company that the provisions of the Bill seek to implement are —

- Firstly that a foundation company has no need to have shareholders;
- Secondly, the rights, powers and duties of a foundation company can be given to whomever the founder wants, not just those who are already members or directors or supervisors, as described in the Bill;
- Thirdly, Madam Speaker, the constitution, which is of course comprised of the Memorandum of and Articles of Association, of a foundation company may entrench the objectives of the company or other provisions of the constitution; and
- Fourthly, Madam Speaker, a foundation company may have by-laws in addition to its Memorandum and Articles of Association, which seek to govern the exercise of any discretion given within the constitution by those who have those powers, or given those powers under the constitution. Those by-laws do not have to be filed and they do not affect a third party dealing in good faith with the foundation company.

Madam Speaker, the potential benefits to the Cayman Islands of this new type of structure is to hopefully attract business to the Cayman Islands that might otherwise be drawn elsewhere, and thus enhance our market share and government's revenues.

As I indicated, Madam Speaker, foundation legislation has been implemented in a number of other jurisdictions that are competitors of the Cayman Islands; at this point we have no comparable product, and therefore we are seeking to implement this to ensure that we have an additional service that complements the existing significant products and services that have made the Cayman Islands successful, strong, dominant and very prominent in the international financial services area. We need this product to achieve our rightful market share in this area.

Madam Speaker, it could also be part of the rationale for a financial institution which decides to use the Cayman Islands structures; or even decides to set up a business operation in the Cayman Islands, all of which is positive for the Cayman Islands economy and the potential revenue contributions to the Cayman Islands Government.

Madam Speaker, the Bill also has a provision which requires a qualified person to provide corporate

management services to this new entity. That qualified person must be the Secretary of the Foundation Company and provide the registered office; of course, part of the rationale there, Madam Speaker, is that it provides a link and a methodology through which there is a separate set of eyes able to assess whether or not there are any risks for things like anti-money laundering and countering the financing of terrorism, both in terms of the parties [and] the way the company may be operated and structured.

Madam Speaker, this presents an excellent opportunity for Cayman to obtain a competitive advantage in this area because we are seeking to create this new vehicle which is a better form of those that exist elsewhere, having learned from the mistakes elsewhere. It certainly will be attractive to other jurisdictions, for example, civil law jurisdictions where the concept of a foundation is more familiar and acceptable to both the professional advisors as well as the potential clients.

As I indicated earlier, Madam Speaker, our existing company structures don't necessarily work well in this type of situation so this type of vehicle [would] allow us to reach a different market segment that wouldn't necessarily utilise the Cayman Islands for these purposes. Of course, Madam Speaker, we seek to have appropriate flexibility but very firm anti-abuse provisions as well.

Madam Speaker, the Bill is arranged in six parts:

Part 1 contains the preliminary provisions and is comprised of clauses 1-3.

Part 2 deals with becoming a foundation company and contains clauses 4 and 5.

Part 3 deals with the constitution of foundation companies and includes clauses 6-11. On that, Madam Speaker, I would note that there is a Schedule to the law as well, which includes a form of Memorandum of Objects and Memorandum and Articles of Association as well.

Part 4 contains the provisions relating to operation and management of foundation companies and those are clauses 12-17.

Part 5 deals with the functions of the Grand Court and contain clauses 18-21.

Part 6 deals with miscellaneous provisions. That was clause 22 and includes Schedules 1 and 2, which I referred to previously.

Madam Speaker, I think that broadly sets out the information that I would like to present in relation to this Bill. As I said, I think it adds an important new product as a foundation company, with specific characteristics that are relevant to estate planning and other private client type business, but also has significant potential in relation to other sorts of commercial transactions.

Madam Speaker, I would like to thank the members of the Financial Services Legislative Committee who generally assisted with identifying oppor-

tunities, designing the structures and reviewing the drafting along with, obviously, the members of the Legislative Drafting Department and the Ministry staff. Also, Madam Speaker, I would like to thank all the private sector stakeholders who have been a part of reviewing this Bill; certainly their tireless efforts in assisting the Cayman Islands to continue to be at the leading edge of new financial services and products should be recognised.

With that, Madam Speaker, I would like to commend the Foundation Companies Bills, 2016, to this Honourable House for passage.

The Speaker: Does any other Member wish to speak?

The Honourable Member for North Side.

Mr. D. Ezzard Miller, First Elected Member for North Side: Through you, Madam Speaker, on the basis of clarity, so I can understand what is being done here.

This is a new product being offered in the financial industry. This is not related to the Foundation Companies such as the questions I asked about HSBC, but can those companies that exist migrate to this status, because clause 4(5) says that **"If the registrar is satisfied the foundation company requirements will be met in relation to a company being formed..."** Can they migrate to this and get the protections under this without public disclosure of those charitable funds that I understand are earned because of financial transactions in Cayman—like special purpose vehicles? When I first saw this, I guess I incorrectly assumed that this was the financial industry's answers to the questions that I asked about those foundations because of the word "foundation" and the commonality thereof.

The other question I have is that we prescribe in Schedule 1, a model constitution but then, clause 6 says **"A foundation company's constitution may adopt any part of or all of the model forms in schedule 2 or any other prescribed model form."** The question I have is why are we prescribing a form if they don't have to comply with it? Or is it because the Memorandums and Articles are a part, too, of that constitution? Then the Bill goes on to talk about the different ways that the constitution can be altered, and the Articles and stuff can be altered only in accordance with the constitution. What happens if they leave out the part of the model constitution that allows them to modify the Articles?

My question is, are there any sections in the prescribed Schedule 2 that are must-haves or in other words, are there some parts that you must have and other parts that you have a choice of? Because, if they have a complete choice of doing something completely different, then I don't know why we are prescribing a Schedule.

The other question I have is [about] clause 7(4)(e): “**A beneficiary of the foundation company has no powers or rights relating to the foundation company, its management or its assets and is not an interested person.**” Does that mean that if I am named as a beneficiary I can’t ask for accounts if I get the feeling that the directors and secretaries are consuming the fund through remunerations for their services? There doesn’t seem to be any limit or period that you can be a Director. The question I have is: can you remain directors and secretaries until the fund is finished; and whether that negates the purpose of naming beneficiaries and setting up the foundation in the first place, if the directors can do those kinds of things?

With those few questions Madam Speaker, I thank you.

The Speaker: Does any other Member wish to speak?

Does any other Member wish to speak?

Does any other Member wish to speak?

I will call on the Honourable Minister of Financial Services, if he wishes to exercise his right of reply.

Hon. G. Wayne Panton: Madam Speaker, I would be grateful if you would give me a minute to consult prior to responding to those three questions specifically.

The Speaker: Would you want to do that or take the luncheon break?

Hon. G. Wayne Panton: That would be even better, Madam Speaker.

I could certainly provide a fuller response on those three questions.

The Speaker: Okay, we will take the luncheon break and resume at 2 p.m.

Proceedings suspended at 12:33 p.m.

Proceedings resumed at 2:20 p.m.

The Speaker: Please be seated.

Hon. W. McKeeva Bush, Leader of the Opposition: Madam Speaker, no quorum.

The Speaker: Proceedings are resumed. Can we have a quorum in the Chamber, please?

[Pause]

The Speaker: Proceedings are resumed.

I recognise the Honourable Minister responsible for Financial Services.

Hon. G. Wayne Panton: Madam Speaker, I thank you very much.

Madam Speaker, before we took the break we had several questions posed by the Member for North Side in relation to the presentation on the Foundation Companies Bill; I am happy to respond to those questions as I understood them and have no doubt that if he thinks I am not addressing any aspect or misunderstood what he was saying, he will clarify it.

Madam Speaker, I think his first question was on the concept of a foundation company and whether that is similar to structures which are sort of generically referred to as foundations in the context of charities, and whether they could be easily converted to a foundation company.

Madam Speaker, this side of the world, when we talk about foundations in a generic sense those are typically in the form of Trusts and more specifically, usually charitable Trusts, so when we talk about a charitable Trust or a foundation in the context of, for example, special purpose vehicles that are wound up under residual assets going to what may be referred to generically as a foundation, to be distributed to charitable beneficiaries, that is usually in the form of a Trust—and of course, Madam Speaker, in this Bill we are talking about a company and there is no mechanism to sort of re-register a Trust, Madam Speaker, as a foundation company.

It is however, Madam Speaker, probably not inconceivable that a company could be structured in a way that it could be a part of this sort of generically described foundation class of charitable Trust. If that were the case, Madam Speaker, under clause 5(2) there is a provision which allows a company to effectively register as a foundation company, to become a foundation company, provided that it complies with the foundation company requirements which are set out in clause 4 of the Bill.

Just for clarity, clause 4(1) says “**For a company to be a foundation company, the requirements (the “foundation company requirements”) are that —**

- (a) It is limited by shares or by guarantee, with or without share capital;
- (b) It has a memorandum that:
 - (i) states the company is a foundation company;
 - (ii) Generally or specifically describe its objects (which may, but need not, be beneficial to other persons);
 - (iii) Provides, directly or by reference to its articles, for the disposal of any surplus assets the company may have on winding-up; and
 - (iv) Prohibits dividends or other distributions or profits or assets to its Members or

proposed Members as such; and

(c) It has adopted Articles; and

(d) Its secretary is a qualified person.”

I spoke in the presentation, Madam Speaker, about a qualified person which is effectively a licensee under the Companies Management Law (2003 Revision).

Madam Speaker, the answer is yes, if we were talking about a company it could actually re-register provided it satisfies all of the foundation company requirements as a foundation company and could get a new certificate of incorporation issued by the Registrar which states or contains a declaration that the company is now a foundation company.

Madam Speaker, I think another question raised by the Member for North Side was in respect of the Memorandum and Articles of Association and why, if there was a form of Memorandum and Articles included in part 2 of Schedule 1 in the Bill, why there would be flexibility in the company being able in clause 6, to, “adopt any part of or all of the model forms in Schedule 2”. The simple answer to that is that the model forms which were attached in the Schedule are simply indicative of the types of provisions that could be rationally included, but as I indicated in the presentation, Madam Speaker, this type of company is designed to have the greatest flexibility that can be achieved within reason. That’s why it provides that, while there is a scheduled form of Memorandum and Articles of Association, the actual constitution of the foundation company could reflect some, all— or none— of those provisions, again, on the basis that there is significant flexibility contemplated by this Bill.

Madam Speaker, if I am not wrong, I think the third question was on the issue of a beneficiary and what sort of rights they have. I think the Member for North Side was specifically referring to clause 7(4)(e) and it, Madam Speaker, refers to **“a beneficiary of the foundation company has no powers or rights relating to the foundation company, its management or its assets and is not an interested person.”** I think his concern, Madam Speaker, was that if the beneficiary has no rights, then how do they complain if they wish to.

Madam Speaker, again, this structure and the contents of the Bill are designed to give maximum flexibility to the structure. In other jurisdictions Madam Speaker, beneficiaries are given the right to go to court if there is an issue that they would wish to have resolved. I think consideration was certainly given to that, but in those scenarios Madam Speaker, particularly if you have beneficiaries from tax jurisdictions, that right gives rise to a very specific tax consequence for that beneficiary.

There are other mechanisms in the Bill which seek to address scenarios where there is some sort of

dispute; clause 11 deals specifically with dispute resolution.

Before I go on to that, Madam Speaker let me back up slightly. In relation to 7(4)(e), which is what I read earlier in relation to the beneficiary of foundation company, but sub-clause 7(4) specifically states, Madam Speaker: **“Except as otherwise expressly provided by the constitution”**.

Madam Speaker, again, in the vein of having the greatest degree of flexibility available to that particular founder of this company who wishes to create something which survives beyond him potentially, he could give beneficiaries a specific right and interest under the constitution, so the constitution clearly specifies what the beneficiary’s rights are, and in default of that there is the provision in (e) which I read earlier, which indicates that the beneficiary has no specific rights.

Madam Speaker, in relation to clause 11, there is certainly the ability to address disputes and to the extent beneficiaries are specifically identified as having rights, then they can participate in the dispute resolution process. Otherwise, Madam Speaker, if they have no rights, then it is essentially up to the directors and/or supervisor of a foundation company. A supervisor Madam Speaker, is defined as: **“for a foundation company, means a person, other than a member, who under the foundation company’s constitution has a right to attend and vote at general meetings, whether or not the person has supervisory powers or duties”**. Again, the idea is to create significant flexibility so that the provisions, the rights of directors, supervisors and beneficiaries can be specified in whatever way and to whatever extent the founder of the company wishes to convey.

Madam Speaker, there are also provisions in clauses 9 and 10 dealing with the ability to alter the Memorandum and Articles of Association and these are also subject to the ability, under Part 5 of the Bill, for the Grand Court to get involved where there is what is defined in clause 18 as a “difficulty”. The Grand Court can then consider what order they can make to resolve the difficulty if there is no power in the constitution that can be inserted. Or, indeed Madam Speaker, if there is a power and that power has not been appropriately exercised, then the Court has the ability to step in and address that.

Ultimately, Madam Speaker, the Court can alter the constitution in any way it considers appropriate to resolve the difficulty in accordance with the general intent of the foundation company; or, Madam Speaker, if the Court considers the difficulty cannot be so resolved, or that the general intent cannot be sufficiently found from admissible evidence as a matter of probability, the Court can make a winding up order for the foundation company and effectively bring it to an end.

Madam Speaker, I hope those responses to the questions raised by the Member for North Side

suffice and with that, Madam Speaker, I wish to thank all other Members of the House for their support and ask that the Foundation Companies Bill, 2016 be passed in this honourable House.

Thank you, Madam Speaker.

The Speaker: The question is, that a Bill shortly entitled the Foundation Companies Bill, 2016 be given a Second Reading. All those in favour please say Aye, those Against, No.

AYES.

The Speaker: The Ayes have it.

Agreed: The Foundation Companies Bill, 2016 was given a second reading.

The Development Bank (Amendment) Bill, 2016

The Speaker: I recognise the Honourable Minister responsible for Financial Services.

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

I beg to move the Second Reading of a Bill shortly entitled The Development Bank (Amendment) Bill, 2016.

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

Hon. G. Wayne Panton: Yes, Madam Speaker, thank you very much. I will briefly speak to the Bill.

Madam Speaker, this Bill seeks to legislate simple but necessary amendments and changes to the Law relating to the Cayman Islands Development Bank. Specifically, it seeks to amend section 4(2) and the First Schedule of the Development Bank Law (2004 Revision) to firstly include the appointment of the Chief officer or his designate of the Ministry with responsibility for the bank as an ex-officio, non-voting member of the Board of Directors. Secondly, it seeks to include the appointment of the Financial Secretary or designate, as an ex-officio non-voting member of the Board of Directors.

The other amendments seek to address several operational concerns and also, while we are doing amendments to this law, replacing the wording "Governor in Cabinet", as it appears in the old style, with Cabinet as it is currently as a result of the 2009 Constitution.

Madam Speaker, in terms of the Bill, clause 1 sets out the short title and commencement.

Clause 2 seeks to amend the principal law by removing the words "Governor in Cabinet" wherever these words appear and substituting the word "Cabinet".

Clause 3 of the Bill, Madam Speaker, amends section 4 of the principal law so that the Chief Officer and the Ministry charged with responsibility for the bank or designate and the financial secretary as I mentioned or designate are ex-officio members of the Board. Of course Madam Speaker, as we have done fairly recently in other laws, governing statutory authorities or government companies, this is done to increase communication and dialogue between the Ministry with supervisory responsibility and the entity itself and/or the board—in this case, the board of directors of the bank.

Clause 4 proposes to amend section 12 of the principal law so that the onus to comply with directions given by the Minister is placed on the board of directors rather than the bank; the wording historically has just referred to the bank. In past scenarios where directions were issued, there was confusion from the board as to whether that was to be accepted by the board as a direction to them or to the management of the bank. I am not sure that there is total legitimacy in that concern, Madam Speaker, but we are including that just for absolute clarification.

Clause 5 of the Bill amends section 13 of the principal law, so that certain persons, for example, members of the board of directors of the bank as well as Members of the Legislative Assembly, are prohibited from acting as personal guarantors for loans from the bank. Obviously, Madam Speaker, this is designed to remove situations in which there may be a conflict or undue pressure in respect of loan applications made to the bank; unfortunately, Madam Speaker, there are past examples of that sort of scenario which is why we wish to address that.

Clause 6 of the Bill seeks to amend section 21 of the principal law to change the calendar year so that it begins on 1st January and ends on December 31st to align that with the financial year of the Government.

Clause 7 seeks to amend paragraph 2 of the First Schedule to the principal law so that the areas of expertise from which directors are selected are changed to persons who are more qualified and experienced in the banking and financial services industry and can understand, appreciate and assist more in developing robust policies and procedures specifically for the operations of the Bank, Madam Speaker. Obviously, the intention is to try to ensure that the bank and its operations are well protected by its management and that the bank can effectively be a self-sustaining entity which meets its objectives.

Madam Speaker, that completes my presentation in respect of this amendment Bill; I commend it to this honourable House and thank all who assisted with it, including the Government Legal Drafting department and those in my Ministry.

Thank you, Madam Speaker.

The Speaker: Does any other Member wish to speak?

Does any other Member wish to speak?

Does any other Member wish to speak?

If not, I call on the Honourable Minister of Financial Services.

Hon. G. Wayne Panton: Thank you, Madam Speaker, just to thank Members for their tacit support.

The Speaker: The question is that the Bill shortly entitled The Development Bank (Amendment) Bill, 2016 be given a second reading. All those in favour please say AYE, those Against, No.

AYES.

The Speaker: The ayes have it.

Agreed: The Development Bank (Amendment) Bill, 2016 was given a second reading.

The Evidence (Amendment) Bill, 2017

The Speaker: I recognise the Honourable Attorney General.

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

Madam Speaker, I beg to move the Second Reading of a Bill entitled A Bill for a Law to amend the Evidence Law (2011 Revision) to make provision for the giving of evidence through television links at trials of offences that are triable only summarily; and for incidental and connected purposes.

The Speaker: The Bill has been duly moved.

Does the honourable mover wish to speak to the Bill?

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

Madam Speaker, this is a very short Bill and for what it is worth, what has happened is that currently section 37 of the Evidence Law, entitled "Witnesses to give evidence through video link" [Sic], is specified circumstances including Madam Speaker, when they are abroad.

The way the section is worded is that this facility is only confined to proceedings involving certain offences so, for "A" offences (murder, rape, et cetera) and "B" offences, which are the ones triable either way. However, it does not include what we call "C" offences, which are the ones triable only in the Summary Court.

I am not exactly sure why it was designed that way. I think it was contemplated at the time that when these "C" offences came for trial they wouldn't have been so heavily contested and therefore probably

might not need experts to give evidence in these matters. However, Madam Speaker, what has happened in recent years is that more and more of these summary matters are being heavily contested— including driving under the influence (DUI) matters— requiring the Crown to resort to getting experts to give evidence.

Usually, these experts are from abroad and this, of course, is being done at great expense compared to the fines that would be levied if the person is convicted. Rather than having to fly experts from abroad, or witnesses for that matter, the objective here is to amend the Law so that persons who are required to testify only in "C" offences, purely summary offences, can also do so via video link evidence, Madam Speaker.

That in a nutshell is the mischief that the Bill is seeking to deal with and so I commend it to honourable Members.

The Speaker: Does any other Member wish to speak?

I recognise the Honourable Member for East End.

Mr. V. Arden McLean, First Elected Member for East End: Thank you, Madam Speaker.

Madam Speaker, whilst I appreciate the objective of this amendment, there are other concerns in relation to video links that I would bring to the attention of the Honourable Attorney General and ask that he address them upon his response.

Madam Speaker, it was my understanding when we did this many years ago, that it was exclusively for the taking of evidence from witnesses, the cross-examination and the likes with the lawyers being in this country. It is now my understanding ([which] may be incorrect) that there is a belief, factual or not, that lawyers being hired in these cases do not even come to Cayman and conduct trials from overseas. I don't know how that is possible but certainly there are the possibilities that it could be done.

I think we have enough trouble as it is, where many lawyers complain of the lack of knowledge transfer and, if such is the case, this would make it even worse. I don't know if it is the case but certainly, if that is what is being done, that was not the intent of this video link. I recall specifically that we even extended it to our prison at some stage, subsequent to the original enactment of the provision, to allow video links for the taking of evidence and cross-examination of witnesses, but with the trial being conducted here as opposed to lawyers being overseas and not having to come here.

Madam Speaker, if the Attorney General would address that; and if such is the case, is it proper and if not, what are we going to do about it?

The Speaker: Does any other Member wish to speak?

Does any other Member wish to speak?

Does any other Member wish to speak?

I call on the Honourable Attorney General for his reply.

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

Madam Speaker, I thank the honourable Member for his question. He spoke generally about trials; I don't know whether he meant in the context of the Criminal Court or generally civil matters.

Mr. V. Arden McLean: Everything.

Hon. Samuel W. Bulgin, Attorney General: Thank you.

Madam Speaker, the primary objective of the video link facility is to facilitate the giving of evidence by witnesses who are outside of the jurisdiction; it is probably more cost effective and convenient to allow them to testify. In the context of the prison, sometimes it is more convenient to conduct the remand from the prisons, instead of having to bus the prisoners back and forth but, Madam Speaker, he spoke more widely about trials being conducted.

First of all, the trials are usually conducted in the Cayman Islands— that's how trials are done. His concern is that the lawyers are elsewhere and participating in the trials.

Mr. V. Arden McLean: Yes, yes.

Hon. Samuel W. Bulgin, Attorney General: Right.

Madam Speaker, I am aware that there are instances for example, where a hearing is being conducted in the Cayman Islands and you might have either directions hearing or probably, in the case of a criminal matter maybe a bench trial, and it is not economical to fly leading council (because usually Queen's Counsel are involved in certain instances) from say London or some other place, to come here for a 5 or 10 minutes' hearing.

The judge, in his discretion, has the power to allow Counsel in those circumstances to participate in the proceedings from abroad. Madam Speaker usually, invariably— and I am pretty confident about this— there is a local instructing attorney who is involved in the proceedings, so you will have a junior here who is also involved and it wouldn't make a lot of sense to fly his senior leader here just to deal with some minor directions hearing or something.

The Grand Court rules have been amended years ago to give the Court that discretion to facilitate such a happening, Madam Speaker, so it is permissible under the rule, but I am not aware of any full blown trial being conducted with the attorney from abroad taking part via video link evidence. I certainly would

need to confirm that but I am confident that it doesn't happen. I think what happens, subject to my confirming, is usually a directions hearing or some other sort of preliminary hearing with a view to, at some stage, progress into a trial which is going to take place here where all the parties are here. Those are the only instances I am aware of; I am not aware of any lawyers being ensconced abroad and conducting a trial using the video link evidence, Madam Speaker, so I hope I assisted him.

What I can do is, given that I wasn't really expecting this, I will certainly undertake to confirm my understanding and speak to the Honourable Members about it, but I do thank him and commend the Bill to this honourable House.

Thank you.

The Speaker: The question is that a Bill shortly entitled The Evidence (Amendment) Bill, 2017 be given a Second Reading.

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

AYES.

The Speaker: The Ayes have it.

Agreed: The Evidence (Amendment) Bill, 2017 was given a second reading.

The Penal Code (Amendment) Bill, 2017

The Speaker: I recognise the Honourable Attorney General.

Hon. Samuel W. Bulgin, Attorney General: I thank you, Madam Speaker.

Madam Speaker, I beg to move the Second Reading of a Bill entitled A Bill for Law to amend the Penal Code (2013 Revision) to make provision for the making of sexual harm prevention orders; the offences of possession of articles for use to defraud and making or supplying articles for use to defraud; and for incidental and connected purposes.

The Speaker: The Bill has been duly moved.

Does the Honourable Attorney General wish to speak to the Bill?

Hon. Samuel W. Bulgin, Attorney General: Yes, Madam Speaker, thank you.

Madam Speaker, again this is a relatively short Bill and has two components, as I read from the title. The Bill speaks to a Sexual Harm Prevention Order; this order is a mechanism that can be used by the Court to protect the public, including particular persons against sexual violence, Madam Speaker. Most importantly, it can be used to protect vulnerable chil-

dren from sexual harm from certain individuals who are prone to bring such harm to them.

Madam Speaker, we speak about sexual harm and it includes physical, as well as psychological harm caused by persons who are committing sexual offences. The order itself is aimed at prohibiting whoever is the subject of the order from doing anything that would normally be prescribed in the order itself.

These conditions, for example, may include prohibiting the person from travelling intra-island, or within the island itself, or even travelling off island for a finite period, and keeping away from certain premises or being involved in certain employment involving for example, children or a vulnerable person or group of persons, Madam Speaker. Of course the order itself would be reviewable on a periodic basis so that if there is certainly no need for it, then it can be discontinued.

Madam Speaker, of course the application would be made by the Director of Public Prosecutions (DPP) after discussions with the Royal Cayman Islands Police Service (RCIPS) and other agencies for example, the Department of Children and Family Services (DCFS) or any similar agency, and it is contemplated that some sort of a risk assessment or risk analysis would be done prior to the imposition of the order. The Court would have to be satisfied on a balance of probabilities that it is really necessary before the order itself is made, given the restrictive nature of it; of course Madam Speaker, given our constitutional framework, the order itself would also have to be very proportionate to the contemplated risk that this person would pose. If a person is convicted for one of these offences, the Court upon application by the DPP may, in addition to any sentence, also impose or make a sexual harm prevention order.

Madam Speaker, I was going to say [that] we don't have a sexual offence register, but given the prevalence of some of these offences relating to children these days, it was considered that this is a very useful tool that should be available to law enforcement agencies and the Court to help protect our vulnerable, including children, from certain kinds of predatory behaviour.

The Bill contemplates, Madam Speaker that before making the order the Court would explain to the convicted person the effect of the order and the consequences which may follow in the event of non-compliance. The person who fails to comply may be, in certain circumstances, arrested without a warrant by the Police and taken back before the Court, and non-compliance itself is in fact a separate offence that can be dealt with by the court. A person who without reasonable cause fails to comply with any of the requirements in the order or who attempts to commit an offence is liable on summary conviction to imprisonment for a term not exceeding four years or a \$3,000 fine.

Madam Speaker, I mentioned that the Court can vary, discharge or renew an order; it is also correct that the Court may in certain circumstances impose what is called an interim order, which is an order that would be imposed prior to the final determination of the court case itself.

Madam Speaker, in the odd spirit of things and given the times that we are living in, I think, this is a very useful framework to have in place to help mitigate the kind of predatory attack or interference that we will have against children and other vulnerable in our society.

Madam Speaker, the other aspect of the Bill deals with criminalising, if you will, persons who are found in possession of certain articles for the purpose of defrauding our financial institutions. For example, I think honourable Members are aware that there have been numerous instances where visitors from far away as Romania, Malaysia, Hungary and Venezuela have come to these Islands for the specific purpose of defrauding our financial institutions by using clone cards, Madam Speaker.

A skimming device is placed on the institution's ATM and then used to capture the credit card numbers of the users. The numbers, Madam Speaker, are then superimposed onto something like a gift card or similar make-shift cards, and used to withdraw funds from customers' accounts.

It has become a major problem in recent times in the Cayman Islands Madam Speaker, with a number of foreign officials convicted and imprisoned over the last couple of years. Indeed, according to my information, between 31st October 2015 and November/December that same year, some 51 fraudulent withdrawals were made from one bank alone and some 340 attempted fraudulent withdrawals at the same bank, totalling about C\$97,000. Other banks Madam Speaker, have also fallen victim to this scam and one bank confirmed some 59 such fraudulent transactions.

Madam Speaker, this Bill will, among other things, allow for persons to be searched for possession of these clone cards, especially at the port of entry and, if found in possession of them, the mere possession could lead to an arrest and conviction of the offence of conspiracy to defraud as well as possession of articles to defraud; and the sentence Madam Speaker, is sufficiently robust in our view to serve as a deterrent if these persons are in fact caught and convicted.

Madam Speaker, I know that this is just one in a number of measures being taken to address this attack on our financial services industry. The government some time ago also agreed that visa restrictions were put in place for persons coming from some of these countries to also cut down on the incidents of persons deliberately traveling to these Islands to perpetuate this fraud, Madam Speaker.

I commend the Bill to honourable Members of this House, both in terms of the framework for the imposition of a sexual harm prevention order and the criminalisation of these devices, cloned cards, to commit fraud on our financial institutions.

Thank you.

The Speaker: I recognise the Member for East End.

Mr. V. Arden McLean: Thank you, Madam Speaker.

I rise to make a short contribution to the Penal Code (Amendment) Bill, 2017. Madam Speaker, I hasten to tell the Attorney General that this does not go far enough. Maybe that position that I take is more because of the position I have taken with these kinds of behaviours, so I trust that everyone will take it for what it's worth.

Madam Speaker, what is not here are exactly the things that the Honourable Attorney General says we don't have: a register of sex offenders, the notification of neighbours, the location the convicted sexual offenders have moved to or [were] sent to by this order; or [that] they are restricted to a particular area [i.e.] they can't come out of East End, North Side or George Town or something of that nature.

Now here we are, whether they plead guilty or [were] found guilty, they are guilty and we are going to apply to the court for an order to prevent them from travelling to certain areas. If that particular act was committed in a district, then you may say that they cannot go back to that district for a period of five years, but we are foisting [them] upon someone else unknowingly. You think because it was committed in one district in this country there is a high likelihood that it would reoccur [there], I agree, but there is no lesser likelihood of it being committed in a district that you send them to. Sexual predators need to be identified. We need to let the neighbourhood know that they are there.

Madam Speaker, I am going to connect these dots that I am creating here. Too many times we have seen instances where time has been served, they are out on licence, they come back in society, their names are not called for fear of exposing the child's name—which I understand— but this is a small society. We know how the marl road is; not marl anymore, it is asphalt road now. The barbeque road.

Madam Speaker, we know who they are and they come right back into neighbourhoods where we have young children. No one dares to go ask them what they are doing there for fear of embarrassment, [but] people are terrified with their children. We are creating environments that could cause us problems down the road, [because] not all human beings are going to be tolerant with these people in their neighbourhoods.

Madam Speaker, I am not encouraging our people to do anything because there is the police and the likes [but] people get so uptight about this that the

least little thing they see, they call us— *What are you doing with this man out here? What you doing with this person here?*

Madam Speaker, I believe it is time we put these people like other countries [do]. They must register so people know what neighbourhood they are in and the police must keep closer contact with them.

Madam Speaker, I was incensed for the last three or four years with a particular case. In particular, those who come to our shores and become Caymanian, by whatever vehicle that is, they do these things and then we let them back out into our society despite the Immigration Law saying that if you get convicted and serve over a year, your Status may be revoked and you are deported.

Madam Speaker, the difficulties with that is that we know not where these people came from, we know not their behaviour and they express one here that is indefensible, the grossest behaviour any society has to put up with, and we try to keep them in our country. That is what we do, that is what we do.

We need to wish them fond farewell, smooth sailing and hurricane winds upon their back. I don't want them to turn over but I want hurricane winds against their back so they sail and hopefully, the world is the shape it was before Columbus discovered that it was round; it is flat and they sail right over.

The Speaker: Member for East End, I am glad that you qualified that; otherwise, with hurricane winds behind their back they would come back to the jurisdiction much quicker.

[Laughter]

Mr. V. Arden McLean: You understand why I said before it was discovered that it was round. It was believed to be flat and I want them to sail off the edge of the world, never to return.

Madam Speaker, I take note that this Bill also says the DPP can apply after consultation with the police. I disagree with the Attorney General in that regard. I think we need to put in there "in all instances when there is a conviction." You can't leave such possibilities up to if they feel it may apply.

[Section] 45A(1): "**The Director of Public Prosecution, after consultation with the Royal Cayman Islands Police Service or any other relevant agency may apply to the court for a sexual harm prevention order.**" I don't think it should be a choice; we need to go further, put these people on register and notify neighbourhoods that they are there.

Madam Speaker, maybe we view that as being worse than not making them know, I don't know; but I know what, by the time people in that neighbourhood find out, by virtue of not notifying them anything could have happened. Anything can happen. We pussyfoot around with this thing too much and we are going to push good, ordinary citizens over the edge to

protect their family, and in the protection of their family.

Madam Speaker, I see what the Attorney General is trying to do [and] I applaud him, but I want to see more. It may be my position. I have no sympathy for anybody with that. They like to talk about when they go to prison they find God— why, He lives in Northward or what? In other countries they don't find Him, the Legislature legislates that they meet Him, for that kind of behaviour.

Madam Speaker, maybe I am wrong but that's where I stand. Every other soul in this world can stand where they want. That is me. That is me. Thank God I believe that you had some mercies on me and gave me two little boys and no little girls. It has to be that He watched over me Madam Speaker. I always wanted a little girl but I didn't get any and it might be that God knew that something was going to happen, you hear?

Madam Speaker, people will die for their family, for their children. I have a number of nieces. Madam Speaker, it is usually the little girls that these people go after. They need to stop it. Then their family come defending them; they didn't do it, while they have been convicted or they plead guilty. Didn't do it in that way; well, which way they did it in then? And now you must have mercy on them? Not me, not my heart. Maybe I don't have a heart, but I will live without one in this instance.

Madam Speaker, the other section of this amending Bill, section 283 which includes possession of articles for use to defraud. I hope this includes things like documentation, holding themselves out as business people. We haven't seen too many instances of holding themselves out as lawyers but you know that will soon be along the way, to represent people; but there are many instances where they hold themselves out as business people as well and they are representing people who want to do investments and the likes. I hope this covers that too, because we saw a few of those here recently, fooling the government of the day. Whichever day it is, they do it.

I am not saying this government is immune from it, but too many people come here and see how vulnerable we are, how friendly we are and they continue to take advantage. They go and start up their business selling cars and they are on work permit. That is akin to defraud. They are breaking the law; they are not supposed to be doing business. They order vehicles off the internet [and] sell them.

Madam Speaker, I believe it is a step in the right direction but again, maybe the country of Romania needs to go on that prohibited list of countries, because we have that list too, Madam Speaker; and it can be modified from time to time I believe, by Cabinet. Because, if we see there is a tendency for that nationality to try to defraud then let us stop the others from coming. Don't we have one in prison now that we

are supposed to extradite? Or that's from a different country? Turkey. Hear ya', a flapping wings.

Madam Speaker, that too: we need to be very, very, careful. Times have changed, Madam Speaker. When I was growing up there were very few people coming here, it started when I was growing up, but these people were genuine. A friend of mine who I got to know after I became an adult started coming here in 1973 and established himself here in 1973. Those people genuinely came to this country. They came here because they fell in love with it and they remain in love with it. He has built many homes here [and] only 10 years ago got Cayman Status but that was not his objective. His objective was living in this country in peace and tranquillity.

These people come here for a different reason now, completely different. They see our glory and they want a piece of it and they are taking it through fraud and we need to stop that. We need to make bold decisions. If we see the Romanians are the ones doing it, put them on the prohibited country list. Let their own people keep their problem there because we have to keep and take care of our problems. Let them stay over there. I don't know why we make these little laws; we have to catch them first for this law to be effective but if they are not here, there is no need to try to catch them. If they are not here we don't have to worry about them. If they slip in by boat, then we catch them and deport them.

That's all, Madam Speaker; the time has come to stop, not just making laws to prevent it, because they're here and they are going to continue to do it.

Let us make the country a prohibited country. Your citizens cannot come here because those that have been here are carrying on behaviour that is untoward, so keep your people home. We will stay out of your way and you out of ours. I don't know what we are afraid of. Everybody else putting up walls and we can't write one prohibition in one law. Oh, we are afraid because it is going to disrupt our coastline to put a wall up, well we can put up walls too. It mightn't be the physical ones like our good friends and neighbours to the north are doing, but we can put up walls too. This is our country, we need to protect it and if we see an increase in this kind of behaviour that is psychologically, physically, and economically destroying our country, stop them.

Oh it is all well and good for us to be stopped from going to someone else's country, but we shouldn't stop others from coming to ours. Oh, yeah? Oh, yeah? What is the percentage of these people in our country? Probably just a couple hundred; are they that important to us? They are not. In my respectful submission, they are not. They bring no value to us— they steal from us. I may be considered to be a little cruel in this regard, but I am also cognisant that I have to protect the people that I represent.

Madam Speaker, I trust that the Attorney General will address those two issues. He said that we had 50-something instances of the Romanians trying to withdraw from the bank; not cases, but one person responsible for fifty-odd of those, or something like that. Let's see about putting them on the prohibited list. Everybody thinks about it but nobody wants to say it. We need to do it.

Madam Speaker, I thank you.

The Speaker: Does any other Member wish to speak?

The Fourth Elected Member for the District of Bodden Town.

Mr. Alva H. Suckoo, Jr., Fourth Elected Member for Bodden Town: Thank you, Madam Speaker.

Madam Speaker, I also want to give a short contribution to the debate on this Bill. I will start by saying that I support it, and thank the Honourable Attorney General for bringing it forward.

I think it is timely; all of us have been acutely aware of what seems to be an increase in crimes of a sexual nature in our little community. I don't know if it is an increase in the number of crimes or the number of persons caught but either way, Madam Speaker, I think the Bill is timely and I am happy to support the Attorney General.

Madam Speaker, on the Order Paper there is a motion being brought by myself and seconded by the First Elected Member for Bodden Town called "Child Sexual Abuse", which primarily deals with the subject matter this Bill is trying to address. Again I say it is timely, Madam Speaker, because clearly the Government and the Opposition [consider] it an issue that needs to be addressed urgently. I don't know if we will get to debate Private Members' Motions, given the time taken away from us Madam Speaker, and I won't try to debate my motion now, but I think this Bill gives me the opportunity to make a few points that would have come up during that debate.

Madam Speaker, I have to agree with the Member for East End; although I support the Bill, I don't think it goes far enough. I talked to individuals in the community who are more involved in dealing with this issue; some became activists and asked me to bring it forward, which is what I planned to do. There is a significant problem in our community, Madam Speaker, and I don't think we are going to make significant progress in dealing with it if we don't take it further; take a more aggressive approach to crimes of this nature.

I understand the rationale behind what is being done in this Bill, where we restrict the movement of individuals who may be involved in sexual crimes and so forth, but I think we need to go further in establishing some form of sexual offender registry. The down side of that, I think the Member for East End mentioned it, is that there is a potential for the victim

to be identified, and none of us would want that Madam Speaker; but the upside is that people in the community would have the benefit of knowing these individuals and just how dangerous they are. Madam Speaker, it is a wide spread concern.

Having served time in prison or not, these individuals are in our communities; they go to church with us, they use public facilities and parks. Madam Speaker, I even saw one individual who seems to be in the habit of hanging out at 24-hour gas stations late at night. I walked into one of those establishments and saw him sitting there— not doing anything, just sitting— and me as a pretty heavy-set, strapping man got sort of a chill when I saw him. I had the benefit of knowing who he was, I don't think the young ladies working behind the counter at 1:30/2 o'clock in the morning knew. I took the time to observe and said to myself, *he is not even purchasing anything, why is he just sitting there?*

Madam Speaker, I understand that those types of behaviours are an indication of a psychological issue in most cases, and I know there are some out there who would be a bit sympathetic towards the individual who is suffering from that mental illness. I agree that steps must be taken to treat them and deal with them however we can, but the greater burden Madam Speaker, is on the victims and potential victims. We have to protect them, especially children, Madam Speaker.

Madam Speaker, having a registry also gives us the benefit of being able to better identify individuals who come here from other jurisdictions because it could contain information held in [international] registries. I think that would also be a huge benefit because Cayman is not the same that we all grew up in, Madam Speaker. Thirty, forty years ago, I think everyone knew everyone. The country has evolved to where people come and go on a daily basis now and you know, we are all busy, working, involved in our own lives. Some of that village approach has gone [and] I do not think we will ever get it back.

There are people now who live within 10-15 feet of each other who do not know each other and with the number of individuals coming into the Cayman Islands now, Madam Speaker, it is a concern; we need not pry into people's business and backgrounds, but we need to know if they pose a risk to us, our children and our communities. I think having an offender registry and I am willing to say in some form that would still protect the victims, would be useful. It would be extremely helpful, especially for families raising young children.

Madam Speaker, I remember growing up and on any given Saturday after my mother forced me to eat a bowl of cornmeal porridge, I would disappear for pretty much the rest of the day. I would be gone. I would be gone and my mother would not be overly concerned about where I was; she would know that I was with my friends [and] I would occasionally get into

a little bit of trouble, but nothing severe. She had the comfort of knowing that I was safe. Madam Speaker, I have two daughters now, and neither of them has had the freedom to leave my house on a Saturday morning and just be out doing whatever they wanted to do with their friends. If I wasn't checking on them, their mother was or their grandmother or grandfather.

Madam Speaker, Cayman has changed and as much as we would like to go back to those days when we could all feel safe and be assured that we were safe, we are not. I think it is incumbent upon us Madam Speaker, to take whatever steps [are] necessary, especially in light of what is going on in our communities, to ensure that we are putting steps in place to protect our young children as much as possible.

I fully support the idea of a sexual offender registry and hopefully when the Honourable Attorney General winds up he will maybe give some clarity on what the government's position is on that.

Another area in the Bill that concerns me, Madam Speaker, is the fact that the Bill does not penalise anyone for assisting. I see where, [if] someone violates the conditions imposed on them by this law they can be penalised, but we have seen so many cases with other crimes that people who assist individuals to break the law can be punished. I just do not see anything.

[Inaudible interjection]

Mr. Alva H. Suckoo, Jr.: Aiding and abetting would be covered.

[Inaudible interjection]

Mr. Alva H. Suckoo, Jr.: Okay, okay. That was a query I had because I did not see it spelled out there but you do not have to spell it out. Okay, I am being informed Madam Speaker, that it is implied or covered under other legislation. Okay.

Madam Speaker, I think getting to the root of the problem is also something that we need to spend some time discussing. I think that sexual abuse and sexual crimes have been taboo subjects in our community for too long. I think they are topics that are rarely discussed to the extent that they should be and that a lot of the cure is going to come from that sort of approach. I know that the law making it illegal for people to do certain things can be preventative but to really get to the root of the problem and cure it, we need to dig a bit deeper.

My view, Madam Speaker, is that from reception age in our government and private schools, right up to when they graduate, there needs to be a much more involved process of education around this subject. From the reception age, I think we should be ensuring that our young kids are able to recognise the signs of a sexual predator and understand what is

required of them to protect themselves in terms of reporting, speaking to someone and avoiding contact.

As they move into the adolescent years, Madam Speaker, when all young people go through that change, when they move from being children to teenagers and hormones come into play— and we have heard the stories— there is some very inappropriate behaviour that can and has happened in our schools, and I think, again, finding a way to reach those young people, to educate them on what is considered appropriate behaviour and what isn't, especially Madam Speaker, in this digital age when we all walk around with a smart phone that is connected to the rest of the world. It is very difficult, I know, I have a teenager— well, she is 19, but I still consider her a teenager.

Those devices can bring unlimited amounts of media into a young person's contact. Many of us, I know, we say we monitor their usage, we try to make sure that they are not using those devices for anything wrong, but it is inevitable that they are going to come across something. Some may even seek it out, out of curiosity Madam Speaker, and you cannot police that.

You have to instil in a young person's mind what is appropriate and what is not and then they have to make the choice. Some will not make the right choice Madam Speaker; I am especially looking at the young men who as they are nearing that age of being able to drink legally, some before they are able to drink legally, go out and they are exposed to alcohol, they are exposed to females and they are in an environment where the music may be contributing to their emotional state, the alcohol is contributing and they make poor choices, Madam Speaker.

I have known of incidents where young women have gone out and someone has dropped a drug in their drink; dope them with the intention of having their way with them when they get to the point where they cannot help themselves. I know countless young women who said that to me that it happened to them.

I will tell you— well, it is not really a funny story but, a long time ago I was out and someone, I suspect doped the drink of a young lady I was talking to but she didn't finish her drink, she said she didn't want anymore, she handed it to me and I drank it.

An Honourable Member: Oh, you got it?

[Laughter]

Mr. Alva H. Suckoo, Jr.: I do not think that was the result the person wanted, but I can tell you Madam Speaker, I was sober one minute and gone the next. It happens. These drugs are out there, they are available and they are being put in the hands of our young men and they are using them for wrong, to take advantage. I went home and passed out. I had a query on what happened next, but. . . No, I don't want to make too much light of the situation Madam Speaker, because that was serious; I mean, I still have no idea

what that drug was so I could have ended up in the hospital or worst, and it happens. It is no secret, it happens.

Madam Speaker, I think that goes back to the fact that we need to spend more time on the preventative side as well. We can legislate forever, but until these behaviours are corrected, until we really spend the necessary time instilling that in our young people, guiding them and making sure they understand what is appropriate behaviour and what is not, their judgment is becoming blurred. They are being bombarded with media from everywhere, they are seeing things on Facebook, Instagram or whatever. It is behaviour that is creeping into our community, our young people, and they are making the assessment Madam Speaker, that it is appropriate. I have seen videos of young men doing things to women, throwing them on the ground and they are supposed to be dancing. It is not dancing— it is abuse— but it has become mainstream and young minds are fragile and are easily influenced.

Madam Speaker, I want to congratulate the Honourable Attorney General for bringing this. It is a needed step, but I would encourage him to go further. I do not think he needs to fear that he will not have support from any of us in taking it further. If people want to make us the villains, the bad guys, for being strong in our approach, so be it, I am willing to wear that label. I think our young people are worth it. If there is any way that registry can be added, he certainly would have my support, Madam Speaker.

Thank you.

The Speaker: Does any other Member wish to speak?

The Third Elected Member for West Bay.

Mr. Bernie Bush, Third Elected Member for West Bay: Madam Speaker, I too would like to thank the Attorney General for bringing this Bill.

Having spoken to two social workers and a group of young women who had the fortune of coaching the national team a few years back, they too felt that the Bill does not go far enough, like the Member for East End said. I [will] not go on long Madam Speaker, due to the time constraints we are [under], but we will be supporting the Bill, Madam Speaker.

We hope that in the next stage some changes can be made to put more bite into the Bill.

Thank you, Madam Speaker.

The Speaker: Does any other Member wish to speak?

I recognise the Fifth Elected Member for the District of George Town.

Mr. Winston Connolly, Fifth Elected Member for George Town: Thank you, Madam Speaker.

I rise to support this Bill but will perhaps sound like a stuck record because I do not think it goes far enough; and I am going to give some examples based on the research that I did, just to perhaps trigger a response from the Attorney General when we wraps up.

Madam Speaker, based on interventions by the First and the Fourth Elected Members for Bodden Town, which highlighted the community expectations on sexual offences— their fears, what they thought about things like sentencing, rehabilitation, et cetera, I think it is time that we give the people what they want so that they can feel safe in their homes, their communities and public settings.

I will only be dealing with the Sexual Harm Prevention Order component Madam Speaker, because I think the other points have been made well enough. As I understand it, these types of orders are intended to protect the public from offenders who have been convicted of a sexual or violent offence and who pose a risk of further sexual harm to the public.

Madam Speaker, we just talked about the Cautions Bill and we are about to pass that into Law. Here we talk about Interim Orders, but when you look at the UK and other places, they also have Cautions that they issue to people that show the propensity to commit these types of acts. We also have Sexual Risk Orders again, looking at the probability of them harming the public or children, and this is a sort of initial reprimand or final warning, if you must, before you get to the interim or actual order.

When those things occur in the UK, Madam Speaker, they trigger full-risk assessment of such a person; a determination is made and in some instances sanctions occur, including disqualification from working around children. We do these things to show the public that we are taking their fears and their concerns seriously. They need to feel that penalties are appropriate.

Madam Speaker, I do not recall seeing any rehabilitation orders in this when I read through it. When these people have this Order against them, what is happening in the background in that period of time that the Order is in place? Are we forcing them to get the help they so badly need to at least be more aware of the offending behaviour?

Madam Speaker, other Members spoke about the need for a sexual offenders register and that it is time. While I do not agree, in such a small community, to having a public register where anyone can go in and see, I do believe that we should have a non-public register. In their functions, the police and certain agencies involved, like the Department of Children and Family Services and all other units that deal with youth and vulnerable people in our society, absolutely need to have access to such a register. We need to start tracking statistics better. We need to start tracking profiles better. We need to be able to

intervene when we see households maybe, that have a propensity for these offending behaviours. If we can give the support and the focus early, it doesn't become an escalating behaviour that leads to things that we know happen in Cayman all too well.

We all, in this room especially, had a friend—and I say that because of the fraternity that some of the Members here have—a friend that met a gruesome end and that, I believe is the escalation of sexual offences; a behaviour that manifested itself onto an urge that eventually claimed a life. That is what we are trying to deal with, Madam Speaker. We are trying to curb behaviours, protect the public and stop escalation to that final end because at that time, nobody will feel that any sentence is good enough.

Madam Speaker, we do not talk here about all the notifications that need to go into this type of law and the period of time in which these notifications need to be made. I am talking particularly, about an offender who is on an order and wants to change their address; we need to get information about their previous addresses and notify addresses involving households where there are children of any impending change in address, so that they can be tracked at all times. Those are the safety nets that need to be put in place so that the public feels that at least somebody knows that these people will be moving into their environment—or any environment where they could reoffend because they have access to children or other vulnerable members of society.

I also think, in terms of any sort of non-public register, there needs to be notification of the family members of people that were victims where somebody has the responsibility; if it is not the police, it is some other government agency that has obligation under a law, to notify family members of these people coming off orders, these people going on orders, any changes to the orders, any changes to the address because I guarantee you, those people will want to know and by extension, anyone living around them would want to know.

At the very least, Madam Speaker, we need to keep the family in mind because whoever has been the victim is going to be a victim for life. It doesn't end after the sexual offence ends. Like the First Elected Member for Bodden Town said and I could not say it better, they are ruined and we need to show the sympathy. We need to show that family that we take their pain as our own, and we need to ensure that they have all the information that we can legally give them that is set out in some sort of legislation so that they can have surety as well of what they expect to receive.

Madam Speaker, annual check-ins where somebody has the obligation to say we have checked on this person on an annual basis and we know exactly where they are. We know where they are in their treatment; we know where they are in their occupa-

tion. We know all these things about them and we are not just letting them slip through the cracks.

Madam Speaker, I would also go much further than this Bill proposes in that, especially in an age—and I think some of the Members spoke about it before—where we have access to the internet and all the things that gives access to. Further details need to be kept by the police, including perhaps the passports, bank accounts, credit cards, because people that commit these offensive behaviours can get their jollies in other ways and some of that is accessed through the internet. You want to be able to see if they are accessing these types of materials.

It is time also, Madam Speaker, we have talked about it and we have heard that there are systems that are now gathering cobwebs. We hear all these things. It is time for a national I.D. and fingerprinting system on this island so that we can track people that are here, but also people that are coming here with this propensity to do sexual harm on our public. I think that we cannot keep saying it is costly and using that as an excuse. That overriding public interest is there. We need to be able to track these types of individuals to see where they are, where they are coming from and where they are going.

We talk about travel restrictions here, Madam Speaker, and that is all well, but we do not talk about what happens when someone from somewhere else comes in and how we deal with them and what we do and how we notify either their home jurisdiction or any other jurisdiction they might be leaving to go to after they have been in Cayman. We know we have a transient society, Madam Speaker. People come on work permits and they stay anywhere from a few months to the rest of their lives. We cannot have people coming here and being just happy that they are leaving when they commit offences either here or before they have come.

It is our obligation, I think, as an international community to raise the awareness and to inform people, so that this doesn't become someone else's problem without them at least knowing; I think we owe that to our international neighbours, plus reciprocal enforceability arrangements with other countries for non-Caymanian offenders. We need to be seeing that in this law. We know where the majority of our people are coming from, because we track the work permits. We might not be able to do it with all of them, but at least the major ones including the Caribbean, UK, Canada and US, we absolutely should have these type of reciprocal information exchange in how we deal with people that would commit these types of offences.

We should also always remember the victims, right? And depending on the crime, the severity of it, some of these people should be on a register somewhere for the rest of their lives. There has to be some escalating component to this Bill, Madam Speaker,

because we cannot say one size fits all. So, how long are these notification periods?

Madam Speaker, the Member for East End gave me an intervention; he said it should be automatic on conviction, that type of notification order and I agree with him, so I thank the Member.

Madam Speaker, you have heard Members in this honourable House show great disgust and concern when these offences occur with children, as we know that when that happens to a child, there is deep psychological and sometimes physical damage imposed on that child. We need to use the old saying "*an ounce of prevention is worth a pound of cure*".

I would expect and hope that in this Bill, we would be looking at the activities that come before the actual sexual offence, including things like grooming children and assessing the risk at that stage, of someone escalating that behaviour into actual physical or psychological abuse of a child. We need that to be an offence that is taken seriously under this type of Bill because we know that, even if there is no plan to meet the child to commit a sexual offence, that type of activity is an escalating activity. Any sort of communication between a child and an adult that has some sexual connotation, whether it is committing a sexual act in front of a child or causing the child to look at sexual images, those sorts of behaviours need to be looked at and assessed on a risk-based basis. Anywhere that the behaviour of an adult gives reason to believe that the child or children are at risk from that person's conduct, we need to try to intervene as early as possible. Those types of intervention should be governed by this type of legislation, Madam Speaker.

When we issue these orders, there needs to be some further communication of them, even if it is to the nation's police stations and the other multi-agencies across the Islands, because people can leave one district to go to another but in Cayman we can [also] leave one island and go to another. If people don't know and [the offender is] starting over, it could be a while before it registers on somebody that this person did something because ignorance is bliss; the best guard against something like this is relevant information passed on immediately at conviction. That is necessary, Madam Speaker.

Madam Speaker, I remember watching a documentary on, I think it was HBO Sports, and I am not saying that the penalties are the same here as they would be in the US, but we know situations occur here that could lead to what I am about to say. It was about a rising American football high school player who was going to go on to fame and glory based on all the statistics and records and all those things that they were breaking at the time; in the state that they were in, they committed a sexual act with another minor (they were both minors), he happened to be a bit older than the young lady involved, but then he was sentenced and became a sexual offender for consensual sex before the age of 17. These so-called Romeo and Ju-

liette offenders that are juveniles, I think we should also look at some of those things, because if we categorise them on the sexual offenders list and we deal with them in the same way as deviant behaviour, we could actually be setting up somebody for a future where they are labelled. I think those nuances need to also be looked at in any type of legislation, so that sometimes we protect our vulnerable from themselves.

Madam Speaker, we also need to look at things like, and I know people might have a chuckle about this and say that we are too small for this to occur, but we have examples of it occurring— we have complaints about it: child abduction, Madam Speaker; and warning notices that go out, again, based on risks. We have had adults that take children away from their homes and they go missing for days and weeks. Whether we like it or not, that is child abduction, so we need to deal with that sort of activity in a bill that is intended to become a law to deal with this type.

Then, Madam Speaker, I think I know the answer to this but I will raise it anyway and let the Attorney General correct me, but we need to clearly define what a sex offender is, what sexual harm is and how the police prove these. We also need to give that information in layman's terms to the members of society, Madam Speaker. We need to show what triggers a conviction and what triggers cautions, what triggers all the penalties and steps that come from somebody perceived to be perpetrating sexual harm in our communities.

Madam Speaker, what we also need to do, that I think is missing from this particular Bill, is look at people found guilty by reason of insanity or some other mental disability as well, because we cannot just have—

[Inaudible interjection]

Mr. Winston Connolly: —No, found guilty; but where there are mental issues. We need to ensure that we don't, again, whitewash all these people together because, even though we abhor the act if somebody is, for lack of better words, in their right mind, I think we need to look at somebody that could possibly be defined as insane or [have] some other mental disability or reduced capacity, Madam Speaker, and deal with them accordingly and appropriately.

We also need to list those coordinating agencies that I kind of touched on before. Who is responsible? Who needs to get the information? We heard yesterday in the Public Authorities Bill that we want to be very prescriptive. I think in situations like this, we have to be very prescriptive because we cannot leave any room for interpretation or doubt. We have to have that link between all those organisations including the DCFS, the NWDA (National Work Force Development Agency), those that deal with passports; all those

agencies need to be on that list so that when notification of these orders go out there is that domino effect— we know exactly who has the information, they know exactly what to do with it, they know exactly when the information changes and things that need to be brought to their attention are brought [opportunistically]. I think that could be more prescriptive.

We also need those extra-jurisdictional agreements Madam Speaker, so that when our people go abroad and carry out those offences — and we have had situations in the past where people who were away in school or living in another country, committed various offences like this. We need to be able to have the agreements to ensure that we are getting the information that we can track them on their re-entry, because they should not be able to run from some place, come back home and be shrouded by a veil of misinformation or no information.

Madam Speaker, I am sure that the Attorney General will tell me that all these things have been considered and they are in some other law and I will be happy when he does, but I just raised them because they are things that I think people would want to be assured that were covered under this, or any complementary type of legislation.

Thank you, Madam Speaker.

The Speaker: I recognise the First Elected Member for Bodden Town.

Mr. Anthony Eden, First Elected Member for Bodden Town: Thank you, Madam Speaker.

We are at the stage referred to at times as after the fact. What I want to briefly look at is the root cause of these problems. I just want to read, with your permission Madam Speaker, a little prayer that someone sent to me this morning.

The Speaker: Permission granted.

Mr. Anthony Eden: As we all know Madam Speaker, the Lord's Prayer is not allowed in most US public schools anymore but a fifteen year old in Minnesota wrote this:

*"Now I sit me down in school
Where praying is against the rule
For this great nation under God
Finds mention of Him very odd.*

*If Scripture now the class recites,
It violates the Bill of Rights.
And anytime my head I bow
Becomes a Federal matter now.*

*Our hair can be purple, orange or green,
That's no offense; it's a freedom scene.
But the law is specific, the law is precise.
Prayers spoken aloud are a serious vice.*

*For praying in a public hall
Might offend someone with no faith at all.
In silence alone we must meditate,
God's name is prohibited by the state.*

*We're allowed to cuss and dress like freaks,
And pierce our noses, tongues and cheeks.
They've outlawed guns, but before that the Bible.
To quote the Good Book makes me liable.*

*We can elect a pregnant Senior Queen,
And the unwed daddy our Senior King.
It's "inappropriate" to teach right from wrong,
We're taught that such "judgments" do not belong.*

*We can get our condoms and birth controls,
Study witchcraft, vampires and totem poles.
But the Ten Commandments are not allowed,
No word of God must reach this crowd.*

*It's scary here I must confess,
When chaos reigns the school's a mess.
So, Lord, this silent plea I make:
Should I be shot, my soul please take!"*

Madam Speaker, we know the chaos in the great United States. It seems like some of these men, their testosterone has gone wild.

We need to deal with the prosecution. I have seen that sometimes it takes 3–4 years before some of these cases are even heard in our systems. Law enforcement seems to be lax in dealing with these sexual predators, as has been revealed Madam Speaker, in evidence that comes out of the court system. I will take my hat off to one of the Justices, Justice Quin. Some of his sentencing, I think he has been doing a fantastic job.

Madam Speaker, it is scary what's happening around us. The great United States has now literally become the cesspool of the world, and I need not say [that] what happens there doesn't take long to get here because of the internet and television and so on and so forth. I have just recently been informed of this nasty and horrific movie that's recently been released in the States called Corpus Christi; let us pray it doesn't get down here. It is about Jesus and his disciples as homosexuals. Lord, have mercy.

I do not know what is happening to this world Madam Speaker, but I must say this is a first step that the Honourable Attorney General has taken. I listened to my colleagues and it made me feel good to hear them express their feeling that in due course these sentences can be adjusted and awareness of the perpetrators increased.

Everyone in this House and the Cayman Islands knows where I stand on these things and God forbid if anyone were to trouble any of my grandchildren.

May God have mercy on these Cayman Islands.

The Speaker: Does any other Member wish to speak?

I recognise the Minister of Education.

Hon. Tara A. Rivers, Minister of Education: Madam Speaker, I rise to make a brief contribution in support of this Bill.

Madam Speaker, as the government is bringing this forward through the Honourable Attorney General and considering that we still have a number of Bills to get through, I will certainly not speak to all that my heart wants to address in the Bill, but I certainly believe it is important that I lend my support, on the floor of this House, to what it is attempting to achieve.

The Speaker: Honourable Minister we have reached the hour of interruption.

I recognise the Honourable Premier.

Moment of interruption—4:30 pm

Suspension of Standing Order 10(2)

The Premier, Hon. Alden M. McLaughlin: Thank you, Madam Speaker.

Madam Speaker, I beg to move the suspension of Standing Order 10(2) in order that the business of the House may continue beyond the hour of interruption.

The Speaker: The question is that Standing Order 10(2) be suspended to allow the House to continue beyond the hour of interruption. All those in favour please say Aye, those Against, No.

AYES.

The Speaker: I believe the ayes have it.

Agreed: Standing Order 10(2) was suspended.

The Speaker: I recognise the Honourable Minister of Education to continue.

Hon. Tara A. Rivers: Thank you, Madam Speaker.

I certainly concur with a number of the sentiments already expressed as they relate to this Bill, so for fear of repetition I will comment as necessary.

Madam Speaker, as I believe the fundamental principle of this Bill is the Sexual Harm Prevention Order, I will limit my comments to that particular section in the interest of time. The Bill seeks to ensure that going forward we do a better job—it is our obligation as a country, as a community, as a government—to protect our most vulnerable people; [and] that in-

cludes specifically our children, our girls and boys are at risk in this regard, Madam Speaker.

It includes protecting our vulnerable elderly population. We know, Madam Speaker, that there are instances of elder abuse, in particular sexual abuse and sexual harm. It is a real concern and consideration. It also recognises the need to protect another very vulnerable population—our disabled. Madam Speaker, we know that persons living with some form of a disability that makes them vulnerable to such abuse certainly deserve and need the protection that such an order may provide.

Madam Speaker, mechanisms such as the Sexual Harm Prevention Order are particularly critical and important and should absolutely be used where necessary, allowing the interim Orders to be made especially, where persons who are either charged, or confirmed to have been perpetrators, are in positions of trust. Family members, teachers, pastors, coaches, youth workers, community workers and the like—anyone that has the ability to develop a level of trust with the victims, Madam Speaker—it is absolutely critical that we try to identify and where necessary put whatever mechanisms are in place, to prevent either ongoing or potential harm.

Because Madam Speaker, make no mistake: sexual harm, sexual abuse, sexual predator behaviour is a scourge in our community and it has been for a very long time. This is not a today's or even a yesterday's concern; this is many decades, many generations, many instances where we have seen, and we are today dealing with the effects of this scourge in our community and Madam Speaker, it cuts across all socio-economic positions, classes, colour, races or creed.

I believe that this law is certainly one step in the right direction to ensure that once someone is found guilty or has been suspected to the point of being charged, and it is determined to be necessary for the protection of either vulnerable children or other [vulnerable] persons, action can be taken swiftly to prevent the behaviour from happening again or those individuals from perpetrating in the future.

Madam Speaker, this Bill defines sexual harm as physical or psychological harm caused by a person committing a sexual offence. The physical harm well, that is obvious; it is deplorable to think about some of the instances that we read about, that some of us may even have witnessed, or have heard about, as it relates to the physical scarring, the physical trauma that is often a result of such behaviour.

Madam Speaker, one thing this Bill does that I agree with is that it identifies specifically the psychological harm that is often as damaging if not more damaging, than the physical harm that may or may not have been inflicted. Whereas most, but not all wounds heal, psychological scars can stay for life and you, or I, or anyone in this room, may not even be

aware of the damage that it has inflicted on someone that may have experienced such trauma.

For example, the sexualisation of our children, our young girls and boys at an early age often leads to sexualised teens and young adults and to a system where that is how they were groomed—we heard that term used in this Chamber, in relation to this Bill and some of the ills in relation to sexual harm—so that is their norm, Madam Speaker. So, to ask and expect children who may be exposed or subjected to this type of abuse to know or do anything different is in many instances expecting, as they say, to squeeze blood out of a stone.

Madam Speaker, I am certainly not here to justify in any way the behaviours that may happen or that may occur as a result, but it is a fact Madam Speaker, that exposing our children to inappropriate images, inappropriate television at all levels; exposing them to pornography or other sexually deviant behaviour that is completely inappropriate for their age, stature and exposure, often leads to dysfunctional relationships, to dysfunctional views about what is normal, acceptable and expected.

It often leads to people's inability to form relationships—and Madam Speaker I go back to the issue—especially, if the perpetrators of such heinous crimes are in positions of trust; it could shatter people's ability to ever form relationships involving trust because their trust has been broken in such a way. Unless they have had the opportunity to have some form of intervention through counselling, in whatever form, to heal those psychological wounds, that is something that can continue with them and have dire consequences in manifestations throughout their entire life.

Madam Speaker, if I am not mistaken I recall there was a recent report from the WHO (World Health Organization) that clearly outlines some of the statistics, some of the indications of the levels of incidents of sexual abuse in the Caribbean and, unfortunately I do not have the stats to refer to right now, but it is something that we know exists today and it has existed for quite some time.

I think the important thing when we talk about how we address the problem is that even though this Bill is not the panacea, this Bill isn't the one size fit all solution to this issue, it certainly goes a step in the right direction to bring about something that will help in dealing with the perpetrators going forward. However, Madam Speaker, we can never lose sight of the fact that today's victims of sexual abuse often become tomorrow's perpetrators of sexual abuse. Today's victims of sexual crimes often become tomorrow's enablers of sexual crimes.

Madam Speaker, some Members spoke about the need to ensure [that] there is adequate rehabilitation somehow coupled with the issuance of the sexual prevention order and I certainly agree with those sentiments, because I believe that the perpetrators of

sexual crimes—as I said, given that in many instances they themselves were once victims of the same crimes that they may be perpetrating or worst—should be required to attend counselling, treatment or intervention programs specifically geared to help them overcome and break whatever cycle they find themselves in as a result of their experiences.

Similar, Madam Speaker, to what I understand to be the conditions attached to drug court orders or other type of rehabilitation and prevention orders that the Courts now have the ability to give, as opposed to strictly incarceration. Because again, I believe it is absolutely critical that adequate rehabilitation provisions such as counselling and other forms of treatment that would be required to help arrest the incidents, the scourge in this community as I talked about, are made available to help these offenders who themselves may be within the grip of this offending behaviour because of their life experience, because of their norm; because of the fact that they did not have the benefit of getting help and possibly did not have the benefit of having such a prevention order in place at a time that could have prevented the incidents happening to them.

As I said, Madam Speaker, it is certainly a very complex situation and we need to look at it from all angles, but we need to ensure that offenders are appropriately dealt with in a way that ensures that they do not in turn destroy the lives of other children and vulnerable people in this community; and one way to address that is tying the order to the requirement for rehabilitation.

Madam Speaker, another key way to address the problem that as I said, if we are honest with ourselves has existed in this community for a very long time, is how we raise our children. We have an obligation as parents, grandparents, guardians, as uncles, aunts, concerned family members, we have an obligation to raise healthy, confident children who have the greatest chance for success in the future—no matter how the child got here.

The child didn't ask to be born, but that child is your child, it is my child, it is our child; we have an obligation to ensure, especially as parents, that we do all we can to provide that foundation for success. One of the greatest ways we can do that is to ensure that that child is nurtured with love and support and is given the tools to speak out and feel empowered enough to defend themselves if necessary; and I don't mean necessarily in a physical way, because we know that there are power dynamics at play, especially if the perpetrators are much older and, as I said, in positions of trust. Madam Speaker, one of the best ways to achieve this "prevention is better than cure" mantra that I agree with in this regard, is to help our children understand from the earliest age possible, what is right and what is wrong; what is inappropriate touching and behaviour versus appropriate behaviour and appropriate interaction.

[Inaudible interjection]

Hon. Tara A. Rivers: Madam Speaker, the worst thing that you can do for a child is to train them to keep secrets; because one of the reasons this is a scourge in our community is because it was never addressed openly and publicly for many, many years. It is a situation where often times the victims are told *you better not tell anybody because you are going to get in trouble or it is your fault why this is happening, you should not have done this*. The victim blaming that goes on and the shame that goes along with that is one of the reasons why today in 2017, we are still dealing with this issue in this way.

As one of the Members indicated, it seems there is an increased incidence. Madam Speaker, I have to question whether or not that is the case in terms of fact. As the Member said, it could be either an increase in incidents being reported or an increase in incidents being convicted but Madam Speaker, I would be very surprised to see that it was an increase of those incidents happening. For too long this has been one of those things that was kept behind closed doors and if we teach our children to keep secrets, unfortunately that is exactly what is going to continue.

As I said, as a parent, the worst thing you can do is to tell your child to keep secrets from other parents or other family members. Your child should be confident enough to know that they can come to you with whatever is happening in their life and that you won't shun them or you won't make them feel less of a person because they are sharing this information. As difficult as this information may be to hear, you as a parent you need to know. You need to know what is happening in your child's life at every stage of their life.

Madam Speaker, I pray over my son every night and I give thanks to the Lord for the relationship that I have with him. I raised him to be able to come to me with everything and sometimes he comes to me with some details that I am like, *Oh my goodness, I am not sure if I really wanted to hear all of this in such detail*, but I give thanks to know that he knows that no matter what he tells me I will love him and I will do all I can to protect him. Therefore I pray every night that that relationship continues if, God forbid, he is ever in a situation— because Madam Speaker, as parents, we cannot be with our children 24/7.

No matter how much we work to protect and provide for them, they will be exposed and sometimes they will be exposed to things that you wish they weren't exposed to. But if we train our children to be open and honest with us as parents, then the chances of identifying those signs early, the chances of putting in those preventative measures, of making those reports that need to be made to the police, to DCFS, to whomever needs to know to be able to take action, those will happen much sooner and hopefully prevent

any further harm that may occur with not having that level of disclosure or trust with your children.

Madam Speaker, again, as things were talked about during this debate, we as parents have to be vigilant and we have to monitor what our children watch, what they listen to, what they read on electronic media or otherwise, because they are bombarded with information. They are bombarded with images and imagery that are sometimes far above their mental capacity and as adults, as parents, as guardians, we are the ones responsible to ensure that they are not exposed beyond their years.

As I said, I am mindful of the time and the fact that we need to get through, but Madam Speaker, this is something that I have felt very strongly about for a very long time.

I support this Bill and I believe it is a step in the right direction. It will hopefully achieve some of what is intended as it relates to ensuring that appropriate action is taken to prevent any further harm being done by persons who may either be found to be or suspected to be perpetrators; but there needs to be some mechanism through which the relevant agencies required by law, and also those who play a legitimate and recognised role in the community as looking after the welfare of our children, can have appropriate access to the information contained in the Sexual Harm Prevention Orders.

Madam Speaker, just yesterday we saw the launch of MASH (Multi Agency Support Hub) unit that brings together critical agencies in the child protection sphere in our country, that of DCFS, the RCIPS, and Health Services Authority. I do hope that that agency will continue to evolve to ensure that there is appropriate representation from the Department of Education Services as well, because agencies that are charged with the responsibility of the welfare of our children need to be able to access the appropriate information at the appropriate level in order to ensure that they are themselves carrying out their obligations under the law.

As I said, there are other civic organisations such as the Cayman Islands' Red Cross, which as many of us know has an initiative known as The Seal of Protection initiative, which aims to identify, verify and recognise the other community organisations, sports organisations, youth organisation and institutions that are putting in place the necessary safety measures for the protection of our children, including appropriate screening and hiring practices, written policies and procedures on child protection. Madam Speaker, there are other organisations, other players in the community that also may need to have some level of appropriate information sharing to ensure that they are able to carry out the mandate that they have taken on as well.

[As to] what the level of appropriate disclosure is, I will refrain from giving my views on that at this point, but I certainly believe that we need to make

sure that all of the agencies in this community [that are] working towards the same goal of safeguarding our children and giving them the best opportunities for success and a healthy, happy and prosperous life are working in tandem with one another, are able to share the information that is gathered and are aware of the types of mechanisms being put in place to prevent harm that may come as a result of not having the information as necessary.

Madam Speaker, with those sentiments, I support this Bill and I look forward to working with the Government to see what can be done to ensure that our children are not just our future in name, because they are not—our children are today. As I said, today's victims become future perpetrators and the best way to arrest this scourge in our community is to get that victim number down to zero.

Thank you, Madam Speaker.

The Speaker: Does any other Member wish to speak?

Does any other Member wish to speak?

I recognise the Honourable Minister responsible for Community Affairs.

Hon. Osbourne V. Bodden, Minister of Community Affairs: Thank you, Madam Speaker.

I learnt recently that the shortest Bills tend to attract the longest debates, but this Bill brought by the Attorney General is a very important spoke in the wheel of child protection in this country.

Madam Speaker, when we talk about sexual abuse, and sadly we see far too much of it in our society today, we hear of the cases before the courts and we usually end up with two victims, the one who has perpetrated the crime and the one who is the victim. As the Minister of Education just said, my colleague, she said that the cycle of abuse is what we are trying to break because usually those who have been victims go on to become perpetrators.

Madam Speaker, today is International Social Workers' Day, in fact, I went over and had lunch with our Department of Children and Family Services just to tell them thanks for all the work that they do. It would make your hair curl; those of us who have been involved— we have the First Elected Member for Bodden Town, the Leader of the Opposition and the Premier for a short time, who have been involved with being the Minister of Social Services. I don't remember if the Member for North Side? Yes. We know the horror stories, Madam Speaker.

Sometimes I am glad when they don't even tell me some, it is that bad because, certainly you cannot keep up with all of the cases, but we do have serious issues in this small community. I have just launched a Child Abuse Prevention Policy as Members will know, and that seeks to monitor and to have child protection officers in place, with sporting organisations initially, but to go way beyond that as it were a

pilot program, but to get all of our sporting associations signed up under that policy and for us to report any suspicions of abuse.

Madam Speaker, like the Fifth Elected Member for George Town, I support a closed register of perpetrators because we need to know who these people are. In a small community it is difficult to have a public register, and I understand the concerns and why it hasn't been done to date, but certainly someone needs to know who these people are and what is being done and where they are going and the monitoring that should be taking place in regards to them because Madam Speaker, our vulnerable—our children, our elderly, our disabled— are the treasures of our society. Our children are our future.

I do not know if this is some sort of divine happening but by chance, I was watching TV late last night and I have never ever watched the Dr. Oz, my namesake's show, but flicking through the channels I happened to come across it and it caught my attention because it was about sports. With him was one of the former members of the US national gymnastics team, now a grown woman.

I started to watch it and it got more and more interesting because, and this is unfolding I guess as I speak, there are huge allegations concerning the team's masseuse and the people who led that team. The way that these young ladies were kept on a farm as it were, protected, looked after, as we know that to become the very best gymnasts in the world, you pretty much give up your regular life and you are trained in a very closed environment; and he went on to bring not just the one that he was speaking to, but at least three other now-grown women who were part of that— and these are medallists, these are Olympic medallists, Madam Speaker.

It got where it was almost unbelievable what I was hearing. This masseuse, who had access to them, had gained so much trust with these young people, 14, 15, 16 year old young ladies, that he was able to have free access to their rooms, free access alone time. A male with young females and he was doing what he called treatment, when in fact it was gross violation of their bodies, of their young minds. The ironic part about that was, and this was the part that blew me away, was that he was the person that they trusted the most because they didn't trust the people that had overall care for them because they felt that they were mean and nasty. This man won over their trust and then proceeded to be a perpetrator of sexual violence against them.

Madam Speaker, listening to it hurt because the pain in these now-grown women, mothers, wives, was obvious. They were ashamed. They were reliving this thing. This man, well, the investigation has started, I think he might even be charged or whatever I am not sure about all of that, but they did show him and you could see that he had on prison fatigues or whatever; but Madam Speaker, this is a huge blow to the

psyche of these women and they have to be praised for stepping forward and sharing their story and basically opening up themselves to the world for what happened to them.

I say all that just to say that we don't know the sexual predators in our community, we don't know who they are. As I said when I was launching The Child Abuse Prevention policy, they don't come with a label on their head; they don't give you a business card. They are the people in the community that gain your trust in the most intimate ways and often-times turn out to be the biggest criminal and violators of the good humans among us.

Madam Speaker, this Bill, as I said, is a valuable amendment to the Penal Code because we have to tackle this from every direction that we can. I would just like to throw a couple of questions if I may, at the Honourable Attorney General and maybe we will talk offline afterwards, but just to find out where exactly does the DCFS fit in to what we are trying to do here? How will the orders be enforced? Who will actually be consulted on the conditions that have been imposed and the monitoring of breaches and that type of stuff? I would like to hear a little more about that and what thought has been put into it. If it is in the Bill, I may have missed it. We have to take this very seriously, Madam Speaker. It is a small amendment to a big piece of legislation, but it is a very important one.

We are right in the middle of International Women's Month [so] it comes at a very appropriate time. As I said, today is International Social Workers' Day and we have a lot of people in our community, many stakeholders working hard to prevent [abuse] and protect our vulnerable so I want to commend [them.]

I don't want to drag this out; a lot of good stuff has been said about this in the debates and Madam Speaker, I want to offer my full support as the Minister in charge of Community Affairs and our youth, in particular.

I feel, Madam Speaker that we need to take the brave step and go as far as legalising certain protection mechanisms for our women. This was brought to this Legislative Assembly before and for some reason it did not become fully legal, but our young ladies and women need protection. I see where we have community efforts for protection with martial arts and all that, but I am willing to go further and say on the Floor of this House, Madam Speaker, that things like pepper spray, certain alarms — well, that wouldn't need any special permission — but certainly something in the form of pepper spray or any other kind of protection mechanism should be sought.

If we get back here after — certainly we won't be able to do it in this term Madam Speaker, but if we are back here as the government after the elections, I hope that will be something that we see legalised for the benefit and protection of any of us who have women in our family, young or grown daughters,

wives and mothers, whatever the case may be. We know what is out there, Madam Speaker, and we cannot do enough in this area to protect [them.]

I am very happy that this piece of legislation has found its way to the Floor of this honourable House and I certainly will continue to fight for the rights of the most vulnerable in our community.

Thank you.

The Speaker: Does any other Member wish to speak?

Does any other Member wish to speak?

Does any other Member wish to speak?

I recognise the mover of the Bill to respond.

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

I just want to make it quite clear that I had no intention of misleading the House when I said that it was a very short Bill. The government is understandably very grateful for the very spirited and passionate debate on what is clearly an extremely important subject matter, as evidenced by the sentiments and sincerity of all Members who spoke Madam Speaker, and those who haven't spoken but are fully behind the initiatives being pursued as evidenced in this Bill.

Madam Speaker, a number of things have been said and I understandably will not be able to provide an answer to all of them this evening, but I do give an undertaking that this is, as the honourable Minister of Education and the First Elected Member for Bodden Town mentioned, a first step to adjust this and related issues, Madam Speaker. I certainly give an undertaking to continue to engage with Members and stakeholders on behalf of the government, to ensure that the ideas put forward are taken on board and somehow implemented to strengthen the framework as it relates to the protection of the very vulnerable in our society, including our children.

It was mentioned that there is a need to have in place a mechanism for monitoring persons who are subject to such an order and it is accepted, Madam Speaker; when we were developing this Bill, it was agreed that there would need to be put in place some sort of an arrangement to have the capabilities to monitor compliance with any such orders.

We also agreed that it was not necessary to include all the details in the Amendment Bill to the Penal Code but certainly, secondary legislative underpinning and rules, as provided for by the provision in this Bill, will be developed to help coordinate the workings of these orders including the monitoring to ensure compliance and the necessary networking, if you will, among the relevant stakeholders. The Honourable Minister of Education also referenced the MASH that was unveiled yesterday which consists of, among others, the Family Support Unit, the DCFS, the HSA, Police and so on.

Madam Speaker, there are provisions in the Children Law which impose certain notification obligations on certain individuals and there are a confluence of initiatives that are being pursued that will ensure that this sort of framework works in the way that it is intended which is again, to provide adequate safeguards for those who we took an oath to protect, Madam Speaker. This is just but one other additional step being taken by the government in ensuring that these paedophiles are in fact held to account and monitored in the right way.

The Honourable Minister of Sports enquired as to where the DCFS fits into this equation which is understandably, a very relevant question given that agency's level of responsibility. Madam Speaker, clause 45A (1) **says "The Director of Public Prosecutions, after consultation with the Royal Cayman Islands Police Service or any other relevant agency"**; I can therefore confirm to the Minister, that when the Bill was being developed the role of the DCFS and others were discussed and although, rather than attempting to list them all we simply refer to them as other relevant agencies, the relevant MOUs and other protocols will be put in place to ensure the necessary synergy with all relevant agencies or persons, Madam Speaker.

There will be monitoring of the breaches, there will be inter-agency coordination, there will be the relevant discussions among individuals and agencies. Grand Court rules will be developed as the Bill mentioned at Clause 45F— the rules of court to be developed by the Grand Court to help undergird the workings of the provision and make sure that it delivers.

Madam Speaker, the Fifth Elected Member for George Town mentioned the need for necessary monitoring and I certainly agree. As I said before, arrangements will be put in place once this Bill is rolled out and before it is fully brought into effect, to ensure that the necessary monitoring mechanism is in place to make it effective. I also agree with him that there is going to be need for international cooperation to ensure that across borders, some sort of a monitoring mechanism can be put in place to alert, if you will, those who need to know [that they] have these sorts of persons within their community.

I heard the discussion about the closed registry and I think, given what we have seen in recent times Madam Speaker, it is clearly something that now needs to be taken on board. If it is going to be a closed registry, then clearly it is something that can be dealt with in a way that is proportionate given the rights of everybody involved, including the victim and those who are going to be the subject of such an order.

I say the rights of those who are going to be the subject of an order Madam Speaker, because during the discussion I looked at some of the UK cases where this provision is in place and there is no short-

age of litigation from persons challenging some of the conditions in the orders in terms of their proportionality. In some cases the court ruled clearly that the orders were necessary; in some instances, the courts clawed back on some of the orders made or watered them down. The courts are extremely vigilant in ensuring that whatever is done Madam Speaker, the right balance is struck. We, being a country of rule of law, we are understandably anxious to protect the victims— ladies, children, young male or female, whoever— while at the same time ensuring that we don't run afoul of the law.

Given all that has been said Madam Speaker, it would be extremely difficult for me to try and traverse just about all the points raised, but I want to assure all honourable Members again that I intend to discuss all the points that have been raised here with all [the] relevant agencies and parties including the police, the DPPs Office and the Grand Court Rules Committee, to see how best we can take these on board and ensure that the orders work in a way that is contemplated by this honourable House, all the Members here and all those who conceptualised in the first place.

I thank you, Madam Speaker.

The Speaker: The question is that a Bill shortly entitled The Penal Code (Amendment) Bill, 2017, 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, 2017 was given a second reading.

The Data Protection Bill, 2016

The Speaker: I recognise the Honourable Attorney General.

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

Madam Speaker, I beg to move the Second Reading of a Bill for a Law to provide for the protection of personal data; and for incidental and connected purposes.

The Speaker: The Bill has been duly moved.

Does the Honourable Attorney General wish to speak thereto?

Hon. Samuel W. Bulgin, Attorney General: Yes, Madam Speaker.

Madam Speaker, this Bill seeks to introduce a legislative framework in the Cayman Islands for data protection. It is aimed principally at protecting the pri-

vacy and personal information of individuals and in particular, Madam Speaker, regulating the collection, storage, processing and dissemination of personal data, thereby safeguarding the rights to privacy in relation to such data while at the same time ensuring that certain essential exceptions are allowed. Consideration has been given, amongst others things, to section 9 of the Bill of Rights, now Constitution, relating to private and family life, as well as other rights, under the current Bill, the Data Protection Bill.

Madam Speaker, for what it is worth, we need to remind ourselves that personal data means data or information which relates to or identifies directly or indirectly an individual. It could include general to highly confidential and sensitive information, including a person's health information or criminal antecedents. Accordingly, the basic premise here Madam Speaker, is privacy and the right to one's own privacy.

Individuals, employees, and customers expect that the handling of personal information will be respected and dealt with in a particular way with adequate safeguards. It has been observed that this has become more acute because of the increase in centralisation of information through the computerisation of various records and the large number of recent data loss and other breaches via online abuse, some of which has even led to suicide especially among teenagers Madam Speaker, due to sheer humiliation and hurt.

Madam Speaker, in order to put all this in context, it would be helpful if I outline the internationally accepted principles of data protection which forms the basis, if you will, for this Bill [now] before the House. The basic data protection principles Madam Speaker, are to be found in Schedule 1 of the Bill— page 42 for those who want to follow— and it contain some clarifications and exceptions in Schedules 2 to 5.

The principles start off by acknowledging that personal data shall be processed fairly; accordingly, personal data should only be obtained for specified lawful purposes and should not be used or further processed for any other purpose which is incompatible with the initial purpose for which it was gathered. In other words, if you collect a person's data for a particular purpose, it should only be used for that particular purpose and when that purpose has been achieved, there is no need to retain the data or try to use it for any other objective.

Madam Speaker, it also provides that the personal data that is collected must be adequate, it must be relevant and should not exceed the purpose for which it is collected, that is, you should only collect the amount of data that is actually needed for a particular purpose or transactions; no more, no less.

[Inaudible interjection]

Hon. Samuel W. Bulgin, Attorney General: It binds the Crown.

The principles recognise that the personal data collected should always be accurate and current that is, Madam Speaker, it should be up to date. Another important aspect of the principles is that the personal data collected or processed for a particular purpose should not be kept for any longer than necessary for that particular purpose. Madam Speaker, if it is collected for a particular reason, it should be disposed of once that purpose is achieved. It should not be kept or retained indefinitely in circumstances where there is no further use for the data.

The processing of any such data must be in accordance with the rights of the data subjects, that is, Madam Speaker, the person's rights are set out in the actual Bill itself. It is also a requirement that there should always be necessary safeguards in place for the handling of such data. Accordingly, there should be appropriate technical and organisational measures in place to guard against unauthorised or unlawful processing of personal data, accidental loss, destruction of or damage to such data. The data must be secure. This is particularly important again Madam Speaker, in the age of I-cloud computing or website usage, transferring of data across borders or as we know it, social networking.

Finally, Madam Speaker, on the basic principles, the personal data should not be transferred to a country unless that country can ensure that an adequate level of protection for the rights and freedoms of the data subject in handling such data exists. This, by the way, is also the position in other countries where data from those countries may be required to be transferred to the Cayman Islands; there has to be what is called "adequate level of data protection" and it needs to be on a reciprocal basis.

Madam Speaker, for completeness, it may be helpful to note that this Bill makes a distinction between personal data per se, which generally means any information relating to a person that may be used to identify an individual— for example their physical, genetic, economic or cultural information— and sensitive personal data which generally refers to one's ethnic or racial origin, a person's political opinion or religious belief or their criminal antecedents, their sexual orientation or political affiliation, et cetera. It also relates to their financial records and their physical or mental health, as defined in the Bill.

Madam Speaker, how did we get here? Some years ago, a data working group comprised of various representatives from the public and private sector was established to research this particular law and tasked with drafting an appropriate Bill for the Cayman Islands. Part of its recommendation was the inclusion of the EU data protection regulations, which are relevant and applicable to our jurisdiction. During one of the consultation exercises Madam Speaker, the Human Rights Commission and the Cayman Islands Monetary Authority among others, offered comments on the proposed legal framework in this Bill. I must say [that]

since then we have had numerous inputs from others including the Bar Association, the Law Society, and STEP (Society of Trust and Estate Practitioners) among others.

Madam Speaker, the working group was understandably very careful to ensure that this regime would not become too onerous on businesses, especially small businesses. When the presentation was done to the current government's caucus and Cabinet, the government was also concerned to ensure that whatever arrangements were put in place to give effect to a data protection framework would not prove unduly burdensome or onerous for businesses, especially small businesses. The Bill therefore contains provisions to enable the making of regulations which will be used to further clarify certain obligations, including how to mitigate any potential burden on certain businesses; these would include for example, the ability to create certain exemptions from fees and registrations and other administrative requirements in instances when the risk is obviously low. The regulations will also be used to provide or clarify other applications of the law.

Madam Speaker, the government was very careful to ensure that the obligations are such that they can be complied with but it is informed by the level of risk that is involved and in instances where the risk is very low, especially as it relates to small businesses, that the regulation be crafted in such a way as to mitigate the burden on small businesses of complying with the provision of the data protection regime.

Madam Speaker, this initiative is very noteworthy and timely in many respects. Indeed, the ICTA [Information and Communications Technology Authority] (until it is changed), has set up a cyber-security response team in order to maintain cyber environment which effectively encourages economic prosperity while promoting proper security and privacy. The passing of the proposed data protection law would be a big step towards this aim and would support the Cayman Islands' claim that it is a safe place to do electronic business and that any data kept here will be secure; it will serve to safeguard properly the data passed over the various networks in the Cayman Islands. Especially and ultimately, it protects the information we hold, such as personal financial data, employee details or third party information.

I must hasten to add that some Crown dependencies such as Jersey and Guernsey, have had data protection legislation in place for some time and Bermuda has since enacted theirs. Other places are [also] moving ahead with data protection. Madam Speaker, Bahamas and Trinidad among others; we can't afford to be behind the curve on this area.

Of course, Madam Speaker, we know that the UK have theirs in place a long time ago, I think it came into play since 2000. We simply need to look at some of the warnings attached to UK government e-

mails when we receive them from time to time. You will see that it says, among other things, *this email, with attachment, is intended for the attention of the addressees only. The FCO keeps and uses information in line with Data Protection Act 1998.* Those are some of the warnings attached to emails that we receive from UK agencies, including FCO [Foreign & Commonwealth Office] from time to time.

It follows Madam Speaker, as I said, that Cayman needs to put this sort of framework in place to ensure that we remain contemporary and [to] be able to sell the jurisdiction as a place to do business, because in the Cayman Islands your data, in whatever form, will be secure.

What of the Bill, Madam Speaker? The Bill is divided into seven Parts.

Part 1 contains clauses 1 to 7 and deals with, among other things, interpretation, the data protection principles and the application of the data protection law itself.

Clause 1 provides a short title on how the legislation would be brought into force. This includes Madam Speaker— it is not in the Bill, but for Members' benefit— a phased implementation over a 12 to 18 months' period, similar to how the FOI [Freedom of Information] Law was rolled out. In the interim, there will be a period for public education, as well as developing the necessary regulations and guidance with the required consultation from various industry stakeholders as well as others who will understandably be impacted by this framework. It is important that we pass the law now to trigger that process so [that,] over the next 12 to 18 months, in a similar fashion to the FOI Law, we will have this work in progress and reach a stage where we can eventually implement the legislation, Madam Speaker.

Clause 2 contains the main definitions. Some of the key terms are "personal data" and "data controller", as well as "processing".

Clause 3 contains, as I mentioned before, the definition of sensitive personal data.

[Clause 4 defines "special purposes".]

Clause 5 in conjunction with the schedules, defines the data protection principles. I touched on those earlier in my presentation but as a reminder, Madam Speaker, these principles include such things as:

1. Personal data must be fairly and lawfully processed;
2. It must only be processed for limited and defined purposes;
3. It must be adequate;
4. It must be relevant and not excessive;
5. The data must be accurate and up to date;
6. It must not be kept for longer than it is necessary;

7. The data must be processed in line with the data subject's rights and must be kept secure; and
8. Finally, the data should not be transferred to other countries without that other country being able to guarantee adequate protection of the data that is being transferred.

Madam Speaker, when we were debating the tax information exchange agreements, we had to give undertaking that we were going to be enacting data protection legislation or similar sort of safeguard in order to secure consent for some of them.

Clause 6 deals with whom this legislation applies to. It applies to a data controller who— for the purpose of this Law means a person who alone or jointly with others determines the purpose, condition and means of processing the personal data— is established in the Islands if the data [are] processed to the extent of that establishment. That means it has to be an establishment within the Islands, Madam Speaker. It also applies to a data controller who is not established in the island but processes data in the island otherwise than for the purpose of transit of the data through Cayman Islands.

Where a data controller is not established in the Cayman Islands, he/she is required to nominate someone who is established in the Islands as a representative. Translation Madam Speaker: it needs to be a representative in the Islands who is a data controller for the purposes of accountability; it simply means that there must be someone within the Islands capable of being held accountable in the event that there is a breach of the data protection regime.

Clause 7, as read with the definition of "Commissioner" contained in clause 2, establishes the Information Commissioner who will be appointed as the independent authority responsible for the administration [and] enforcement of the data protection regime. I know Members will say *well, there is an Ombudsman Bill now which is going to be charged with that responsibility*, but the way the Ombudsman Bill is written, Madam Speaker— if I understand it correctly— speaks to prescribed laws, so at the appropriate time the Data Protection Law will be one of those added to the schedules of the Ombudsman Law

Part 2 of the Bill contains clauses 8 to 14 and deals with, among other things, the rights and responsibilities of the data subject which, for the purpose of the law, means an identifiable living individual or a living individual who can be identified directly or indirectly by means reasonably likely to be used by the data controller and any other person.

Clause 8 provides for the general right of access to data. Subject to some exceptions and conditions, a data controller is obligated to supply certain information to a data subject where that information relates to the data subject. Simply put, Madam Speaker, if someone collects data on you, personal

information, you as a data subject need to be assured that the data the person has on you is correct, up to date and not being used for any other purpose other than for which they hold that personal information or data about you. Those are some of the rights that as a data subject myself and everyone else enjoys, Madam Speaker.

Part 3 of the Bill contains clauses 15 and 16 and deal with restricted processing of personal data breaches. Clause 15 provides that Cabinet may, after consultation with the commissioner, make regulations governing the types of data processing that requires the prior approval of the commissioner. That is, Madam Speaker, processing that is likely to, among other things, cause substantial damage or distress to a data subject.

Part 4 of the Bill contains clauses 17 to 31 and deals with matters such as exemptions to certain general rules established in the legislation relating to data protection. The exceptions are based not just on the classification of the data but on other criteria, Madam Speaker.

An example includes the collection and transmission of certain data by entities such as CIMA [Cayman Islands Monetary Authority] [and] the Tax Information Exchange Authority which are to be exempted in certain respects, given their regulatory mandate to cooperate with overseas counterparts; exemptions that deal with the administration of justice [and] legal proceedings, exemptions that deal with combating organised crime, terrorism and drug trafficking, among other things, Madam Speaker. Some significant exemptions also relate to government fees and duties, monitoring and inspection of regulatory functions as I mentioned, journalism literature, legal proceedings, corporate finance (clause 28) and legal professional privilege. Those are what we would call card voter exemptions to the general rule, as it relates to the handling of personal data.

Madam Speaker, Part 5 of the Bill contains clauses 32 to 42 and contains provisions relating to the function of the information commissioner. As I mentioned earlier Madam Speaker, that office is expected to be [the] oversight body or enforcer of the provisions of this law. The commissioner will monitor and provide guidance on the application of the law, in addition to being able to undertake enforcement action in appropriate cases.

Madam Speaker, some of those who were consulted expressed concerns about the level of the fine— I think it is \$250,000— but I was looking at the European Union General Data Protection Regulation and believe it or not, Madam Speaker, their regulation has provisions for the supervisory authorities to have power to impose administrative fines of up to a maximum of €20 million euro or 4% of the data controller or data processor's total global turnover of the preceding Financial Year, whichever is higher; quite a hefty penalty.

Part 6 of the Bill contains clauses 43 to 58 and deals, among other things, with the mechanism for enforcement and includes the right to seek judicial review of decisions of the Commissioner in the Grand Court, as well as related matters thereby guaranteeing certain due process in any enforcement proceedings under this law by the Commissioner.

Madam Speaker, the Human Rights Commission had some concerns about this; they thought the summary power, as they described it, that was given to the Commissioner without adequate due process, was not in keeping with our obligation to abide by the rule of law, so a provision was inserted where an aggrieved person can seek judicial review of any decision taken by the Commissioner with which that person is aggrieved.

Madam Speaker, nobody supports wrong doing. It is of utmost importance that people's professional and private data enjoy proper safeguards in circumstances where they are involved in legitimate lawful undertakings, but Madam Speaker— but— subject, of course, to exceptions for the investigation or prosecution of crimes and regulatory transgressions.

In this age of constant hacking and data mining and in the advent of most recent historical and significant hacking and release of certain personal and commercial data, there are very good reasons and justification to have a proper data protection mechanism via the required legislative framework in place in the Cayman Islands. By so doing Madam Speaker, the jurisdiction will be able to assure persons who want to conduct legitimate commercial business here that we have internationally accepted standards of confidentiality and that should provide them with the necessary comfort.

Madam Speaker, there are a number of legal imperatives for the Cayman Islands to enact a comprehensive data protection law; as I mentioned earlier, while dealing with some of our tax information exchange agreement partners we undertook [to] put in place the necessary reciprocal data protection framework. It was also envisaged that when the FOI Law was rolled out, there was going to be a complementary Data Protection Law. There is also a CCTV code of conduct which is used by government and that assumes, [or] at least contemplates, the existence of some overarching data protection legislation as well.

Madam Speaker, as a jurisdiction involved in international business, we need to be able to provide comfort to those who seek to do business in and from our shores that their commercial and personal data, where required, will be adequately protected to the extent that the government is able to do so.

We have to make it quite clear Madam Speaker, that like all other civilised countries we do have exceptions for international corporations where it can be established that offences are being committed, including regulatory transgressions. This country provides no safe harbour for those who are involved or

want to be involved in nefarious activities; that is not what data protection is all about [and] if they think that is what we are about, then [the Cayman Islands] is the wrong choice of jurisdiction.

Madam Speaker, the Postmaster General advised that the Cayman Islands' Postal Service international customs and security obligations contemplate the existence of some sort of data protection framework [as well]. The postal service has two primary needs as it relates to data protection:

1. The need to electronically exchange customs data with customs and postal authorities in other jurisdictions; custom data includes the names, addresses and contact information for the sender and recipient of mail packages, as well as detailed information regarding the country of origin, contents, description, quantity, harmonised tariff code number, and value or weight of packages.
2. The ability to enter into data exchange agreements such as the agreement between the Cayman Islands Postal Service and United States Postal Service. They need to have the ability to collect and store electronically or on paper form, and report on data for mail items handled by the post office. This includes the ability to allow customs to submit mail package information electronically Madam Speaker, so that the post office can generate and print declarations on their behalf.

Finally, Madam Speaker, we cannot forget that [as] there is a Bill of Rights in the Cayman Islands Constitution which imposes a positive obligation on the country to provide protection for an individual's private life, including a person's medical and other personal data, the government is required to put in place the appropriate framework to guarantee such privacy.

Madam Speaker, transitioning to a legislative data regime will not and should not be such a change for our major businesses and other entities, as they are already routinely involved in collecting, processing and dissemination of significant amounts of personal data on a day-to-day basis. This legislation merely seeks to streamline the obligations necessary in dealing with such data. It is hoped that these provisions will offer the desired and intended protection of personal data in these Islands.

I wish to commend the data protection working group, the legislation drafting department and all who contributed to the creation of this Bill. Those who critiqued, some of the criticisms were quite helpful, others I think were meant to be constructive but not necessarily helpful. Nevertheless, Madam Speaker, it is a democracy; we took all of those on board and the result is the Bill before this honourable House today. It has been quite a mouthful but I commend the Data

Protection Bill, 2016 for the consideration of this honourable House.

I thank you.

The Speaker: We will take the afternoon break now and reconvene at—

Hon. Samuel W. Bulgin, Attorney General: Madam Speaker, if I may just— out of turn, I am sorry.

Just to apologise and say that I have asked for some Committee Stage amendments to be circulated in respect to the Bill. I am sorry about that; I should have said it sooner.

Thank you.

The Speaker: We will take the afternoon break and reconvene at 6:30 p.m.

Proceedings suspended at 6 p.m.

Proceedings resumed at 6:50 p.m.

The Speaker: Please be seated.

Proceedings are resumed.

Does any other Member wish to speak?

Does any other Member wish to speak?

Does any other Member wish to speak?

I recognise the Honourable Attorney General if he wishes to reply.

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

Madam Speaker, I certainly wish to thank all honourable Members for their tacit support. I am aware that some Members have some observations— I won't put it any higher than observations— about whether or not they were ready to debate this Bill. I am certainly sorry about that, but the fact is that the Bill has been around for a while.

Hopefully there will be an opportunity in Committee and Members' observations can be ventilated and we can listen to those. I certainly thank all honourable Members for their support, Madam Speaker.

Thank you.

The Speaker: The question is that the Bill shortly entitled the Data Protection Bill, 2016 be given a second reading.

All those in favour please say Aye, those Against, No.

AYES.

Mr. V. Arden McLean: No.

The Speaker: I believe the ayes have it.

Mr. V. Arden McLean: Madam Speaker, can we have a division?

The Premier, Hon. Alden M. McLaughlin: Did you speak against it?

The Speaker: Madam Clerk, please call a division.

The Clerk:

Division No. 36 of 2016/17

AYES: 8

Hon. Alden M. McLaughlin

Hon. Moses I. Kirkconnell

Hon. D. Kurt Tibbetts

Hon. G. Wayne Panton

Hon. Marco S. Archer

Hon. Tara A. Rivers

Mr. Roy M. McTaggart

Mr. Joseph X. Hew

NOES: 4

Mr. Alva H. Suckoo, Jr.

Mr. Winston C. Connolly

Mr. D. Ezzard Miller

Mr. V. Arden McLean

ABSENTEES: 5

Hon. Osbourne V. Bodden

Hon. W. McKeever Bush

Mr. Bernie A. Bush

Capt. A. Eugene Ebanks

Hon. Anthony S. Eden

Hon. Samuel W. Bulgin, Attorney General: Mr. McLean, I thought you said you were going to give conditional support.

[Inaudible interjection]

Hon. Samuel W. Bulgin, Attorney General: You misled me again.

[Inaudible interjection]

The Speaker: The results of the division are as follows: eight Ayes, four Noes and five absentees.

Agreed: The Data Protection Bill, 2016 was given a second reading.

The Prescription (Amendment) Bill, 2017

The Speaker: I recognise the Honourable Minister responsible for Infrastructure.

Hon. D. Kurt Tibbetts, Minister of Planning, Lands, Agriculture, Housing and Infrastructure: Thank you, Madam Speaker.

I beg to move the Second Reading of a Bill entitled The Prescription (Amendment) Bill, 2017.

The Speaker: The Bill has been duly moved.

Does the Honourable Minister, mover of the Bill, wish to speak thereto?

Hon. D. Kurt Tibbetts: Yes, Madam Speaker.

Madam Speaker, the Government considers very necessary to bring this Bill and it is brought alongside the Public Lands Bill, which will be next on the Order Paper.

We have a problem here that I would want to say has plagued us for a very long time. The Bill that I am introducing seeks to amend the Prescription Law to enable a government agency or entity, to bring claims to the Grand Court on behalf of the general public in order to have a dispute settled regarding access to a public beach.

The public's access to the beach is a subject of regular debate here in the Cayman Islands and I believe it is safe to say each and every one of us in this Chamber has experienced how this can provoke very strong opinions from individuals and groups alike.

Public rights of access to the beach fall in to different types; they may be formal, Madam Speaker, that is, being registered on the registry map. These have been registered at Cadastral or have been voluntary registered as what is termed a dedication. Some are public rights of way to the beach that are created through legislation. For instance, Regulation 32 of the Development and Planning Regulations requires the CPA, that is the Central Planning Authority, to require a land owner seeking planning consent in a hotel/tourism planning zone to set aside and dedicate to the public a right of beach access from the public road to the sea of at least 6 feet in width per 200 feet of shore line.

However, Madam Speaker, certain beach access rights are unregistered, having been established through regular use by members of the public over many years— these are termed 'Prescriptive rights'. Section 4 (1) of the Prescription Law (1997 Revision) provides for the effect of 20 years' use by the public of a beach and of means of access thereto.

"When any beach has been used by the public or any class of the public for fishing, for purposes incident to fishing or for bathing or recreation, and any road, track or pathway passing over any land adjoining or adjacent to such beach has been used by the public or any class of the public as a means of access to such beach, without interruption for twenty years, the public shall, subject to the provisos hereinafter contained, have the absolute and indefeasible right to use such beach, land, road, track or pathway, unless it appears that the same was enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing."

Now Madam Speaker, under section 9 of the same law, **"Where the public or any class of the public has used any beach, land, road, track or pathway in the manner specified under section 4(1) ... and such user is disputed, any person**

concerned in the dispute may lodge a plaint in the Grand Court under the Judicature Law..."

Madam Speaker, what that is saying in lay terms is [that] any member of the public who has a dispute with either a landowner or someone else saying they do not have the right to use that right of way, has to go to the Grand Court to lodge a plaint to be able to seek redress.

For practical purposes, the prescription law has been rarely, if ever, used to protect historic unregistered public beach access. This Law does not allow privately owned land to be fettered with registered public rights of access without the landowners' consent or without the backing of a judgment from the Grand Court.

Having said that, the government's legal department has advised— and your good self and other Members will remember that I read that memo from the late Stephen Hall-Jones, former Senior Crown Council, as he proffered that legal opinion, I think it was in 2003— that as the law stands now, the government cannot lodge a plaint in the Grand Court on behalf of the public. The advice—

[Inaudible interjection]

Hon. D. Kurt Tibbetts: I am told by my learned Counsel that I shouldn't use the word *plaint* and I understand absolutely why I should say the writ. so if I say plaint again, please correct me, Madam Speaker, thank you.

So, the government's legal department advice said that as the law stands now, the government cannot lodge a writ on behalf of the public in the Grand Court; the advice suggests that a writ can be lodged by a member of the public or members of the public forming a group or association or, for the government to fund such an action by the individual or group.

Madam Speaker, historically, the high cost of lodging a writ in the Grand Court and following this through is a significant undertaking and a deterrent to an individual or a group, considering that the beneficiary is the general public.

The Bill that I am putting forward to this House, Madam Speaker, is simply an amendment to section 9 of the Prescription Law [that] will enable the Cayman Islands Government to initiate and lodge writs in the Grand Court on behalf of the public in order to seek judgements on disputed public beach access rights.

I believe this is long overdue, and just so that everyone will know Madam Speaker, until I saw that legal opinion given by the late Stephen Hall-Jones, I for one did not know that that's what obtained. That's what made me understand why there has been all of this kerfuffle over years and the fact that nothing has been done to right it. As I said, I believe it is long overdue as all of us have been around long enough to

know of the many struggles people have had to have such rights recognised.

The Bill before us specifically speaks to, and I want to paraphrase, a statutory authority, department of government or agency charged with responsibility for ensuring access to public beaches to make an application, under the law, to have a dispute settled regarding access to a public beach. That is basically the objective of the amending Bill, Madam Speaker. It is our intention that on the passage of this legislation action will immediately be taken to commence the process to register all public beach access rights that can be proven to exist as prescriptive rights.

To go back into history once again, Madam Speaker: in 2003, Lands and Survey prepared a report identifying all beach access points along specific sections of the Grand Cayman coastline. Last year, the group known as *The Concerned Citizens* solicited this government's assistance in recognising this report. Here again, Madam Speaker, until I was given a copy of this report by the concerned citizens, I did not know of its existence. Nevertheless, we now know of both the legal opinion and the existence of this 2003 Report.

The Concerned Citizens effectively requested that we recognise these accesses so I instructed my Ministry to have this report—commonly referred to as the Grant Vincent report—comprehensively updated; as we speak, Madam Speaker, all beach access points, both registered and unregistered, are being identified, inspected and recorded around the entire Cayman Islands.

This report, I was told this afternoon, will be released to the Ministry before the end of March. They said that they have finished all the site visits, they are now completing all of the paper work and will have the report finalised for anyone to access by the end of the month. This will also include a survey of the coastlines of Cayman Brac and Little Cayman.

Madam Speaker, this report will then form a database for ensuring that all registered public rights of way to the sea are sign posted and maintained fit for purpose. The report will also identify the unregistered beach access points and from this, the government can then commence the action to ultimately register those that can be proven to exist as prescriptive rights. Prescriptive rights as defined in the law speak to 20 years of use regularly by the public, so that is where affidavits and such will come in.

The Concerned Citizens have also provided Lands and Survey from quite a while back—again, something which was new to me until I discovered it some months ago—over five hundred affidavits from the 2003 report, so now there are the ones that would have been identified by the update to be dealt with.

Madam Speaker, once we have safe passage of this Bill, we will also be speaking to the Public Lands Bill which [is] not quite companion legislation but in some respects, the Public Lands Bill is compan-

ion legislation because that will provide some teeth to effectively ensure that the public has access to these rights of way. It will also make clear determination of proper signage, upkeep and all of the other aspects of it to make sure that businesses are not using these rights of way to operate and block use by the public and all of those things that we hear about today. I am sure that the House can see the importance and the correlation of both pieces of legislation.

Madam Speaker, in closing, it would be remiss of me if I were not to say a special thank you to all those who have worked diligently on the drafting of this Bill. I am certainly proud to be bringing some resolution to what has been a longstanding bone of contention here in Cayman. I commend this Bill to this honourable House and trust [that] Members can see fit to support it.

The Speaker: Does any other Member wish to speak?

I recognise the Member for North Side.

Mr. D. Ezzard Miller: Thank you, Madam Speaker.

Madam Speaker, let me start off by thanking the Minister and the Government for bringing the Bill, but I think it falls short of some of the things that I would like to see and I have filed an amendment to try and achieve some of that.

Madam Speaker, as the Minister said in moving the Bill, this has been a vexing and contentious thing for a long time. I started this thing with *The Concerned Citizens* in the 80s; that was when we put up the swim signs that you see one or two left around now. At one point, they were all over the island; I think there are just a few left along West Bay Road now, because most of the people in North Side who bought land took out the signs and threw them away and the governments have never seen fit to put them back. Rather like the No Dive zones, created in 1986 and until this day the government—not just this government, but all governments since that—we put up the signs in 1986 and once they were destroyed, I have been unable to get any government to replace them.

Madam Speaker, as the Minister said, there are two kinds of these rights-of-ways that we have to be concerned about. One is the one that my grandfather earned the prescriptive right to use and people of his generation—and as I read The Prescriptive Law, once that prescriptive right has been earned, the fact that somebody blocked it and no government has believed that it has the authority to unblock it does not remove the prescriptive right. In my constituency there are several that my constituents have been prohibited from using over a long period of time because landowners have erected fences and ran people off their property and told them that they cannot use these beach accesses.

The other one is the 6-foot rights-of-way that is prescribed under the Development and Planning

Law for developments over 200 feet, but Madam Speaker—

[Inaudible interjection]

Mr. D. Ezzard Miller: No.

An Honourable Member: Six feet for every 200 feet.

Mr. D. Ezzard Miller: Yeah. There are a couple places where we may have 12 because we combined them, but we have earned a prescriptive right for many of those today, because they have been used for more than 20 years.

[Inaudible interjection]

Mr. D. Ezzard Miller: Graded, but they can block them, right? And as far as some of these landowners believe, they have taken them away; because there is really no such thing in Cayman as a public beach other than those where upland of the line of vegetation is owned by government. All beaches, the prescriptive right has been earned to use them and that prescriptive right was at the line of vegetation.

It was changed in this parliament in 1985 or 1986 for planning and measurement purposes to be high water mark and any of the people who bought beach land since that time, including Caymanians who come to my community and buy it, believe that that [change] removed the prescriptive right for the beach and all that people have the right to do is walk along that little one foot wide stretch of land between low water and high water; because in most places in my constituency it is not much wider than that between high-water and low-water mark.

In instances, they have accosted people for walking. I know of cases where people of my constituency go and catch sprats, and because they dump them out of the cast net on the higher part of the beach so that they can't get back to the sea, the landowner come down, take the sprats, throw them in the sea and tell them they are his because that's his land.

One of the worst cases I ever heard was about six months ago, one of my constituents anchored his boat and he said 10, 15, 20 feet from shore to clean his fish while putting out his little side-line to see if he could catch a mutton snapper and the people come out and tell him he can't clean fish in their water.

Madam Speaker, there is urgency in the government doing something to clearly identify these accesses but also to preserve that prescriptive right to use the beach above the high-water mark because I have had three people come to me and claim that they have been run off in front of the Kimpton Hotel by security guards telling them they cannot sit down on the beach, go in the sea or stand up on the beach. And the people that came to me with that complaint were not frivolous people.

If we walk alongside Seven Mile Beach now, we will see where Planning has allowed people to erect structures within that section of the beach to which we have a prescriptive right. Madam Speaker, I believe we may have come to the stage where it might be necessary for government, through Lands and Survey, to go back to the old maps and put down some kind of datum line, particularly along Seven-Mile Beach, which clearly identifies that any beach below that datum line is what the people have a prescriptive right to use. These people keep pushing the envelope and the more we allow them to get away with it, the more they are going to take.

Madam Speaker, the amendment that the government is bringing is to provide for the statutory authority, department of government or agency, meaning the agencies established under the Public Lands Law to be able to take action on behalf of people who complain to them that they are being run off the property; but Madam Speaker, what happens when that commission decides that it doesn't want to take action? Because it says here, a person can still take the action but they have to go to Grand Court. I have filed an amendment to ask that it be dealt with at Summary Court for the same reason that the Minister proposed—the cost of a person going to Grand Court can be high.

I have been advised that this could be something that the Summary Court could deal with and that is not so far reaching you know, Madam Speaker—to believe that this government department will not take up the case—because in some instances, they may be being asked to override a department they are members of, that is, the Central Planning Authority and the Planning Department. Madam Speaker, I have asked that it be dealt with at Summary Court and also filed an amendment to provide punitive measures if a person blocks the beach access or in any other way inhibits a person from going there. I propose to do that by adding a new section 11 to the Prescriptive Law.

Madam Speaker, if all that is going to happen is [that] somebody decides to put up a fence across the prescriptive right-of-way and a person complains to a government entity, the government entity takes the case to court and establishes that there is a right-of-way but there is no punitive damages—the person does not have to pay any fine, they don't have to go to jail or anything else—the person is likely to go back and block it again. All it cost him is his defence in court and if he does not show up there is no defence for him to pay, and most of these people are off of the island most of the time. I believe that there should be some fine and I propose \$5,000 or imprisonment for six months and shall, in addition to such fine or imprisonment, pay a fine of \$500 per day for every day after conviction that such impediment or encroachment persists.

[Inaudible interjection]

Mr. D. Ezzard Miller: Because, Madam Speaker, when the government goes out and survey some of these, it is going to cost some of these landowners a substantial sum of money to clear these rights-of-way. Some of them have air-conditioners, and I do not just mean just one air-conditioner, I mean 30 or 40 and other things in these rights-of-way. Some of them have expensive rock fences, so Madam Speaker, I believe that we need to make some amendments to the Prescription Law.

I support the government in what it is doing, but I also believe that we need to go further.

[Inaudible interjection]

Mr. D. Ezzard Miller: Madam Speaker, some of these people in my constituency have just decided that they can commandeer the beach access; they can park their trucks and trailers with the kayaks across it for hours.

Five years I have been trying to get something done about some of this stuff and cannot get anything done. When they go there, if one of my constituents' vehicle is parked anywhere near where they cannot get their trailer in with their kayaks, they harass the people; but they are going to pick on the wrong one, one night, you know. They are going to pick on the wrong one, one night.

Madam Speaker, while I am not encouraging my constituents to take matters of law in their hands or to be violent, they really do not have to have too much fear of the police because they do not come—I would love to see the police. I have tried to get the police to go and stop these people. There is a big sign up on Kaibo beach saying no commercial activity; the man told the police, *"That's by the dock. That only apply to the dock"* and the police said, *"Well you know, Mr. Miller, if it applies to more than the dock the sign should be at the entrance."* Any excuse not to enforce the law. However, if it was one of my North Side constituents doing it, if one of them go down there tomorrow and decide that they are going to put up a jerk stand and the people at Kaibo complain that the scent of the jerk smoke is coming over there — trust me, they are going to close them down.

Madam Speaker, in part of the report that the Minister referred to, I think that my constituency had some of their rights-of-way identified, but there are more that need to be identified and I hope that they are not going to finalise the document and the report as to where these beach accesses are in my district, particularly those owned by prescriptive right-of-way, without consulting me or the North Side District Council. If they had come there and talked to anyone I would have gotten the report, so I do not believe that they have been to my district as yet— there is still time, because there are a couple days left to go until

the end of the month— so I am expecting that they will consult before they finalise the document.

Madam Speaker, as recently as last week when the government did the Christmas clean-up, one of the things they told me they were going to do was clean out the beach access and stuff. I got [them] to clean up a piece of property on Old Robin Road that used to be public land and a camp site for the Scouts. The Scouts had a building on the land— nothing was wrong with the building, nice little house, porch, they had a well with running water. The man that bought the piece of land next door went to the Chief Officer in government and told him that the house needed to be torn down. The Chief Officer gave him permission to tear the house down, without even going to look at it, and the man that tore it down took it to West Bay and built a house; because there was nothing wrong with it, it was good 2x6 pressure-treated wood. Now he has taken over that whole government thing.

You talk about the Department of Environment and how they do things; what they do and what they don't do? He dredged the black grass in front of the public beach, no permission. It was reported to them and they did nothing about it. I got the—

[Inaudible interjection]

Mr. D. Ezzard Miller: —people to clean it.

I do not know his name. I do not want to know. He is not one of we, I can guarantee you that. I got the people in the Christmas clean-up to clean it out. The Parks and Recreation Unit put a table there by the beach for people to use and put up a sign. The man took the table and the garbage container and put them out by the road. I called them. I said, *"Listen, this man cannot move around government property like this."* They went there and basically, the man verbally assaulted them. They put the table back, he moved it back. He uses the beach as his own— it's his backyard— and if anyone goes there he tries to run them off it and nobody seems to be able to do anything.

Now I understand he complained to someone in government that he is being harassed because the Parks and Recreation unit put up the sign without Planning permission; because, rather than putting him in his place, we prefer to abuse our own who are trying to help our people. We have to stop making these people come here and decide what is good for us.

It is going to get ugly Madam Speaker, it is going to get ugly, but we sit back and do nothing. It is time to act on this stuff because my constituents are being narrowed down, if not daily, monthly and yearly. People are coming here buying land— no one in the real estate field tells them that they do not own the beach, the legal people that do the documents for them do not tell them that they do not own the beach— and they buy the land believing that they own the beach.

They put up docks [with] no way for the people to get across the docks. If the people walk into their yard to get around the dock, then they want to arrest them for trespassing. There used to be a time, Madam Speaker, anytime you build a dock across that prescriptive beach, you had to provide a staircase on either side of it for the public to walk; but these modern day people that we have giving these permissions, I do not know whether they do not know their culture, they do not know their history or they just don't want to know, but they give them permission to do this stuff and we must just accept it. It is time to do something constructive about it.

I will give the government credit that they have brought an amendment to the Prescription Law, but in my view it needs to go further. I do not see any provisions being made in the Public Lands Law for how these rights-of-way are going to be registered, whether they are going to be registered as government owned property with that caveat that they have on the National Trust Law — not indefeasible, I do not remember the word they used but you cannot change it and you cannot move anything off it. Because if they are simply going to be registered as government land, the risk in that is that someone can unregister it; so however we register this, we have to make sure that there is a lock and key.

Madam Speaker, I will give the developers this much: that if the 6 foot right-of-way or the prescriptive beach access falls within their parcel of land in a way that may impede the maximum development of that particular parcel of land, I have no problem moving it to the side of the property, as long as it is not 2 miles away, right? If we keep it in the same parcel I don't have any difficulty with that, but we need to do it now and we need to get them surveyed, we need to get them registered, we need to fence them off and we need to be able to have ways of maintaining them as a clear path to the beach and there needs to be a sign. I think the swim signs were designed very well and most Caymanians know what that means, a public access.

More has to be done Madam Speaker, because this has been going on a long time and the people's prescriptive rights are slowly but surely being eroded away. The Minister will know, because now they have blocked the one at the end of Sand Point; because you remember that when Sand Point was originally built by the Dices they drew it right to the sea, right by that grape tree, that has been fenced off now for what, twenty years? But if your boat breaks down in there, the only place you can bring that back up is to walk it around Rum Point for that 6 foot right-of-way or to walk it around Finger Cay, all the way over to the 6 foot right-of-way by the Gardens of the Kai.

[Inaudible interjection]

Mr. D. Ezzard Miller: The one on Finger Cay, there used to be a place there where you went to the beach too— all of that has been fenced off and roped off.

Madam Speaker, the people in my constituency, and people from all over the island, have gotten used to using these things. They respect the people property, most of them do. If they used it last week but they come this week and they see a fence, they respect the fence and then they come to me and complain about how it's blocked off.

Madam Speaker, I hope the Government will consider the amendment I have filed because I believe it increases the people's protection if we bring it down to Summary Court. If we get a situation where, for whatever reason, the body in government that has the authority decides that it is not worth doing or that they do not have time to do it, then the person can afford to take it to Summary Court because— Madam Speaker, I see some people looking at me as if they don't believe that civil servants will refuse to do things. I can tell them that it happens regularly, because when I try to get them to go out there and enforce things, they do not show up.

Madam Speaker, if we can come to some compromise over the amendment, I support the Bill.

Thank you, Madam Speaker.

The Speaker: Does any other Member wish to speak?

Does any other Member wish to speak?

I recognise the Member for East End.

Mr. V. Arden McLean: Thank you, Madam Speaker.

Madam Speaker, I rise to make a contribution to the amendment of the Prescription Law 1997, to permit statutory authority, department of government or agency charged with the responsibility for ensuring access to public beaches to make an application under the law to have a dispute settled regarding access to public beach and for incidental and connected purposes.

Madam Speaker, in the latter part of last year, I moved a motion in this honourable House asking Government to consider bringing the necessary Bills within three months to amend the Registered Land Law and the Prescription Law in the necessary and appropriate manner, so as to have full recognisance to and enforceability of any public rights-of-way which have been gained or given by way of prescription and/or dedication pursuant to some legal process, and such legislated change shall include, but not be limited to provisions for the determination and registration of all existing public beach areas and accesses thereto and/or access to the sea and the necessary and appropriate provisions for the enforcement of the same by way of penal sanctions.

Now, I do not know if this amending Bill is in response to that however, I do not see any accompa-

nying amendment to the Registered Land Law nor do I see any penal sanctions being proposed.

Madam Speaker, like the Minister who is sponsoring this Bill said, we have for many years argued, begged and whatever else there was to do, to get successive governments to do something about beach accesses that are prescribed by law as citizens having an indefeasible right.

Madam Speaker, the Prescription Law gives any class of public the right to access beaches and it is an indefeasible right, it cannot be taken away under any circumstance; and yes, section 9 of the Prescription Law gives people who have a dispute the right to lodge a plaint in the Grand Court, under the Judicature Law (1995 Revision); but what the government is doing here, is merely extending that right of claim to allow government departments and statutory authorities or agencies designated by Cabinet. I wonder which authority has been or will be designated by Cabinet to do carry out this job, without it being enshrined in that Authority's law.

As far as I know, Cabinet can only give general direction through the Minister to an authority, so how are we now going to get over that? Maybe Madam Speaker, the learned Attorney General will explain how that works, because I do not [know].

Madam Speaker, like my colleague for North Side, I do not believe that this goes far enough but more importantly, like he said, where we are finding ourselves is that, and the Minister mentioned this, it is too cost-prohibitive for most people to make a claim through the Grand Court; nevertheless, we have left it in. Why don't we put it to the Summary Court? I think that would be much easier [and] less costly for residents to pursue. The fact that we are adding a provision for the government to make that claim on behalf of the public, does not mean that they are going to be done in an efficient and orderly manner.

Madam Speaker, what we are going to find is that we are going to become inundated with claims; and I must say, in my humble view, theoretically, that is the responsibility of an Attorney General of any country as it stands. If a complaint on behalf of the public is made— and we need to get away from this thing about being the principal legal advisor to Cabinet and the Legislative Assembly only. In other countries, especially in our neighbouring Caribbean countries, the only thing I see is that the Attorney General goes to court to defend the public.

Madam Speaker, in effect what we have done, is [that] the country does not defend its people; we say to them— *"You can go ahead and do it, we are going to make laws so that you can make claims on rights."* We recently saw a certain sector of society claim rights and the government weighed in on it, but all of a sudden, those who use those rights-of-way do not get the same privilege. What we do is change the law to allow one of the departments to claim for them.

Now, it certainly is not a criminal case or maybe the Attorney General (AG) can let us know if a dispute in this instance would be a criminal case; and if it is not, then certainly, it would have to be the AG Chambers that act on behalf of that department. So no matter where that office goes, they are obligated to defend the people in these disputes. In essence, what we are saying is that we are dumping it on the lap of the Attorney General. Right at the doorstep of the Attorney General's Chambers, and if such is the case, then I say maybe there is no need to go through a Department. Is it that we are trying to get them to do the leg work and then present it to the Attorney General's Chambers? I do not know how the process would work, but I certainly would like to think that the Attorney General will explain all of that to us in his contribution to this very important matter, in the public's interest.

Madam Speaker, I do not know why we are making this amendment to read, **"The Prescription Law (1997 Revision) is amended in section 9 by deleting the words 'such user is disputed, any person concerned in the dispute may lodge a plaint in the Grand Court under the Judicature Law (1995 Revision), and the said Law shall apply to the matter in dispute' and substituting the following words- 'such user is disputed, an application may be made to the Grand Court for the settlement of the dispute by-**

- a. **Any person concerned in the dispute** [same thing as what was said is being deleted]; or
- b. **The statutory authority, department of Government or agency designated by Cabinet by Order, charged with responsibility for ensuring access to public beaches, on behalf of the public or any class of the public'."**

Now, Madam Speaker, there must be some understanding, some designation, some responsibility for the care of beaches currently, such as the Cemeteries, Park and Recreational Unit, or is it the—

[Inaudible interjection]

Mr. V. Arden McLean: We are doing the Public Lands now— or the Planning Authority? Which one is it? Why are they not named, in order that we have clear lines of understanding [as to] who the public can go to?

Madam Speaker, you cannot have a department that is designated by Cabinet. Let us name the places in order that it is clearly communicated to the people who may have a dispute. What are they to do? Right now they cannot afford to go to the Grand Court; we are further compounding that by them having to call and find out who Cabinet has designated.

[Inaudible interjection]

Mr. V. Arden McLean: That certainly spells a more convoluted way for the class of people to defend their rights. Name the department, agency or statutory authority, whichever.

Madam Speaker, I know that when I was a Minister we created the Cemeteries and Parks— that is close to twelve years now.

[Inaudible interjection]

Mr. V. Arden McLean: No way in the world you put it in law. Well, I have seen them listed here many times, as to who has responsibility for what.

Madam Speaker, that is not to say that I am not supporting it; I just want it changed from Grand Court to Summary Court.

[Inaudible interjection]

Mr. V. Arden McLean: Madam Speaker, I heard that. So, what does the Land Adjudication Law have? In 1971; if you think I was not prepared for that too. In 1971, because I have been hearing that kicked around, the Land Adjudication Law was made to settle the same very thing, disputes, and there were no judges and courts in that.

An Honourable Member: That must have been a special Law.

Mr. V. Arden McLean: Absolutely, a special law.

[Inaudible interjection]

Mr. V. Arden McLean: They set up a tribunal and there were no judges and that is still in effect too.

An Honourable Member: Its purpose is over.

Mr. V. Arden McLean: Its purpose is over? Well, I don't see any sunset clause in it. You need to show me.

[Inaudible interjection]

Mr. V. Arden McLean: I wouldn't pay you for any advice. I know I would go jail on that one. I mean to pay him— dereliction of my civic duty.

Madam Speaker, I want to come back briefly to this thing about designating civil servants to do these things. I heard the Member for North Side say that sometimes they do not do it.

Madam Speaker, sometime in September of last year I wrote to the Minister, telling him that a right-of-way was blocked at Colliers, off Queen's Highway. On September 12th, one David Fawcitt wrote to the NRA (National Roads Authority) and copied (it might have been) the Director of Planning, Vasquez Rupert:

"Good morning Paul,

MLA McLean has written to complain that persons unknown have blocked off vehicular access to one end of Spotter Bay with large boulders, and would the Ministry please act immediately to ensure that such access is not restricted. Can this problem be investigated and remedied by the NRA?"

Paul Parchment wrote internally on the 12th September, 2016: *"Can you create a drawing showing me this road and who owns the land around it? Is the road a public road?"*

Madam Speaker that was sent at 1:27 p.m. and at 2:36, just over an hour, there was a response to Mr. Parchment:

"Good afternoon Paul,

As requested, please find attached a map that highlights Spotter Bay in East End. It is an unpaved public right-of-way (12 feet wide) when it parallels the ocean, but becomes a private,"—highlighted, private—"right-of-way (6 feet wide) when it connects Queens Highway on Parcel 73A 26REM1."

Mr. Parchment then sent to me, on September 27th:

"Morning Sir,

Please see the attached map. Note Denis' comment about the 6 feet private right-of-way as it connects with Queens Highway."

I responded on the 3rd of October to Mr. Parchment:

"Thank you for your email. Please explain the comment on there being a private right-of-way connecting Spotter Bay with Queens Highway. I would be most interested in knowing how you have determined that it is a private right-of-way, that is, by way of instrument."

We say that was October? I am yet to hear, or see, an instrument that made that right-of-way private. I do not know what has happened behind closed doors Madam Speaker, or internally, but I certainly know that that road is still partially blocked and the Ministry has not yet responded.

I wanted to go and move it recently, but remembered that this Bill was coming here. And I stopped writing letters now. Maybe too little, too late Madam Speaker; I understand all of that. I am too old for people to do this to me.

(Desk thumping)

Mr. V. Arden McLean: No one has done anything. That is not unlike other things that are not done that you request on behalf of your people that you represent.

[Inaudible interjection]

Mr. V. Arden McLean: Madam Speaker—

[Inaudible interjection]

Mr. V. Arden McLean: Let us talk about the other side. Somebody thought I did not have an interest in this thing called prescriptive right-of-way? I brought a motion on behalf of the people of this country, the people of East End in particular and the country in general, to bring to the attention of government that the rights of the people were being eroded.

The Minister got up on this Floor Madam Speaker, and said that the Grant survey from 2003 was going to be comprehensively reviewed and extended to the entire country, because it was only done on West Bay Road and North Side at the time; and he made a commitment here that his Ministry, Lands and Survey, whoever was doing it, would engage the Member for North Side and I, as the local knowledge in our constituencies.

The Minister is back here, six months later, and says the report is nearly finished. I hope he doesn't get up now, after I have said it, and say that they still have to do East End. I hope not.

Mr. D. Ezzard Miller: You cannot hold the Minister for that, that's the civil servants.

Mr. V. Arden McLean: No, I am not holding him for it. I am not holding him for it because his head is spinning like a gig out there now, trying to find out where it went awry.

Madam Speaker, I am yet to be contacted about the rights-of-way in East End, but you know what they contacted me 'bout? Selling land in East End. Every week they send letter about that.

An Honourable Member: Oh, yeah?

Mr. D. Ezzard Miller: Yeah.

Mr. V. Arden McLean: A couple little pieces of land government got up there.

Mr. D. Ezzard Miller: North Side too.

Mr. V. Arden McLean: But I have not received one about rights-of-way, an issue that is much more important than selling any piece of land that government has; because government is not feeding that land but people are being deprived of their rights. Should I say their indefeasible rights that we have the responsibility to ensure are guarded?

Madam Speaker, I noticed that during the December clean-up they cleaned some spaces down to the beach; half of them are not even rights-of-way. There are rights-of-way in East End that extend parallel to the land, along the edge of the sea.

Mr. D. Ezzard Miller: Or ironshore.

Mr. V. Arden McLean: I wonder if they identified those without any local help from East End? I just

wonder. There are rights-of-way within my constituency that only East Enders would know.

Madam Speaker, mind you now, I will concede if the Minister can get up here and say how many people in East End they contacted and if they went around with them to get a better understanding and identify these rights-of-way. I will bet the butter off my bread that they didn't do it—not like that. I bet that no one in East End was contacted, but the report is almost finished. One month time and it will be finished.

An Honourable Member: No, no, two weeks. End of this month.

Mr. V. Arden McLean: End of this month, yes! I would like to see what they have on there. I wonder if they are rights-of-way in the air that they put on it, the one that we are going to soon approve here tonight too.

Madam Speaker, let me just say on that same matter, that the fact that the Minister has his staff working on these rights-of-way—and I am sure every attempt will be used to ensure they get as many as they can identify—does not mean that some are not going to be missed. I want the government to know, and in particular wherever they are registered, that that does not mean that there aren't others left outside based on that report, especially in the absence of local knowledge.

Madam Speaker, like the Member for North Side said, I do not have a problem if someone wants to develop their property, like the one that blocked that off up there. I know they are coming for me this time, but those rocks have got to be moved, I promise you that. But I needed to say it publicly that they hadn't done it!

Madam Speaker, those rights-of-way need to remain open. I want to know how they are going to register them, who is going to maintain them? The Minister said that they are going to be registered, that is the next step. Who is going to maintain them? Is there a need to maintain them? If they have been identified and registered, does that mean that there will be no more disputes?

[Inaudible interjection]

Mr. V. Arden McLean: It does not mean that because they are registered, people are still not going to block them off. The only thing that would assist in the registration part of it is that when someone tries to do a development, it is represented on the map and they have to maintain the setbacks therefrom.

Madam Speaker, people are still going to block them off and if we touch one, if we remove one, all others are in jeopardy because they are all interconnected. If we shut down one of those rights-of-way, it means the rights-of-way along the beach right around these three Islands, are going to be in jeopardy.

ardy. People are going to challenge it. We cannot afford to shut down one right-of-way from the main road to the beach, because they are interconnected and you put the whole beach into question. It is in enough question as it is—people are even stopping locals from fishing in front of their property from a boat.

Madam Speaker, we know the gentleman from West Bay who does bone fishing for his livelihood. I do not know his real name because we call him by his nickname, what is his name? Ron Ebanks. He was relaying his story to me recently. He has a flats boat and he takes tourists out to do bone fishing. All of us know how bone fishing is done, we see them muddying up there and you push up with your spike, your *spreet*—many people will never know what that is, your *spreet*—to get you on the other side of them, because if you use your motor you are going to run them. We never did fish for bone fish with motor on the boat; it was always in catboats, eh?

He continues to employ that method along the shore and told me that recently he was over at Cayman Kai *spreeting*, and the owner came out and tried to run him away. He was probably 10, 12 feet away from the shore because this is the little flats boat—the bottom is absolutely flat and it doesn't have a lot of rail. Free board, you know, and that is what it is for. Now, Madam Speaker, to think that someone would try to run you, and I have to be careful, whilst you are on the Queen's bottom—and Cayman Compass is going to say that I am insulting the Queen again.

Madam Speaker, this thing has become a crisis. It is a serious matter. You know, I think Ron was upset but because he had clients, he kept his disgust down a little bit, but it is not going to happen with everybody.

I say it again: it is through ignorance. The people are ignorant to the facts, is what I meant by that. The proprietors of these properties are ignorant to the fact. I believe that CITA (Cayman Islands Tourism Association) or the Condo Association were trying to educate their owners that there are certain rights people have through those rights-of-way along the condos.

The government needs to do something, and I am not saying this government Madam Speaker, I am talking about the department which is the Deputy Governor now—you thought you were getting away? He needs to instruct his staff somehow, to educate the populace on these matters. We have GIS, Radio Cayman, and newspapers. It is important that we do not perpetuate the problem that we are having and if they are not, real estate agents need to be educated too when they are selling these properties, Madam Speaker.

In another instance, Madam Speaker, my good friend was catching sprats and you know we throw sprats way up on the beach because they are going to flip and before they get in the sea they die, it doesn't take them long to die. He is running after the

baited sprats and when he turns around, they were kicking them out in the sea. They almost picked the wrong man; he rushed back with his net to tie it around the property owner's neck and carry him out there with all that lead on it. That is what is happening. And it really was not in the gentleman's property, it was up there on the beach, we need to be careful with it.

Every resident of this country, every person that graces these shores, tourist and everybody, is entitled to that right you know, Madam Speaker? You cannot stop it and people are becoming incensed, they are becoming angry that they are losing their rights.

Madam Speaker, I know the learned Attorney General and the learned Premier have said that the Summary Court has no jurisdiction over this to make binding declarations; well, I do not know what we are going to do, but we are going to try and make it easier for those who are aggrieved by this thing or in dispute with it. We need to make it easier because Caymanians and residents are becoming frustrated. People are becoming frustrated and, in most instances, when we see the people who try to kick you off the beach, invariably it is those that are snowbirds, they only come to Cayman for like three months out of the year or something and they feel an entitlement to their property; rightly so. But it is ignorance and they don't know. Why should we not go on a campaign to educate them?

[Inaudible interjection]

Mr. V. Arden McLean: Madam Speaker, I find it quite unreasonable, and I am not blaming this government alone, that we have done very little to protect the rights of our citizens in this matter. I know what: that West Bay group has fought tooth and nail for every other Caymanian and I hope their fight results in something that we can be proud of, Madam Speaker.

[Inaudible interjection]

Mr. V. Arden McLean: Madam Speaker, the Premier said he thought that fight was over. Boy, they have more grit than a lioness, I think they are mostly women — and that is not because they are from West Bay either.

Madam Speaker, I support the government but I want to see some kind of change that can carry forward; some kind of proposal, commitment or something, to educate the uninitiated in the rights of residents because in most instances, I bet you we will find that the very people who run you off their beach go and use other beach accesses elsewhere in the country.

I want to hear from the Government, in their response, if they are going to move those rocks up there; because I am getting ready to.

Madam Speaker, I have nothing against the proprietor, who I understand—

[Inaudible interjection]

Mr. V. Arden McLean: I cannot be nominated if I am in jail. What a mistake that will be.

[Inaudible interjection]

Mr. V. Arden McLean: They really want me out of the way, eh?

An Honourable Member: I am warning you.

Mr. V. Arden McLean: You warning me?

Mr. D. Ezzard Miller: You mean you are threatening us.

Mr. V. Arden McLean: Okay, I shall take your warning and your sage advice and your legal advice; I will wait until the 29th evening—

[Laughter]

Mr. V. Arden McLean: —And run my campaign out of prison. Thank you, Mr. Premier, for such sage advice, such good legal advice.

Madam Speaker, I want to hear what the government is doing about it and if it is a private right-of-way, who is that private right-of-way for, because that is the last thing I heard. How was it established? All my life in East End I walked that road—

An Honourable Member: You built it.

Mr. V. Arden McLean:—I built it over, I ran the bulldozer that built it and all of a sudden now it is a private right-of-way.

Madam Speaker, I look forward to that. I would like to hear from the Minister on those other matters when he responds.

Thank you, Madam Speaker.

The Speaker: Does any other Member wish to speak?

Does any other Member wish to speak?

Does any other Member wish to speak?

I recognise the Honourable Minister of Works.

Hon. D. Kurt Tibbetts: Madam Speaker, you know, I really never cease to be amazed.

[Inaudible interjection]

Hon. D. Kurt Tibbetts: As I was saying, Madam Speaker, I never cease to be amazed why the Member for East End, just because he knows I will take it,

uses me for a beating stick all the time, every single time. He got me so, that I do not feel it anymore.

First of all, Madam Speaker, before I go through to deal with this I want him to understand this Spotter Bay issue. I do not mind him squarely pinning it on me. I am not a lawyer. I believe if someone takes the time to explain something to me, I can understand it. I believe I have the ability to process, assess and, I think more times than not, decide on the right course of action. The legal advice that I have tells me that there are certain rights which the government can invoke and there are certain [others] which have to go through a certain process. Sometimes you have options in which process you choose, before you can reach either what one may call a satisfactory ending to the situation or to achieve the objective that one hopes to achieve.

I saw when he wrote to the Ministry. I gave instructions to have the matter looked at and to do everything that had to be done to bring the situation to its conclusion. To keep the Member informed and, once the matter was resolved, to let me know. I do not know yet so obviously, the matter is not resolved and that is what the Member said also, which is fine; but if the Member is going to hold me responsible for the rocks, then he better go move 'em, because I only can do what I can do from where I sit.

I do believe that they are working on the situation. It is not impossible—because I don't have anything to hide from anybody including him, he knows that—it is not impossible that somebody may have dropped the ball somewhere along the way, I don't know but—

[Inaudible interjection]

Hon. D. Kurt Tibbetts: Did it to me? But you still blame me! Hush your mouth, boy, you blame me.

[Inaudible interjection and laughter]

The Speaker: Members, I know it is getting late but let us please maintain the decorum of the House.

Hon. D. Kurt Tibbetts: I am so sorry, Madam Speaker.

Madam Speaker, I only want to get the matter cleared away because I am not saying that the ball has been dropped, I am simply saying that it is possible. All the Member had to do, we have been here for two weeks, was say to me *Kurt, I haven't heard anything about this thing, could you please find out for me?*

I know how it is, I also know what time of the day it is so I understand, but all I am saying is don't make it sound like I was to do something and I didn't, because that is not the case and I am a little funny when it comes to that. I don't mind the beating—

Mr. V. Arden McLean: I said I am not blaming you.

Hon. D. Kurt Tibbetts: That's not how it sounded.

Mr. V. Arden McLean: I said that.

Hon. D. Kurt Tibbetts: That's not how it sounded.

Madam Speaker—whose head? My head is spinning? My head did not spin for a minute; you don't cause that to spin anymore, you beat on me too much. It doesn't have the ability to spin anymore.

Madam Speaker, forgive me, that little banter is just what it is so let me continue, but I needed to get that cleared away.

We will find out what happened. We certainly don't want the Member to do anything that will cause him any distress and we will try to bring about the correct solution to that. The point with that—because he keeps insisting about moving them. I just want to say that because the question is in the air, and I do not know the answer to it yet, and it is why I cannot say what the conclusion should be. That question is: if it is a private right-of-way as it is said to be, how did it get to be that? I don't know the answer to that.

[Inaudible interjection]

Hon. D. Kurt Tibbetts: That's what we are endeavouring to find out. But nevertheless, Madam Speaker, that is a perfect example of the matters that need to be squared away, once and for all.

The second thing I want to speak about, Madam Speaker: I have known for a long time, and so has the Member for East End and for that matter, the Member for North Side, that everyone operates with a different style. My style may be a little bit different from theirs, but it doesn't mean that we don't have the same objectives in mind. Let me explain what I mean by saying that.

Both Members spoke about nobody contacting them after I said what would happen in the House. I have changed absolutely nothing. What I said to the staff was *go and complete this exercise* and it is not limited to East End and/or North Side. I said go and complete this exercise on your own. As you all know, and I know, when you think the exercise has been completed, there will be places that you have not caught—that is the term I use, "caught"—meaning, you will have overlooked some places.

When you finish that, so that you have those in front of you, so that you aren't starting from scratch, it will make life easier when you speak to each of the representatives from the various districts and say to them, "can you show us what we don't have or what we haven't captured" and that will happen.

Forgive me if I sounded like they were coming to start the process. I still believe that the way that I suggested is perhaps the easiest way to achieve the result, so that at least when they look at it, they will

see what this exercise has meant for the Lands and Survey team.

[Inaudible interjection]

Hon. D. Kurt Tibbetts: All I am saying is, when you all see those it might make your life easier to show what is not there, that is all I am saying, so that will be done.

Madam Speaker, let's just think about it. It really serves me or the Lands and Survey team absolutely no purpose, no advantage, no nothing, not to be inclusive in the process so when we say it is finished, it is as close to being finished as it can be. That is really all there is to that, so I trust that clears up that matter.

Madam Speaker, I know *[laughs]*—I really have to laugh—I know, that a whole house slipped through the cracks not so long ago. I know that and I cannot argue with the Member for East End about that; that is the truth.

[Inaudible interjection]

Hon. D. Kurt Tibbetts: It was a big crack, you are right about that. Anyway we got the crack fixed.

[Inaudible interjection]

Hon. D. Kurt Tibbetts: That is alright, that's okay *[laughs]*. At least we got it squared away after a while.

Madam Speaker, there are points which have been brought by those who have spoken. I want to just try to go through the issues to the best of my memory.

There seems to be Madam Speaker, an issue which keeps hanging in the air; it doesn't seem to get resolved in the minds of some people, including those good people that the Member for East End mentioned—*The Concerned Citizens*.

Madam Speaker, somewhere along the line they arrived at the view that the Registrar of Lands has the ability to register these rights-of-way once the Registrar of Lands concludes [that] it should be so. Right now, they are in disagreement with that Registrar of Lands and I think there is some appeal that they want to happen; and it is all about the Registrar of Lands concluding, based on the legal advice, that as it is now she cannot do what they want her to do. Once we get the law changed, once we get the motion that we need to get going with regards to getting the Grand Court to make—

[Inaudible interjection]

Hon. D. Kurt Tibbetts:—to make a binding declaration—

[Inaudible interjection]

Hon. D. Kurt Tibbetts: Not everyone, but she cannot register everyone, is what I am saying. Let me just finish.

My point is: even if there is disagreement about how we get there, we all want to get to the same place therefore, if it takes this change of legislation to move the process forward to get it done, let us just do it. Let's not try to hold each other up and let's—

An Honourable Member: No, no, no—

Hon. D. Kurt Tibbetts: No, no, I am not speaking personal, I am just saying that I am reaching out to all of those because I want everybody to understand and I say this without fear of contradiction.

The Member for East End and the Member for North Side do not love the beach and catching sprats and catching fish from the shore no better than me and don't want anyone to stop them from doing it. Let us get it straight, so this is as much for me as it is for everybody else in the world.

Madam Speaker, getting back to the point, they are suggesting amendments. Those suggested amendments will be looked at to see how practical they are to be achieved. They suggested taking it to Summary Court; I think we already established that that is not the most sensible way to approach it because, and I understand what they were saying would have been easier, but if the Summary Court does not have the ability to make binding declarations, we don't want to risk that either.

[Inaudible interjection]

Hon. D. Kurt Tibbetts: Madam Speaker, we cannot solve all of those issues, me standing here. I want to make sure that we all have a clear understanding of exactly what we are talking about and where we are going with this thing.

Madam Speaker, why I was laughing when I started the wind up is, I sat here for the last couple of days and every Bill that I brought, most of what I have heard is *we want to support the Bill but it is not enough*; and Madam Speaker, as I have said before, if I were sitting over there I would probably be singing the same song, so I am not arguing with that. But what I am saying is, let us appreciate the fact that some of these things have been left and left and left and left and left again, and finally we are doing something now. We are not saying everything will be done in one heartbeat or one second but this— it won't solve everything else, but I think it will make the picture a little bit clearer when we speak to the Public Lands Bill which is as I said, tantamount to companion legislation to the Prescription (Amendment) Bill.

I just want to say Madam Speaker, that the team will be look between now and tomorrow at the proposed amendments, because the way the

amendments are proposed by the Member for North Side, we will need legislative drafting's assistance to compare what is there, what is proposed, to make sure. I can assure the Member that if it is the right thing to do, it doesn't create any other confusion or doesn't conflict with any other type of legislation — I won't have a problem.

My main contention with this specific Bill was that we had limited time to get to this meeting and to make the 21-day deadline. This was the main objective, while there may be a few other things that could have been thought about, this was the main objective and I did not want to miss the opportunity to get this done. That is where we are at with this piece of amending legislation.

Madam Speaker, when it comes to Committee Stage amendments, I am not saying that sometimes it may not appear—because of the volume of committee stage amendments—like something may not quite have been thought through, but what I can say about that is [that] there is a flip side to that coin, and the flip side is simply this: whether those Committee Stage amendments come from the government or from those on the other side or a combination of both, it proves that as legislators, we are continually trying to think, to make improvements.

Not only that, even when you do stakeholder consultation, it never fails that in the eleventh hour, someone, somewhere, who had all the time in the world to look at it before, suddenly realises this is it, decides to put their mind to look at it and says *oh my God I hope they haven't passed it yet*, and then there is a frantic move to reach the right people to show what someone believes is an oversight or something of that nature and needs to be fixed; and if it is the right thing to do Madam Speaker, then we should.

So I am not begging forgiveness and absolution for Committee Stage amendments, I am only saying that it is part of the process. Let us accept that if we are going to make legislation better by dealing with these Committee Stage amendments before we go to third reading and passage of the legislation, then let us continue to do so.

Madam Speaker, I commend this Bill to this honourable Legislative Assembly and I trust that Members will see it fit to support it.

Thank you.

The Speaker: The question is that a Bill shortly entitled The Prescription (Amendment) Bill, 2017 be given a second reading.

All those in favour, please say Aye, those Against, No.

AYES.

The Speaker: The ayes have it.

Agreed: The Prescription (Amendment) Bill, 2017 was given a second reading.

The Public Lands Bill, 2017

The Speaker: I recognise the Honourable Minister of Infrastructure.

Hon. D. Kurt Tibbetts: Madam Speaker, thank you.
Madam Speaker, I beg to move the Second Reading of the Public Lands Bill, 2017.

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

[Inaudible interjection]

Hon. D. Kurt Tibbetts: Now you can understand, with me taking it from all sides, why I don't expect it from him all the time. He can do better than that, tell truth.

[Inaudible interjection]

Hon. D. Kurt Tibbetts: That doesn't mean you must make it harder for me.

Madam Speaker, before I speak in detail on the proposed Public Lands Bill, 2017, I would like to first give an overview of the government's broad objectives in this regard, as to why we found it critical to bring this for consideration of this honourable House. This, I will repeat for the last time, is almost considered companion legislation to The Prescription (Amendment) Bill which just received its Second Reading.

Madam Speaker, the Cayman Islands Government and its authorities — and by the way, Madam Speaker, as I mention the word "authorities" I remembered something that I forgot while speaking to the last Bill, when the question was asked about authorities. Authorities are not mentioned in that amending legislation as regards to an authority being the agency to look after all of these lands; it is mentioned in that amending legislation simply because some of what we consider Crown lands are owned directly by authorities, so when matters concerning those parcels are dealt with, they would be dealt with directly by those authorities, that's all.

[Inaudible interjection]

Hon. D. Kurt Tibbetts: I certainly do not want to start another debate, not on that one.

Madam Speaker, the government and its authorities, government-owned companies and associated entities, manage in excess of 250 public sites comprising public parks, public beaches, launching ramp and jetty sites, cemeteries, craft market sites, sports facilities and public buildings and other miscellaneous publicly owned parcels of land. We have seen

over the years the increased use of government properties by private businesses. In some instances, it is trading and/or vending, in others it is for storage and public display. To date, Madam Speaker, the only piece of legislation on the books which is relevant to this is the Towns and Communities Law (1995 Revision).

Madam Speaker, this is an exceptionally old law that speaks to antiquated ideals and procedures that make it difficult for government to effectively use in this day and age. After doing some careful research, the Ministry felt that it was more prudent to bring a new law that addresses the concerns of government, rather than trying to revise the Towns and Communities Law; and I want to make note that we also intend to seek a revision of this older law, but that will come after this. Once we get this one up and running, we will be able to bring that one in line with this, rather than to have the two of them dangling on a string contradicting each other.

Having said that, Madam Speaker, it is also meant to regulate public rights-of-way such as beach accesses which we have seen had a myriad of complaints of some of them being blocked or some entity carrying out some type of activity over it and in instances, as we all know or at least some of us here know, actually carrying on business on those sites. I have singled this out specifically from the areas mentioned above because the government recognises the importance of this issue to Caymanians and residents alike and we are intent on doing something sensible—in the own words of the Member for East End, "something tangible" about it.

Madam Speaker, the Prescription (Amendment) Law started the train rolling and now the Public Lands Bill will continue that journey. While I have spoken to the amendments of the Prescription Law separately, one can start to see why the government has moved legislation which goes hand in hand. You see, Madam Speaker, we saw this as an integrated, holistic approach not just a piece-meal plan that would not have satisfied the needs of our people.

Madam Speaker just one second, please?

[Pause]

Hon. D. Kurt Tibbetts: Thank you, Madam Speaker.

Delving into the Public Lands Bill, 2017, we see that it gives the government, in my view, the teeth to manage and regulate the use of lands by establishing a commission that will issue permits to vendors and companies trading on public land, but with the understanding that they must comply with criteria that gives the public confidence that its rights are also being protected. Madam Speaker, it is a balancing act, every which way you turn.

For example, we have a number of public jetties or docks, which are usually alongside launching ramps in various advantageous locations throughout

the districts. Several of them are currently being used by the dive industry to shuttle tourists to the many beautiful dive sites around Cayman.

Madam Speaker, that is a good thing, but we also want to ensure that they all operate under the same rules; in other words, we don't want a situation where one company can stay docked for three hours while the other one only has fifteen minutes and likewise, when we think about all of that, we cannot forget that the small local fisherman must also be able to use it without fear of being chased off. Those are the things that we have to consider in creating the legislation to make it work as right as possible.

Similarly, we all know of the vendor situation that has plagued the Seven-Mile Beach. I believe in recent days, not weeks but in recent days, in making attempts to try to address the situation, we now get objections from neighbouring landowners when you are trying to make the situation better and you wonder what is right— if you leave it alone they complain, when you try to fix it, they complain— so sometimes, Madam Speaker, it takes a real test of patience.

Anyway, this issue has plagued us for years; it is not something that suddenly appeared in very recent times, I am certain that previous administrations have had the battle and have scratched their heads and have looked to try to find solutions which are meaningful and not just kicking the can down the road.

Madam Speaker, truthfully I have to say, even when the *Caymanian Compass* decides to write their editorial, I guess when they don't have anything else to talk about, we still are here to make the best attempt we can to fix this. I hope that they are able to take on board the spirit that we are trying to create so that they, in their messages, can assist us with achieving the objectives that everybody, including them I know, want to achieve.

Madam Speaker, as I said, it is a situation where we have to find a solution, and I believe that this Bill will allow for that specific situation, amongst others, to be properly regulated. I also believe that the Bill will allow vendors to operate consistently under the same conditions and criteria and in so doing, raise the quality of the product and overall beach experience no matter who uses the beach, whether it is our own locals and residents or tourists.

Again, Madam Speaker, ideas and criteria such as first-aid training, tourism training and customer relations, are basic measures that will serve them well in promoting the user experience. To go hand-in-hand with this, we are also undertaking a renovation to the public beach and it is that exact exercise that I just referred to, saying that even in doing that, we are getting objections from adjoining landowners.

Madam Speaker, I know that while you were in the seat that I occupy now, I don't mean as Premier but as the Minister, you had your hands full over a short period of time trying to come to grips with the

same situation. Madam Speaker, I want to note that permission to use some of these public areas may come with a service fee, but we recognise that this cost should be relative to the use and the type of business that is operating on the land. For instance, there may be a charge to dive operators for the use of the piers, simply because this can assist government in maintaining the structures.

[Inaudible interjection]

Hon. D. Kurt Tibbetts: But I what? Okay.

And while there may be a minimum charge or even an exemption to vendors on the public beach, I use the business of the dive operators because I believe that they would be able to pay a small fee much better than the single vendor who is operating on the Seven-Mile Beach. Madam Speaker, government's main objective is to enhance the quality of the product, not to penalise traders. Indeed Madam Speaker, we want to see them prosper also.

Now, Madam Speaker, I will take the time to simply speak to the legislation itself.

Firstly, Madam Speaker, Clause 2 which provides the definitions for terms used in the proposed legislation. Of importance here is the definition of "public land" which in this law means "**the following lands, whether or not the public has access to them**", and when I read the definition Madam Speaker, it will be clear to all what I mean by whether or not the public has access to them.

- a. Crown land and facilities on Crown land - whether owned solely by the Crown or jointly by the Crown and another part;
- b. Land vested in Statutory Authorities or Government companies and facilities on such land;
- c. The seabed and territorial waters of the Islands;
- d. Wharfs, jetties, ramps and docks owned by the Crown,

but does not include areas of crown land designated as protected areas under section 7 of the National Conservation Law, 2013, for so long as the designation is enforced.

Madam Speaker, I just conferred with the technical staff; I thought I knew why but I just wanted to make sure. The reason for the exception, regarding the protected areas under section 7 of the NCL, is simply because that law, the National Conservation Law of 2013, has its own rules under which those parcels are dealt with. It was important to establish such a definition as we were cognisant of the National Conservation Law and areas that would be protected under that Law and/or under other agencies' control.

Part 2 of the Bill establishes the Commission and allows the Minister to provide policy direction on how Government wishes to see public lands regulated. The Commission will be made up of five individu-

als: the director of Lands and Survey or his designate will serve as Chairman; the Chairman of the Tourism Attraction Board or his/her designate; the Chief Officer of Tourism or his/her designate; and two other Members appointed by Cabinet on the recommendation of the Minister, at least one of whom shall be a member of the public and one of whom shall have a background and knowledge of the Islands' heritage and culture.

Madam Speaker, we thought it important to have such a composition for several reasons. First, it may be obvious that the Lands and Survey Department and the Ministry of Tourism play an important role in this arrangement; however, we also included the Chairman of the Tourism Attraction Board for an added perspective on tourism, but also because some of the lands that could utilise the protection of this law are jointly owned between government and the Tourism Attraction Board. Furthermore Madam Speaker, having another member who has a background in heritage and culture, we consider to be a very important prerequisite and was a result of consultation with parties such as *The Concerned Citizens* and the Ministry of Culture, to ensure that knowledge of our community was recognised and provided to the Commission.

Clause 11, Madam Speaker, provides for the appointment of a Chief Inspector, additional inspectors and a secretary to the Commission, and for the supervision of the secretary and inspectors by the Chief Inspector. The clause empowers inspectors to enforce the law and regulations and requires them to present identification on request when doing so. Madam Speaker, I want to say it again, there will be a chief inspector, additional inspectors and a secretary to the Commission and these inspectors will be empowered to enforce the law and the regulations and it also requires them to present identification on request when doing so.

Madam Speaker, clause 12 also provides for the designation of deputy inspectors by the Chief Officer of the Ministry. The concept here is to allow for individuals currently delegated with responsibility for a particular land to be designated or deputised so as to enforce the law. For example, should an authority opt to have their lands included within the jurisdiction of this law, then a suitable employee of that authority could be deputised to enforce the law for that land working under the Commission; this we thought, would be an efficient and effective use of existing human resources.

Part 3 regulates the use of public land and clause 14 enshrines the public right of access to and the use of, public land without discrimination and requires the Commission to protect that right. These are some of the areas that I was referring to, which in the Public Lands Bill are very important to the amendment to the Prescription Law which tells how all of these functions will work together.

Clause 15 provides that a person who wishes to carry on a commercial activity on public land must apply to the commission for a vendor's permit. The intent here is to create a mechanism that gives vendors permission to use specified public land to carry out commercial activity. Madam Speaker, this is in line with section 18 of the Trade and Business Licensing Law which stipulates that any business trading on public land disclose details on the location and nature of their business, along with permission for them to carry out such business. It states in the Law section 18(1) says **"Any person carrying on a trade or business shall, unless excluded from the application of this Law, apply to the Board for the grant or renewal of a licence in accordance with the respective categories of trade or business set out in Part B of Schedule 1."** The Board in this instance is the Trade and Business Licensing Board.

Subsection (2)(v) says: An application pursuant to subsection (1) shall be accompanied by **"where the applicant will be carrying on business in a public place, evidence of the approval of the relevant authority to carry on business in such a place;"** Madam Speaker, it is one then two; anyone who applies for a Trade and Business Licence and is using government property to operate from must be given a permit by the Board to operate in that location and that permit has to accompany their application in order for them to get a Trade and Business Licence. There is a reason for that—you do not want either of them trying to operate with just one and not the other; they cannot get the second one without the first one. That is the whole purpose of the exercise.

Well, let me put it to you this way Madam Speaker, if they operate illegally, the inspectors, part of their job description will be regular visits to every one of these sites. You see, when the Member for North Side now makes a report and doesn't really get the results that you think you should get now, because again, kicking the can down the road, nobody wants to take responsibility for it—this cures that problem.

[Inaudible interjection]

Hon. D. Kurt Tibbetts: But there are specific individuals who will be tasked to enforce such a job.

Madam Speaker, in order for such a person or an entity to obtain a Trade and Business Licence, they must first get permission or authorisation to use the land.

Clause 21 gives the Commission authority to suspend, cancel or refuse to renew a vendor's permit on certain grounds. Madam Speaker, obviously this allows the government to manage these areas and ensure that a quality product is delivered.

Part 4 of the Bill speaks to enforcement and offences.

Clause 22 sets out the powers and immunities of inspectors in performing their duties under this law.

Clause 23 provides for the search of premises by inspectors or deputy inspectors and the procedure for application for search warrants. The clause also provides that searches of persons must be carried out by enforcement officers of the same gender as the person. The subsequent clauses Madam Speaker, speaks to issues such as the seizure, disposal and or return of items as well as court appearances and the penalties for offences under this Law.

Madam Speaker, let me say this, because I heard Members, on both sides of the aisle speak to penal sanctions. I would invite all Members to look carefully at what is proposed in the Bill; it is best effort from the technical team, from the various stakeholder meetings that were held and also legal advice given by the draft person.

Madam Speaker, part 5 deals with miscellaneous issues such as providing the Commission with the authority to make regulations to the law and that is going to be critically important, Madam Speaker. Those regulations will be approved by the Cabinet, but this is something that is live, so regulations will perhaps periodically have to be amended and changed, perhaps more regularly than the primary legislation itself.

Clause 39, Madam Speaker, empowers the Commission to exempt public lands regulated by a Ministry, Statutory Authority, Government Company or other entity from the regulations. Alternatively, the Commission would be empowered to enter into a service level agreement with the entity to jointly regulate the use of such public lands and the enforcement of the regulations thereon.

This is of particular importance as we recognise Madam Speaker, that there may be areas or lands that have specific requirements that this law cannot satisfy. For example, the Cayman Island Airports Authority may wish to include the land around the airport, such as the cricket grounds, within the jurisdiction of this law, thereby giving them better management over that area and who utilises it, but they may see it fit to opt out of the law for the apron, which has specific international criteria that regulates that. We foresee that a schedule will be published with lands that are not included in the jurisdiction of this law.

Clause 40 requires the Commission to submit an annual report to the Minister and for the Minister to table the report before the Legislative Assembly.

Clause 41 protects the Commission from liability for negligence in respect of accidents, deaths or injuries to persons on public land, except in certain circumstances. It also protects the Commission and the members of staff of the Commission from liability for anything done in the course of their duty, unless it was done negligently or in bad faith.

As I mentioned when I introduced the Bill, I am hopeful that Honourable Members and the public

can begin to see the big picture; the importance of this and the other pending legislation.

Madam Speaker, this Government believes that these pieces of legislation will serve the people of the Cayman Islands well and will provide some greatly added measure of management and security to the public areas.

You see, Madam Speaker, we have some Committee Stage amendments to the Bill as well, and these were as a result of further last-minute discussions with stakeholders and thus, spoken to as well to give clear understanding to this Bill.

Finally Madam Speaker, I want to thank those who served on the steering committee, the government's Legal Drafting Department, the many departments, agencies and the public that provided such important feedback for the drafting of this Bill.

I commend the Bill to the honourable Members of this Legislative Assembly and I do trust that it will receive safe passage.

[Thank you.]

The Speaker: Does any other Member wish to speak?

The Honourable Member for North Side.

Mr. D. Ezzard Miller: Thank you, Madam Speaker.

Madam Speaker, let me congratulate the Minister for bringing this badly needed Bill.

[Inaudible interjection]

Mr. D. Ezzard Miller: Huh? We will get to that part later, but in keeping with the request of the Premier as he begged us under the legal practise but he brings the Bill here, he expects us to help him correct it, so I am going to offer a few amendments that will assist him and will offer what I believe are some additional protections for my constituents, whom I represent.

Madam Speaker, the first thing in the Bill that I would like to see amended is the definition of "Crown Land". This says Crown Land means "the lands belonging to or held in trust for her Majesty or acquired for use by the government." I wonder if they can put something in there that says, "...belonging to the people of the Cayman Islands" in addition to being held in trust for Her Majesty. I think we need to start putting down our markers that—

An Honourable Member: Can't do that.

Mr. D. Ezzard Miller: Okay, I am not a legal person, but you know the drift.

[Inaudible interjection]

Mr. D. Ezzard Miller: Well, then I think we need to re-register it from Crown land to Cayman-owned land.

Madam Speaker, in clause 5 under the Public Lands Commission, I would like to offer an amendment to **“The mandate of the Commission is to regulate the use of public land in the public interest”** — I would want to add “after consultation”.

[Inaudible interjection]

Mr. D. Ezzard Miller: Yeah, yeah, a long time ago, from the 14th. Madam Speaker, the reason I want *after consultation* is because, if this Public Lands Commission is going to change the use for instance, of Kaibo Public Beach and allow vendors to be licenced there, I want the community of North Side to be consulted. Because we do not support, and I want to repeat Madam Speaker, we do not support the commercialisation of Kaibo Public Beach. It must be left as it is for the people to use.

Madam Speaker, I do not want it to be like what has happened to the public beach along West Bay where it is controlled by vendors and the general public cannot get there, right? I would want to put in there that there is some consultation with the district where the public land is located.

Madam Speaker, the way the Commission is structured is the complete opposite to what is required by the Public Authorities Bill we just passed that says it should be no more than 40 per cent civil servants, because this one is exactly as proposed by the Minister— 60 per cent civil servants and 40 per cent members of the Public. The amendment that I propose to that Madam Speaker, is that instead of having two other members, we have six additional members, one from each geographical district.

I think it is important that the districts feel that they are represented on this Public Lands Commission so that they can protect the interest of their local community. The way it is structured now, there is likely to be one George Town, one West Bay and North Side and East End will be left out, right? Because it is only two and I would like to see one from each geographical district—not electoral district, because that would be far too many.

I would also suggest, if we are increasing the membership of the Commission, that it should not be a simple majority of the members present to give them a quorum because that means that the three civil servants could have a meeting all by themselves and if the three of them are there, 2 out of 3 would be a quorum. So I think we need to put a number in there and if we accept that they show from each district then the quorum should be five people.

[Clause 7] (4)(b) says, and this is dealing with people who have a pecuniary interest, subsection (b) says **“if so directed by the Chairman, recuse himself or herself from participating in the Commission’s consideration of the matter.”**; I think we need to delete “if so directed by the Chairman” and simply insist that if someone has a pecuniary interest they

recuse themselves from participating in the Commission’s deliberations. He should not have to wait for the Chairman to direct him to recuse himself.

Madam Speaker, it says **“Fees shall be paid to members of the Commission who are not public servants for their attendance at meetings of the Commission, as approved by Cabinet.”** I do not know whether you might want to consider putting in the Chief Officer and the Ministry responsible there for that.

[Inaudible interjection]

Mr. D. Ezzard Miller: I am not suggesting that he goes on the Board; he must set the fee for the people to be paid because that would have to be done under the Public Management and Finance Law.

In clause 11(2), in dealing with the appointment of inspectors and secretary to the Commission, it says, **“Under the direction of the Chief Officer and the Chief Inspector, the secretary shall record the proceedings of the Commission and assist the Commission and Chief Inspector in the administration and enforcement of this law.”** I think it should be a requirement of the secretary to record the proceedings. I think you need to delete “under the direction of the Chief Officer and Chief Inspector”, because the Secretary should keep the Minutes and should not have to be directed to do so. What happens? Does that mean that the [Chief Officer] and the Chief Inspector can direct them not to record the minutes? I think it needs to be “the Secretary shall record the Minutes.”

Madam Speaker, under Enforcement and Offences, clause 22(2) says **“If an inspector or deputy inspector suspect on reasonable grounds that a person has committed or is committing an offence under this Law, the inspector or deputy inspector may, using such forces as may be necessary for the purpose —”** I just want to make sure that caveat applies to stop and search under (e), so that if he is going to stop and search somebody it should be with some reasonable grounds of suspicion of activity. As long as the clause and the caveat covers it I am okay with it, but outside of that, I would not want people to be stopping and searching people on public beaches for no reason or without cause.

Madam Speaker, Exemptions and agreements, clause 39. I heard what the Minister said in terms of the Cabinet having the right to exempt certain areas from the application of all or any of these laws and regulations. I would want to see more control of what kinds of property they could exempt, because if Cabinet can just exempt property *carte blanche*, then they could reduce the effectiveness of the law.

[Inaudible interjection]

Mr. D. Ezzard Miller: That would even make it worse, because those three civil servants meeting alone could make the recommendation.

I believe that either in the regulations or in the law we should put the conditions under which that can be done. Because we are not making this law for this Cabinet, you know? Okay.

Madam Speaker, if we can come to some agreement on some of those changes, I would be happier to support the law, but I will support it anyway because I think it is really needed and it certainly is a move in the right direction. The Minister is correct; it is very frustrating Madam Speaker, to know that what is going on is wrong. I mean, Sanford and Son destroyed the dock in Old Man Bay on commercial activity and no one could do anything about it. No one would do anything about it.

[Inaudible interjection]

Mr. D. Ezzard Miller: No man, that was not his dive boat, it was his “tour” boat. Because you know, it has been seven years now and [Department of] Planning still does not have the illegal walls that he put up there down, you know.

Well, when we get to your Development Planning regulations to do with the volumetric stuff, I am going to make some suggestions of how we need to tighten some of that up, because the wall in Frank Sound, I think this week will be exactly one year since the Member for East End and I reported that. Planning came out, they said it was wrong, it is wrong in law; it goes into the sea, and it has to begin 50 feet from the sea. This Easter is coming again and people will have to walk in the water to use the dock and get on the camp site next door. I have never understood why S-T-O-P in Planning regulations means laxer.

The joke about that, Madam Speaker, is that in the North Side Primary School the story goes that the teacher asked one of the students *what does S-T-O-P mean*, and he said *laxer*.

That is what it looks like it means in the Planning regulations because it takes forever and ever. I tell you, Sanford and Sons, seven years—the wall is crumbling into the street. It still has the blocks there with 2x4s—no cement— 2x4s through the hole in them to hold them vertical and I cannot get Planning to do anything. They say they have gone to court and all kinds of things, but nothing is happening, so...

Madam Speaker, once again I congratulate the Minister for bringing the Public Land Bill and I look forward to this being implemented, but I want to put down the caveat that the information I have from the constituents of North Side is that we do not want any commercial activity on any of our public beaches because it is going to restrict the use of the people in the community from using the beaches.

Thank you, Madam Speaker.

The Speaker: Does any other Member wish to speak?

Does any other Member wish to speak?

Does any other Member wish to speak?

I recognise the Honourable Minister of Works.

Hon. D. Kurt Tibbetts: Madam Speaker, could I have just two or three minutes to confer with staff regarding the points raised by the Member for North Side?

The Speaker: You could do that or you could thank them for their tacit support and you could do a preliminary statement at Committee Stage, but the choice is yours.

Mr. D. Ezzard Miller: That's good, because in Committee Stage I can question him, I cannot question him in his reply.

Put him in Committee stage, let me tie him up. Careful, Kurt.

(Laughter)

Hon. D. Kurt Tibbetts: Madam Speaker, I know your birthday is approaching but you never cease to amaze me; how wise you are beyond your years. Madam Speaker, I want to thank all Members who have not spoken and the one Member who has spoken.

At the Committee Stage, when we get to this Bill, I will deal with the issues, as you rightly pointed can be done, and the wisdom in your statement extended beyond, because at that time I could also deal with any Committee Stage amendments that we are going to place based on his recommendations.

Thank you very much, Madam Speaker.

The Speaker: The question is that the Bill shortly entitled the Public Lands Bill, 2017 be given a second reading. All those in favour please say Aye, those Against No.

AYES.

The Speaker: The ayes have it.

Agreed: Public Lands Bill, 2017 was given a second reading.

The Speaker: I recognise the Honourable Premier.

ADJOURNMENT

The Premier, Hon. Alden M. McLaughlin: Madam Speaker, my inclination was to press on, but when the Honourable Minister of Planning looked at me and shook his head, I realised that he is weak, he is weary, he is worn; and so I won't press him any further. I will move the adjournment of this honourable House until 10:00 a.m., tomorrow morning.

We have but one Bill remaining to take through the Second Reading.

The Speaker: The question is that the House be adjourned until 10:00 tomorrow morning. All those in favour please say Aye, those Against, No.

AYES.

The Speaker: The ayes have it.

At 9:49 p.m. the House stood adjourned until 10:00 a.m. Wednesday, March 22nd, 2017.