

STATES OF JERSEY

OFFICIAL REPORT

WEDNESDAY, 20th OCTOBER 2010

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[09:30]

The Roll was called and the Deputy Greffier of the States led the Assembly in Prayer.

PUBLIC BUSINESS – resumption

The Deputy Bailiff:

Now before we return to yesterday's debate I give notice to Members that Senator Le Gresley has notified the Greffier that he wishes to withdraw his second amendment to P.130 Reg's Skips Limited - Planning Applications: compensation and further action. That amendment he seeks to withdraw, as I understand it, in the light of the fourth amendment which he has lodged.

1. Machinery of Government: establishment of Ministerial Boards and revised system of Scrutiny (P.120/2010) - as amended (continued)

The Deputy Bailiff:

Very well we now return to P.120 as amended which is open for debate. Does any Member wish to speak? Deputy Duhamel.

1.1 Deputy R.C. Duhamel of St. Saviour:

Yesterday I think we had for one of the first times in this House, or certainly one of the first times that I have been witness to, a rare glimpse of the elephant that sits in this House and sits on that table. Before Members start thinking that I have possibly contacted the spiritualists **[Laughter]** I need to explain. I was one of those Members who participated fully in the Shadow Scrutiny process and indeed in the setting up of the Scrutiny Panels of which I was chairman overall. All during that time when we moved to the introduction of Ministerial government one thing kept on nagging me and my members, and that was how the States had been changed by the move to Ministerial government. Now I need to just recollect for those Members who were not in the House or privy to some of the arguments. I will not dwell on them at any great length but the issue has to be drawn out. Under the previous administrative organisation this House reigned supreme. You may ask where the seat of power is, although some might say it is beneath your rear, Sir, but it is not there, nor is it on my right-hand side beneath Deputy Power's rear. **[Interruption]** The seat of power lay in this House in its entirety and that is to make policies in light of strategies that this Island wants in order to forward how we deliver services and improve society for all of those who elect us. In moving to Ministerial government, during the debate advice was not really given and nor was it sought, to be fair, in any great measure by those who took part in the debate as to what would happen significantly if we moved to Ministerial government to the collective responsibility of the House. In subsequent conversations indeed with you, Sir, and other legal Members it would appear that an interpretation of this move to Ministerial government is established by setting out Ministerial government that the Government of this Island is not the States Chamber any more, it is the Ministers. The Ministers have been given a corporation sole status, which effectively underlines this position and allows them in all effect to do whatever they wish to do or whatever they think is needed to be done by those who vote for them. I think that raised at the time I was a member of the Scrutiny Panels the huge issue as to the longevity of the Scrutiny system, and the extent to which any of the efforts that will be made by those Members working on Scrutiny would be useful. Because it seems to me that if Ministers have taken over the House and they are the Government and they can act because there is no collective responsibility that binds them through the Council of Ministers - an amendment saw to that, which I think was from Senator Syvret supported by this House - they are all completely entitled, and this is my understanding of the States of Jersey Law 2005, to act in any which way they please and they are backed up by the law. Now being reasonable Ministers they do on occasion, particularly when there is some significant issue, worry about whether or not they might be re-elected or whether or not they are doing the right thing. Certainly, we can see Ministers wanting to bring some of the strategic and policy issues

to this House, not for our decision as to whether or not they can take the decision or whether or not they should be taking a different decision, but for advice and that devalues all of our jobs, I think, unless we are a Minister. So as I say this for me is the elephant in the House and I think as the saying goes: "If it is not broken, do not fix it" but there must be a corollary to this that if you do wish to fix a system that is broken you must do it properly and that is what is worrying me. If indeed the proposals by Senator Breckon to move in the direction he is moving in is to replace Ministerial government by a Committee system which puts back the responsibilities for taking decisions, or that we have lost or we have not admitted we have lost as yet, then all well and good. But I am not sure the proposals that are being put forward go that far and indeed you were wise to comment and to solicit a response from Senator Breckon to determine whether or not within the body of his report he was wishing to take away the corporation "soleness", so to speak, of the Ministers and to allow the responsibilities for taking decisions to return to this Chamber. If it does not, and he indicated that that was not his intention, then I feel that the proposals on the table are only half-hearted and will effectively be the nail in the coffin for Scrutiny, for the half-hearted system, the governmental coquetries we have on our table, which is neither one thing nor another. That worries me because we all think that we are elected here to do a job; we all wish to do the job to the best of our ability. But as I say the key issue is one of whether or not we can participate in a meaningful way to the creation of strategies and policies which the Ministers - and I am quite happy for the Ministers to act in this regard - can execute through the departments. Executive Government in my mind means this House still remaining supreme in its decision-making capacity and not just being relegated to a legislature but to rubber-stamp laws that are brought to us by the departments through the Ministers, but is participating in the very big issues, the strategic issues and the policy-making issues, in order to determine what might be best practice for the services that we are delivering to the public. Unless we can go in that direction, I am not sure that the amendments will add anything to, or the main proposition will deliver what all of us perhaps in our hearts would like to see delivered. It is not a case of mistrusting Ministers; it is a case of, I think, putting the genie back in the bottle and outlining in a very particular way, which was not done in the States of Jersey Law 2005, what all of our jobs are, those of us who are not fortunate enough to be a Minister. Now I popped into the Greffe this morning and got out a copy of the States of Jersey Law 2005 and really there must be reference to it at some stage if this proposal goes forward to re-write it to the extent that we write-in the functions for all of those Members who are party to the House and the Assembly in a way that is meaningful.

[09:45]

This was the source of my concern a number of years ago which has not been resolved as yet. At the moment the document is silent when it comes to who makes the strategies and who writes the policies. There are kind of mealy-mouthed words which were not properly, as I say, advised upon as to whether or not we were giving up things, which I think we did when we went to Ministerial government to the effect of who would do these functions. We have already heard a number of Members in the amendments suggesting that there is no seat of power or focus or responsibility that is given to a particular body of members or kept or retained by this House for the bigger picture stuff and that is what we are here for. As I say, in the previous debates we all agreed by a very small majority to go in this direction. There was a surprising lack of legal advice that was given to this House to put it in plain English what we were giving up, what we were going to achieve, and to make it crystal clear for every Member, what it was we were getting into. In that respect before I finish my speech, I would like to ask the Solicitor General to perhaps say a few words as to the legal outcomes or implications of adopting Senator Breckon's proposition and the extent to which perhaps the States of Jersey Law 2005 might have to be changed and to put Members' minds at rest, or at least give an indication, as to what it is we are getting into at this stage if we go along with Senator Breckon or indeed what might remain to be changed if we do not.

The Deputy Bailiff:

That sounds like a fairly broad request ...

Deputy R.C. Duhamel:

It is and I think I have deliberately couched it in those terms because I do not wish to put words in the mouth of the Solicitor General. I think it must be right for him to interpret whatever he thinks needs to be said in legal terms because he is the legal expert and I am not.

The Deputy Bailiff:

Solicitor General, are you ready to deal with this now or would you like to come back later on? It is a fairly wide request that has been put to you.

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

Yes, can I make some initial comments and perhaps if other Members want further clarification I can speak later. Obviously these are rather provisional thoughts, and further consideration and more mature reflection will be required if and when this matter is ever referred to the Law Officers' Department, so I should make that qualification from the outset. But of course the starting position now, and indeed in the proposition as I understand it, is that the Minister is a separate legal entity and is responsible for his or her decisions. That being so, there is a potential - and I do not wish to use any stronger word than that - for legal friction between a Minister, a separate entity, being joined on to a Ministerial board. By that I mean, how do you define the legal interaction between the Minister and the board? In other words, when should the Minister consult the board and about which decisions? The wording used in the proposition is in respect of significant decisions or other words are used such as "major" or "contentious". Speaking as a lawyer, the potential problem is, what do those words mean in reality? Suppose a Minister takes a decision without reference to the board and he does so because he thinks the decision is neither contentious nor particularly major, the decision is then published. Another States Member then takes a totally different view as to the merits of that decision. He thinks it was major or she thinks it was contentious. That States Member perhaps lodges a question or some sort of proposition in the States Chamber. How do you then judge whether or not the decision was major or contentious, whose view is correct, is it the Minister's honestly-held view of the time, does that hold sway or does the very fact that another States Member thinks it contentious, does that render it so and who decides? Is it the Royal Court through litigation, is there a vote in the States Assembly, what is the consequence of this potential uncertainty? If there is a failure to consult, does that render the Minister's decision unlawful? Presumably it does because the Minister would have been required to have taken into account the views of the Ministerial board and did not. So, if that is right, does that mean that another politician claiming that the Minister's decision is in fact contentious; does that mean you have a period of uncertainty whereby you do not know whether or not the decision was lawful in the first place? Can I just take 2 simple examples? There have been questions yesterday about psychic mediums at the Fort. Supposing for a moment the Minister was in charge of making such a decision for the purposes of this advice and had granted the entertainment licence, does the fact that another States Member submitting a question challenging the appropriateness of that, does that render it contentious? If it is contentious, does that mean the decision to issue the licence is now unlawful? Does the performance go ahead, do the public get their money back, should I be prosecuting people for providing entertainment without a licence? Another example may be 1(1)(k) residents. Does a Minister granting a 1(1)(k) resident licence to Mr. Bloggs... is that major or contentious? It may be that some States Members think it is but again because those words are so subjective, it is difficult, legally speaking, to know quite how the interface works. I suppose those are my initial views, having read the proposition. Plainly, if this proposition was adopted there would need to be a lot of work done on the States of Jersey Law 2005. I cannot properly tell you exactly the extent to which that would happen today but obviously, as I said at the beginning, the Law Officers' Department would need to give very careful consideration to the legal

consequences. But I just flag-up today perhaps what might be an obvious legal issue to me which is how do you legally define the interaction between board and the Minister? Thank you.

Deputy D.J.A. Wimberley of St. Mary:

May I ask for a point of clarification on what the Solicitor General has just said? He said that Ministers are separate legal entities and then this new system would adapt to that. Can he explain what the situation is with regard to liability? If a Minister makes a decision which then has an effect which someone else interprets as damaging, then does that liability rest here in the States or with the Minister personally?

The Solicitor General:

Well at the moment the Minister is sued in his own name so if you keep him as a legal separate entity then you would sue the Minister, yes.

Deputy P.V.F. Le Claire of St. Helier:

May I ask a question of the Solicitor General, please? Thank you for your advice today. Obviously these issues have been in the minds of some Members, in fact, I know the Constable of St. Lawrence has made a note particularly about the issue to do with the significant decisions. I am wondering, given the advice and given part (a) and (b) of the proposition, whether or not it is possible that these issues can be fleshed-out in due course by the Council of Ministers and the Privileges and Procedures Committee which this proposition is asking us to do.

The Solicitor General:

I think that sounds more like a matter for States Members to decide whether or not they want to flesh-out the legal difficulties later. I am simply advising as to what might be a legal problem on the face of the proposition.

Deputy P.V.F. Le Claire:

Just for complete clarification, there is no problem with the Council of Ministers sorting these issues out in due course if we decide that we want to head in this direction?

The Deputy Bailiff:

I think it is clear the Solicitor General has said there are some difficult legal issues which will need to be resolved. Whether they are capable of being resolved will be a matter for Members to assess today. The Deputy of St. John.

Deputy P.J. Rondel of St. John:

Can I ask the Solicitor General, he mentioned a Minister being sued in his own name: who picks up the bill if he is sued in his own name? Is it the Minister or is it the States of Jersey?

The Solicitor General:

Well plainly or ultimately it will be the States of Jersey because the States of Jersey allocate money to the Minister to run his department but it will be firstly the Minister will pay any damages or costs arising from a legal action.

The Deputy Bailiff:

The Minister is the defendant, Deputy. The personal identity of the Minister may change from time to time but the Minister is the defendant.

The Deputy of St. John:

I can understand that, yes, but what happens if that Minister is being sued after he is out of office, does it still stand?

The Solicitor General:

Yes, you are suing the office of the Minister, not the particular individual in place at the time.

The Deputy Bailiff:

If there are no other questions to the Solicitor General, Deputy Duhamel, do you wish to continue your speech?

Deputy R.C. Duhamel:

I do, Sir, and I would like to thank the Solicitor General for those very helpful comments which I hope have opened some Members' eyes to the real issue. In the States of Jersey Law 2005 under Article 26 it answers the question that has just been asked: "Each Minister shall be a corporation sole having subject to Article 29(2), perpetual succession." So it is the name of the office and the Minister has given the power to, as I mentioned earlier: "... enter into agreements for any purpose of his or her office to acquire, hold and dispose of movable property in his or her name, to do any other thing which the Minister can do by virtue of his or her office and to do anything reasonably necessary or expedient for or incidental to any of the matters referred to in the foregoing clauses." So in effect there is a *carte blanche* that is given in terms of power to the individual Ministers to be delivered however the Minister wishes and this is the key problem. Because I think a government must have Members who are capable of guiding those who pick up the Executive function, particularly in the absence of political parties. It makes it even more important in my mind that there is some mechanism to convey what it is the public would like us to deliver through our term of office as non-Ministerial Members and yet this mechanism is not really referred to within the States of Jersey Law 2005. Now, as I say, we have been labouring under it since 2005 and I think this is really at the heart of our difficulties of why so many members on Scrutiny feel that their work is de-valued or worthless, why we cannot feel part of the individual departments that we are trying to make a positive contribution to and why there is perhaps the spoken-about animosity that exists in the Chamber between those who are in power, the Ministers, the favoured 10, and the rest of us. It strikes me that if we are a parliamentary democracy then we cannot really be setting up a system, even though we have done, whereby 10 Members can do whatever they like individually and the majority of the House have limited ways to hold them to account, look at what they are doing and to exercise the voice of the majority and that is the issue. As I have said earlier, if the system is not broken then do not bother to fix it but we do have this proposition to fix the system and indeed I think the proposition is deficient in this respect or in the respect that it does not really go to the heart of the problem which is to solicit the views of all Members of the House as to whether or not we wish to continue with a system that in effect places divisions between us. Whether we knew about it or understood it or not is irrelevant. Personally, I think there should be a debate going on from what Senator Breckon has proposed to address this particular issue, and until it is addressed I am not sure that by delivering this proposition we will make things right. I referred to earlier it is my opinion that this will be the death knell to Scrutiny and I think it would. We heard yesterday in some of the submissions for the amendments, what would we be doing? Deputy Le Claire said we would all be nodding puppies in the back of the car and that is in effect what we would be, or the majority of the Members would be. We would be given titles so the inclusion of all Members into the States, the Government, would be tokenised, in my view.

[10:00]

We would all be running around with a particular hat to say: "Well we are the Minister responsible in some terms for whatever" albeit that the ultimate responsibility comes back to the Minister, and then what? We have heard from the Solicitor General that perhaps we would not be able to throw our weight about on these committees or boards, or whatever you want to call them, in order to insist by majority vote that the Minister moves in a different direction because that is the direction that is asked for by the people who put us here. But the system cannot work that way and the system does not work that way at the moment. So I think we are in a bit of a cleft stick and I am not really sure how I am going to vote. As evidenced by the work I undertook, and took the

ultimate reward for by losing my chairmanship of all the Scrutiny Panels, I tried to raise this particular issue at the time on behalf of all the other Scrutiny members and indeed lost the job because of it. But that said, I must not dwell on that. The real issue is whether or not the issue is going to be solved once and for all to the betterment of all of ourselves so we can play a full part in the Government of the Island, and whether or not we have a mechanism that efficiently delivers what the public wants. I do not think we have it at the moment and I do not completely think that Senator Breckon's proposal is going to deliver it. Picking up on a point by Deputy Le Claire, I am wondering whether or not there would be an opportunity either to be suggested by myself, or brought by myself or some other Member, as to whether or not we could have an opportunity to put in a further amendment to (a) in order to insist that the States of Jersey Law 2005 is addressed and this particular issue as to whether or not Ministers are to remain corporation sole or indeed responsibility comes back to a greater number of Members should be something else that we would wish the Privileges and Procedures Committee to look at.

The Deputy Bailiff:

Well, Deputy, you could make that point but it is too late for any amendment to the proposition now. The States of Jersey Law 2005 would clearly have to be considered by the Privileges and Procedures Committee if the proposition is adopted because (b) requires that.

Deputy R.C. Duhamel:

Yes, so would I be able to propose from the floor that we put in an item (a)(vi) in order to ask that another aim be made? It is too late?

The Deputy Bailiff:

You are not able to lodge an amendment at this stage.

Deputy R.C. Duhamel:

In that case, it leaves a question mark, as I said earlier, as to how I should vote and indeed how any other Members should vote, but I think I have probably said enough. I did try to solicit the views from yourself, Sir, and indeed from the late Christopher Lakeman who was a member of the Privileges and Procedures Committee at that time who was looking, along with Deputy Le Hérissier and others, as to the amendments that needed to be made by the States of Jersey Law 2005 before it came to this House, but I was unable to find out the particular reason as to why we had gone for this particular peculiar, I think, form of government which, as I say, puts, in my mind, too much power into the hands of too few. Why we went to corporation sole I do not know and I think looking back over the debate it is perhaps something that should have been debated more fully but was not. But I am keen, having learnt from my mistakes and the mistakes of the past, evidenced from the comments that I have just made, that these issues must not be overlooked when we come to vote on this particular issue. So I think with that I would like to say I am sitting down.

The Deputy of St. Mary:

Can I ask the speaker for a point of clarification? I think it is important that we do try to sort things out as we go along. The issue of the Minister being a corporation sole and having, in the speaker's words, *carte blanche* is really important. I just want to ask him, does that corporation "soleness" of the Minister and the power and the suability that follow from it, does that cascade down to delegated responsibilities so if the ...

The Deputy Bailiff:

I think that is a question more for the Solicitor General.

The Deputy of St. Mary:

Or possibly to the Solicitor General, yes, it is an important matter. If the Solicitor General could clarify that.

The Solicitor General:

Well, yes, because what is quite interesting about this proposal is that you have a Ministerial board that in effect has 2 functions which is, on the one hand, to scrutinise the Minister when he or she takes a decision but, on the other hand, the second function is also that members of that board will also take delegated decisions themselves. So, I would expect if you want to be consistent about it legally, that that member of the Ministerial board would have sole responsibility for the decision. But then of course the issues are, does the rest of the board scrutinise them or are they scrutinising themselves in respect of their own? There is not the clear distinction, is there, legally between the board performing a Scrutiny role and performing a delegated decision-making role? But coming back to your original point, yes, I would expect that if responsibility was delegated by the Minister to an individual, that individual would have sole responsibility.

Deputy P.V.F. Le Claire:

May I on a point of order just ...

The Deputy Bailiff:

It does not feel like a point of order coming but very well. [Laughter]

Deputy P.V.F. Le Claire:

I must confess that there are probably 300 or 400 times I have done this and I have not been correct. I did finally learn after many years prior to your brother, Sir Philip, retiring that I finally understood what it was that I was doing wrong but I do believe this is a point of order. [Laughter] I did take a long time getting to understand that, I am sorry. The explanation by Her Majesty's Solicitor General raises questions about whether or not board members might be able to, or should be able to or otherwise, scrutinise the Minister. In my proposed amendments which were considered and adopted by the amended proposition, the working party took my proposed amendment item (ii): "Assistant Ministers should not be able to participate in Scrutiny reviews on topics related to their own Ministerial department" and subsequently they commented: "The working party agreed with this proposal albeit that Assistant Ministers will be known as board members and the revised proposition reflects the changes proposed." So therefore they have considered that board members will not be in a position to scrutinise their Ministers and I just wondered if that had been considered by Her Majesty's Solicitor General when he made that comment or whether I am misinterpreting what he said.

The Deputy Bailiff:

I think I am reasonably confident that was not a point of order. It is a further question, if it is one, to the Solicitor General. Do you wish to answer that?

The Solicitor General:

Yes. I am sorry if I have not answered the question clearly, but the point is that the delegated member takes the decision on their own, and I suppose the side point I was making is that who then scrutinises the decision, I suppose, is the question. Presumably the rest of the board. But then you are almost conflating the concept of Scrutiny and decision. I appreciate that separate members are doing different things but you are inviting a body to do 2 quite different things at the same time, potentially.

The Deputy of St. Mary:

Could I ask a point of clarification but the point is that it does make it clearer in terms of this debate. Is there a change in the situation? Because at the moment we have Assistant Ministers who, as I understand it, have delegated powers - some of them - and therefore they take that decision and are liable, presumably, or the Minister is liable on their behalf. So, first of all, what is the present situation; who is liable for that decision and who takes it? Then, secondly, does that

change with this system of people who sit on Ministerial boards who have delegated responsibilities? I do not see that there is a change but maybe there is.

The Solicitor General:

On what I have read in the proposition there is not a change in the sense that the Minister is still responsible ultimately. You would still sue the Minister, and nothing in this proposition that I have read changes that.

Senator A. Breckon:

I wonder if I may ask for some clarification from the Solicitor General. In my proposition under paragraph (iv) it makes reference to Annex 1. In Annex 1 on page 14, the bottom paragraph after the (a) to (d) it says: "Ministers will therefore be responsible for determining policy and monitoring its implementation. The Ministerial decision template will record the advice given to Ministers by their boards, and draft legislation lodged for debate by the States would also include a statement in the accompanying report giving the views of the board on the draft." On the next page under "Delegation of functions" it says clearly: "Ministers will maintain responsibility for their statutory functions ...". Could the Solicitor General explain whether Annex 1 in this proposition and that wording is the intention of how it would happen? Because my understanding, the explanation to date is a variance on that and I would ask if the Solicitor General could clarify that.

The Deputy Bailiff:

Well the Solicitor General has already given advice on this issue but is there anything you could add, Solicitor General, or not?

The Solicitor General:

I regret that I do not quite understand the questioning. What is intended is a matter for Members, I suppose. All I have done is seek to give a steer as to what the legal position might be and, as I said, I do not think I really have anything more to add to that advice but I would be happy to answer any clarified question.

The Deputy Bailiff:

We will return to the debate at this stage. Senator Le Gresley.

1.1.1 Senator F. Du H. Le Gresley:

I got lost in the legal arguments there. I would start off by saying that as I have been a Member of this Assembly for only 4 months I am perhaps less of a cynic than the majority. I believe that currently there is nothing to stop the Minister forming a board or group of Back-Benchers with whom to consult on policy issues if he or she so wishes. In fact, since I have been a Member of this Assembly I have been contacted by a Minister because of my knowledge of the income support system to be involved in the review of income support. So I do believe that there is a role for Back-Benchers to be involved in the process of deciding policy in the Ministerial department. I am not convinced that the proposals in Senator Breckon's proposition will achieve a more inclusive form of government unless the Ministers appointed in 2011 after the next election are minded to engage in real consultation with their boards. The fact that the membership of these boards will in reality be imposed upon Ministers by the States if we approve (a)(ii) of the proposition really concerns me. While listening to different viewpoints can often be helpful, there will be a point where the Minister will have to go with his own judgment. We have just heard from the Solicitor General that the Ministers will have the final decision because they are the legal entity. That decision or judgment of the Minister may be at odds with the majority or minority of his board, so what then? Do the members of the board in the minority resign from the board and force an election or does the Minister ask the States to remove a member or members of his board. I foresee valuable States time being taken up with elections for boards, requests from Ministers to remove board members and in the worse scenario frequent propositions calling for votes of no confidence in Ministers. The

nub of the problem as I see it with current Ministerial government is that the Members of the Assembly who are not Ministers or Assistant Ministers feel excluded from day-to-day decision-making and this has been re-affirmed by Deputy Duhamel today. Well I think that Members have to decide at the time of the election of the Chief Minister and Ministers whether their personal political allegiances and beliefs will be inordinately compromised if they wish to join the Executive. If for these reasons they decide to stay on the Back Benches, that is their choice and I do not think that the existence of Ministerial boards should change this situation, particularly if a Member at opposite ends of the political spectrum is imposed on the Minister and on his Ministerial board. Our current political system favours independent politicians rather than parties but I can see that there is an opportunity for likeminded Back-Benchers to work more closely together on major issues where they wish to challenge the Executive. Such groupings should be encouraged in order to share ideas and produce alternative policies.

[10:15]

Yesterday we talked about research when we had the Deputy of St. John's proposition, and it struck me that all States Members get an allowance for expenses, something in the order of £3,650, if my memory serves me right. There is nothing to stop a group of Back-Benchers using part of their allowance to pay a research assistant. I see some Members scoffing at the idea but that could be quite possible and I would question whether people use their allowance for the purposes that it is supposed to. So, I also feel that the role of Scrutiny Panels will be de-valued by this proposition and I suspect that in the past some Scrutiny Panels have been used for political purposes rather than the purpose of Scrutiny. I also have a query for the proposer when he comes to sum-up, if I may, about the role of the Planning Applications Panel because I do feel that this particular Ministry where we have been told numerous times in this House that the Minister has all the power and all the decisions are his, how will the Planning Applications Panel feature within the system proposed where there is a Ministerial board? Will the Ministerial board be in fact the Planning Applications Panel? I would like to know a bit more about that. So in summary I think that this proposition is well-intentioned but if approved will not bring about the seismic change in political life that the proposer and members of the working party are anticipating and in fact could lead to more confrontation. Thank you.

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

Clothier said: "You must adopt this system in its entirety." That included the governmental reform and the electoral reform, as well as the other bits which Senator Breckon talked about in his opening speech. The States Assembly of the day cherry-picked the reforms and did not adopt the electoral reform. They were told to adopt this in principle and it would be added later. What have we been told about this proposition: "This is only the beginning and more will need to be done." Is this history repeating itself? The point is those who are elected to this Chamber influence the way in which the Government works. Now, Members may ask, what is in a name? We all know the differences between the 3 roles. It is not simply a difference in name. The 3 roles have different criteria and different responsibilities. While of course at some point these will overlap, at other points they will not. So what are we trying to do here? We have found that with the electoral makeup of the States, Ministerial government and Scrutiny does not work. No surprise there then; that is what we were told. If the States does not adopt the proper electoral reforms for a Ministerial and Scrutiny makeup, then the only option is a Committee style of government. This perhaps explains why this proposition has been formed in the form that it has come to us. So, another flaw in the Ministerial design has been the concentration of power in fewer hands. So what does this proposition do? It further concentrates the power in the hands into a single Member, the Chief Minister, which I cannot support. This is not a reflection on the current incumbent but if you are talking about the design of a system that supports this measure, then regardless of who is the individual in the Chief Minister's post, I cannot support it. I think from this debate we have seen that the proposals may not necessarily have been thought through, it is confused. Members do not

understand how it is supposed to be going; this is an in-principle proposition of a design of a road which we may go down. How can we as an Assembly go down this road? We do not know what is going to happen and it is coming across as how confused this debate has become. At this time I will not be able to support this proposition. Thank you.

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

I appreciate following on from the previous speaker who focused clearly on an issue which is important, I believe, in that at the fundamental root of the issue we are trying to deal with today with this hybrid that we are inventing, or maybe about to invent, is that we cherry-picked Clothier. Key to the whole thing is part of the address of the proposer where he pointed to the part of Clothier which said: "An effective democracy requires not just an Executive but the balance of a strong Assembly which holds the Executive to account and scrutinises its actions" and that is the single thing that is missing. In abandoning the electoral reforms and the membership of the States reforms, we abandoned the concept of a strong Assembly. The fact is that this Assembly is a relatively weak Assembly. I include myself in that as part of the structure. I am not empowered, nor are any of us, to hold the Executive to account and that is the nub of the issue. That is the reason why we keep saying: "Ministerial government is broken." I am not saying that. I would not say that. Ministerial government does not work as well as it should and the Ministers and the Executive are not working as well as they should. Scrutiny is not working as well as it should. It is not broken but it is not working as well as it should and we have to ask, why is that happening? Then we have to ask, does this proposed solution tackle those fundamental reasons? I believe the answer to that is no. As I said yesterday, this is just dreaming. This is wishful thinking. We know what the problems are, we want to mend them, can we mend them this way? I do not believe so. What we are saying is let us have this hybrid between a Committee system because we knew about that. It took ages to do anything but sometimes we got it right and everybody knew what was going on because stuff got out. But the Ministerial system, nobody knows what is going on, including sometimes the Ministers themselves, I think, because their officers have not told them. Nobody knows what is going on and things get done quickly and only occasionally are they done right. The same problem. The question is, would things be guaranteed, would they be assured to be better under this new hybrid? I see no evidence in all of this that makes that link and says that if we do things this way then this problem will be solved. This problem will be solved. I point you just to one item briefly on page 23 where it is talking about the Scrutiny function. It says: "It is estimated that the maximum number of reviews at one time, albeit they may be at different stages, would be no more than 5." Unlike the current system, that may mean that reviews are done more quickly. Here is an issue: getting Scrutiny reviews done quickly. Big problem? Yes. One of the things that drives us all the time: "Try and get that timeframe set and try and meet it" may mean: no mechanism; no solutions. Just do fewer and you will be able to do them quicker with fewer officers. Hang on, how does that work? It does not work in my logical system, it does not seem to flow at all. It says: "Let us do things this way and cross our fingers and we may be able to do it better." No evidence, no mechanism, no proof, no reasoning to suggest that those 2 will follow. That is riddled all the way through this document. I feel every sympathy for Senator Breckon. He is aware of the problems as I am aware of the problems. He has very bravely proposed a solution but I do not think it holds together. Here we are, we are something like 40 minutes into debating this and I believe already, legally or otherwise, the wheels are falling off. Just on 40 minutes' scrutiny of the issues I think that the wheels are falling off. Do not be taken in, as I am sure we will hear at some stage in this debate, by the argument that says: "Ah, but this is only in principle. Give us a year to work on it and we will come back with something magical with all the 'I's dotted and the 'T's crossed and we will make it work. It will be much better." Do not be taken by that otherwise we will be committing to a lot of work and I think we are committing it to go down the drain eventually. So, in particular, why am I worried about this proposition? I think, looking around the House, with one other Member I am the longest-serving and most experienced Member of Scrutiny and my concerns are about Scrutiny and delivering effectively Scrutiny because without

that, Ministerial government is Ministerial dictatorship or something close to it. Executive dictatorship, whatever you call it. It is not held to account and that is absolutely essential. I have already pointed out that this Assembly is not as strong as it might be because of its structure. So we are told, we know, Ministerial government is not working properly, Scrutiny is not working as well as it might and the question is why and how do we address that? Ministerial government is not working properly because it still contains a vast element of secrecy. Ministers want to hold information to themselves and, as we witnessed last week, it takes the devil's own job to get information out of them to scrutinise efficiently, effectively and properly and that has been a hangover from the old previous days where Presidents maintained control by holding on to information. Secondly, despite assurances from the Chief Minister, the Chief Minister has singularly failed to be inclusive. He has picked his set of Ministers, his colleagues, his mates and stuck there and there is a split in this Assembly between those who feel included and those who feel excluded and that divide is happening. Will what is proposed change that mindset (a) of secrecy and (b) of pick your mates? I do not think it will. I do not think it will go one jot towards changing that philosophy, that psychology in the States, and I see no evidence in this document that says it will. So what it says then in terms of Scrutiny is: here we are, we are working very hard, some of us, and Scrutiny is not working properly. What do we need to do to make it better? The solution according to this is to do more. I did the numbers yesterday, every Member, about 50 of us, will be involved in a board or will be Ministers. No spare, no slack there. Think about it. We meet 2 or 3 days every fortnight so we have 10 working days in a fortnight, 3 of them, let us say, allocated to States meeting. One meeting day allocated to the Council of Ministers. That is 4 days out; we have 6 days left. We have 10 boards. We might be on one or, in many cases, 2 of them so that is another 2 days which will sit in my diary: "Board meeting. Board meeting." Whoops, that is 8 days; we have 4 days left in which to organise Scrutiny for ourselves because we have no focus, we have no standing, Scrutiny boards, so instead of being established 4 Members here studying this area, we are asked to be flexible and go where we like. So, okay, here I am, I am particularly fascinated by this area. I think there is something going on there, I want to investigate it. I run around like a blue-bottomed fly trying to find 3 or 4 other Members who are not on that board and who have spare time on the same day to meet and scrutinise this particular aspect. Well, that does not sound like making it easier for me. In the meantime of course I am on one of 2 boards, so what board am I going to go for? I am going to go for the board I am least interested in because I really want to just sit there and tap my hands and do nothing towards contributing towards government.

[10:30]

I am going to go to Planning and Environment. Am I? Of course I am not. When I am picking my board, and that is suggesting I might be good, I am going to be on Economic Development, so we stop here at the moment because I would love to see what he is up to. I have done in the past and I really enjoyed that work. The numbers do not fool me. So I am on that board and if I notice something going wrong I will be off it pretty quick. If he is not listening to me what do I do? In order to investigate it I would have to resign from the board. But I am not going to be there investigating the same board that I have picked to stand on, because that is my interest area. Or social security; I know a heck of a lot about that. Yes, I would love to be on that board working hand in hand, hand in glove, with my Minister. He would really like it, too. Or I might decide that I want to scrutinise what he is up to and be in a Scrutiny role, having done this exercise of finding a board that wants to investigate social security and whatever is happening with, let us say, supplementation, which needs dealing with for one thing. So you can see some of the problems involved but the principle is here we are on Scrutiny and it is not working properly. Why is it not working properly? Well, I will tell you one reason and it is on page 22 of this proposition, D1, Scrutiny Framework: "Training: It will be imperative for all Members who would be available to be involved in Scrutiny to undertake initial training in the role of Scrutiny, the terms of the Code of Practice, the processes involved to undertake a Scrutiny review, how to chair a meeting, and how to ask pertinent and appropriate questions." Yes. That is an issue. On Scrutiny, by and large (and I

include myself, my skills are not perfect even though I have been doing it for 6 years now), we under-train in what we do. We are under-practised in what we do. We do it to the best of our ability but often that is not very good and sometimes I cringe when I hear my own questioning technique on a recording. You think: "Oh, look what I did there. I spoke over the answer. He was just about to give me the answer and I spoke over it and moved him on." Really crass, essential things; I have been doing it for 6 years and I am still appalled by some of the mistakes I make when I am conducting a review. We under-train. Does this proposition go any way to making us better trained and more efficient and more effective Scrutiny members? No, it does not. It does not take us one jot closer to that. It identifies the problem, which I know exists, but it does not suggest how we do it. Nor does it help us do it because what it says, basically ... and this is common to all scrutineers; all scrutineers, if you talk to them, will say. We are talking Wales, Scotland, the U.K. (United Kingdom), Isle of Man; it does not matter where. Wherever you go and talk to scrutineers and say: "What makes the big, big difference; what makes high quality scrutiny in your jurisdiction", the single thing of all the reasons that runs through their responses is one thing, joint wherever you go: the enthusiasm, the commitment and the skills of the Members who lead Scrutiny. That is essential. That is what counts. That is what makes it work or does not make it work and that applies universally. What we have got, I think, is a lack of commitment in Scrutiny's side; a lack of training, a lack of skills but certainly a lack of enthusiasm and drive that officers pick up on and recognise: "This member will drive this through. I will be on my toes and when I am given deadlines I had better meet those deadlines because this person wants to drive things through." Time and time again, that does not necessarily happen. The commitment is not there. The failing is with us. We, as Members collectively in Scrutiny - I include myself - fail time and time again to drive things through; to show that enthusiasm; to show that commitment. What solution do we propose: "Right, we are not doing it well enough because of our own failings, for whatever reason"? Let us do more, it says. Meet 2 days on a board - if you are on 2 boards, 2 days - and organise your own scrutiny and do it. How much enthusiasm and energy will that require? This solution says: "We are failing to do effectively what we should be doing now. Let us do more. That is the answer." I am sorry, it will not work. It will not work while this membership with these energy levels and these commitments are still in this House; again, the quality of this House and Members in this House. That is what the problem is and that is why I do not believe anything in here is likely to help mend those faults. I then come back to the content of what is contained in this document and I go to this fundamental question of organising ourselves to conduct 5 reviews at a time when we are also sitting on boards, *et cetera*, and doing our case work, our constituency work. Ha-ha-ha. On page 21 it says the remit of P.R.C. (Policy Review Committee). This P.R.C. is a Policy Review Committee. It is the single body that is organising Scrutiny. In there it says things like: "Assess to decide whether review should take place. This may include seeking background information prior to scoping." So I say: "I want to investigate this." I go to the body P.R.C. and I say: "Please may I investigate this?" They say: "Well, hang on, we had better assess that. Go away and come back in 3 weeks' time." It is going to check that no Ministerial conflict exists: "You are not sitting on the board, are you, that you want to investigate?" Of course, that would not happen. "No pecuniary conflict?" You are not involved in some way in the business that this concerns. "No perception of conflict of interest which could compromise the individual member that works on the review or the scrutiny process as a whole?" So somebody else is going to decide whether I have got a conflict of interest in deciding to look at the bigger aspect. Oh dear, that sounds very interesting. Then to check that there is a balance in the membership of the review panel. I have got an imbalanced panel. Imbalanced in what sense? More males than females? More old than young? More Lefty than it should be: "Oh, we cannot have that membership. Go and have some others. Go and find some dry old Tory stick and work with him or her. That might work. That will slow you down a bit." **[Laughter]** Whoops. I just do not believe this. What a thing to put in the way of Scrutiny. I mentioned the enthusiasm and the drive but, God, I am going home with this lot: "Determine the terms of references, the project outlines and target deadlines for review completing and estimated budget allocation in conjunction

with the proposals review panel.” “In conjunction with.” Effectively: “These are my terms of reference. Are they okay? This is how much I think it is going to cost. Is that okay? This is my timeline. Is that okay?” Again, another barrier to get in the way of scrutiny rather than assist Scrutiny. I can just see it happening. Some jobs-worth with his cap badge on saying: “I am not sure about that, Geoff.”

Deputy I.J. Gorst of St. Clement:

Sir, I wonder if the Deputy would give way.

Deputy G.P. Southern:

No, he will not give way. You have not had a speech. Have your own speech when you like. **[Laughter]** Sir, through the Chair.

The Deputy Bailiff:

Through the Chair is better.

Deputy G.P. Southern:

I am getting carried away. Point 11: “Ensure that one aspect of executive policy is not overly scrutinised to the detriment of all others.” So here is another test. Okay, there is some Minister making a complete pig’s ear of his job. He has got it completely round his neck. He is making mistake after mistake after mistake. Three people come up and say: “I want to scrutinise this Ministry, this Minister on this and this and this.” In point 11 the Chairman of the P.R.C. (if that is what it is called) says: “Oh, I am not sure you can do that. That is 3 Scrutiny issues with the same Minister. No matter if he is making a pig’s ear of it or not.” Another decision; another barrier to get over. Then this final thing: “Ensure a minimum and maximum number of reviews occurring at one time.” Ensure? Everyone from now on taking part in a Scrutiny is a volunteer: “What do you want to look at? Find your own team. Find your own schedule.” Come on. So this chief of P.R.C., a new set of letters ... that is changing the cap badges, are we not? Ensures? No, he does not. How can he? He is running around like you are and saying: “I need to have more scrutiny done. We have only got 2 topics going on at the moment. How can we get some more? Any more volunteers? Everybody take one step backwards; otherwise you will volunteer, whether you like it or not.” Come on. Can we make this work? I do not believe we can make this work. I have every sympathy with Senator Breckon but, as I think I have illustrated, I do not believe this will provide, in particular, effective Scrutiny. I do not think it will necessarily provide the caring sharing co-op feel that is intended. To illustrate that, before I finish, I will just refer back to some presidents, as they were, that I have known and their approach to doing things. It was Senator Le Main who volunteered me to go on to Home Affairs, a long, long time ago, because they were all from the country Parishes and nobody from the town, he said, which is why he volunteered me to do Home Affairs. I was last one on; so I got the last bit of Home Affairs to be allocated responsibility for and that was births, marriages and deaths with the registrars. It was dreadfully exciting times, I must admit. I went along and I had a chat with the registrar and the St. Helier registrar, who has got an office about 800 yards away from the registrar, and they both told me that, hang on, there are 11 more registrars on the Island. I thought: “Gosh, we have got 13 registrars. That seems a mite inefficient for a small Island. I think we might do something about that. I think it might be one and I think we would ...” No: “Oh, do not go near that, Geoff. That is dynamite.” Early learning curve, absolutely *verboden*. I did my duty and I sat and took charge of the registrar and I met him every now and then - it was not very often, I must admit - to see how things were going. Apparently at the time more were being born than died under my supervision. **[Laughter]** I think I can claim a success. Let us get back. But what I learned was, although everybody had an allocation, the President did most of it and Deputy Egré, he is not in the Chamber but I am sure he would be nodding if I said that, although he was Vice-President and took a few meetings, he had very little control over what was happening. Most of the decisions were taken by the President and

we were informed, effectively. Occasionally we had something to debate and he had the joyful task of being in charge of taxis; which was, again, the thorn in the side of many a politician: “Hello, Deputy Egré. This one is yours. You can look after these awkward people because I do not want to be doing it. I could be doing it until the cows come home.” But very little delegation, very little inclusion, even though on the surface it looked like it was. Then I think back to the 2 previous presidents. Senator *[name omitted in accordance with standing order 160(3A)]* never delegated a thing. Very rarely did you get anything to do.

[10:45]

Ditto, I would say, Senator *[name omitted in accordance with standing order 160(3A)]* as was. Again, those people who were on the committee at the time will know that very little information came their way. They had some technical responsibility but very little was devolved down. There was very little sharing of what the process ... That is not ensured in here nor is it contained that that sort of thing will not happen. Finally, I will say this, and you may take it how you like. I feel every sympathy for Senator Breckon in bringing his proposal. He has grasped the challenge. He has seen what is wrong and he has proposed a way forward. I do not believe it is the right way forward. I believe it takes us down a cul-de-sac. I do not think it is effective to be a hybrid between Ministerial and committee system. I do not think it can be made to work. I fear deeply for the prospect of Scrutiny and, to be honest, if this were to go through and if in a year's time - the other side of another set of elections - I were to find myself on a board and trying to do some Scrutiny, I do not think I would be volunteering to be the blue-bottomed fly who runs around trying to organise Scrutiny. I will be out of it. I cannot work with this. Finally, I have every sympathy with Senator Breckon because he has received the support initially, of the Chief Minister, the Chairman of P.P.C. (Privileges and Procedures Committee), I believe, and the chairman of P.A.C. (Public Accounts Committee). As far as I am concerned, that is the kiss of death.

Deputy R.G. Le Hérisier of St. Saviour:

Sir, I wonder if I could move a reference back?

The Deputy Bailiff:

What is the particular point that you want referred back?

Deputy R.G. Le Hérisier:

My point is, Sir, that as this debate has proceeded and the issues have come more into focus it has become clear to me that we should be looking either at a total reversion to the committee system or a total reversion to a reformed Ministerial system. We are stuck in the middle and many questions have arisen, notably those that have been posed by the Solicitor General, which have left an enormous number of issues hanging as to the legal status of a lot of this material and also as to the political status of a lot of it, as to what role the boards will play. There are a lot of areas, that as the debate unfolds are ... and I have enormous sympathy, as does Deputy Southern, with the proposer. I think he has run with a challenge and he is to be incredibly commended for that. But it is becoming more and more confusing as it proceeds and I do not think Members understand where precisely we are going.

The Deputy Bailiff:

Deputy Le Hérisier, I am being advised by the Greffier this would be the first time ever a proposition has been referred back to an individual Member as opposed to a Minister, but Standing Orders do not seem to prevent that. However, the thrust of what you said was that there is confusion because of the inconsistency between the proposition and the legal advice which the Assembly has received. It seems to me that is not a matter for reference back, although any Member would be well advised to take legal advice before they bring their proposition. But surely that is a matter that can be determined by the Assembly in making a vote on the proposition in due

course. I am not clear what precisely Senator Breckon should do with this if the Assembly were to refer it back to him.

Deputy R.G. Le Hérissier:

Sir, I was moving it primarily under 83(1)(b): “Inconsistencies and ambiguities.” I believe that as the debate has proceeded many of these have become manifest and it is becoming more and more difficult for us to get a clear view of what the issues are.

The Deputy Bailiff:

I am sorry; I am not prepared to allow the motion for reference back. I think it is possible for Members to take a decision on the proposition that is before them, having had the advice of the Solicitor General, as Members think they wish. I am also influenced by the fact that it would be the first occasion of a reference back to an individual Member and I am also influenced by the fact that I am not sure what Senator Beckon could do with this if it is referred back to him. I regret I am not prepared to allow the reference back.

Deputy M.R. Higgins of St. Helier:

Could I ask instead that Deputy Breckon consider withdrawing the proposition and bringing it back at some other point? One of the criticisms I have of this, which have been outlined hilariously by Deputy Southern ... he has outlined many of the flaws with this and one of the criticisms I have of it is the fact it has come straight to the Chamber.

The Deputy Bailiff:

Deputy, may I say you are not entitled to make a speech, unless you want to take your speech out of order and this counts as your speech. Senator Breckon will decide whether he wants to withdraw it or not later on. If you wish to speak at the moment ...

Deputy M.R. Higgins:

No, I will let him speak because I will come back otherwise.

Senator A. Breckon:

Can I say, just so I can give the House some guidance, I believe the issues that have been raised I can deal with in the summing-up. If Members who have not done so would read the report, some of the questions that have been asked are in there.

1.1.4 Connétable D.J. Murphy of Grouville:

Together with many other Members, I know, I am desperate for some form of reform to come in with regard to this situation. I do not think any of us would doubt the fact that what we have at the moment is not perfect but what we do not want to do is to move from one imperfect thing on to another imperfect thing. I have listened to the speeches, especially of Senator Le Gresley where he said, I think, exactly what I would have liked to have said but better. So I would go with him on that. My major problem here is with Scrutiny. Now, Deputy Southern may recall, in fact, that he and I sat on the first ever Scrutiny Panel that, I think, was looking at drugs reform under the chairmanship of ex-Deputy Dorey and I think we made a difference on that. We did carry forward some propositions from there that we influenced and it was quite impressive, the fact that we do have a voice. I cannot see that this is going to give States Members a bigger voice in the decisions of what is being done. We are going to put Members on a board who are subject to the whim of the Minister or of the appointed Deputy Minister, who may or may not be a member of the board; who has been elected either by the States or has been brought in by the Minister. As it stands at the moment, the States Members will elect the boards and this may or may not work. I cannot see it working, to be perfectly honest with you, because I can see that the Minister is going to end up with people he does not want on his board and you are going to have clashes of personalities that are going to escalate into resignations and further problems. As I say, a lot of us are desperate for some

form of reform. This, I do not think, is it. I am really worried about it and I am afraid, unless I hear something completely different from the summing-up, I will have to vote against it. I have just been reminded by Senator Le Main on my right that - in fact we discussed this earlier - the public will have less information. The media will have less information. As a Scrutiny Panel, you can come up to the Scrutiny Panel and you can sit there and watch and see what is going on and almost influence the proceedings by being there. But with a closed committee-type system that is not going to happen. So the public are going to be kept away from the discussion that, to me, is part of the whole process. We should be more open. We should be more transparent. This is going to close it all up again and I am not in favour of that at all.

The Deputy Bailiff:

Before I call on the next Member to speak can I just remind Members that of Standing Order 104(2) which says that a Member of the States must not refer to any individual who is not a Member of the States by name unless use of the individual's name is unavoidable and of relevance to the business being discussed. There have been references to some former Members of the States in speeches which have been made today which I think are not appropriate and, in that context, I am going to direct the Greffier now to remove from Hansard the references particularly to the 2 former Members referred to previously in relation to their mode of presidency.

Deputy G.P. Southern:

My apologies, Sir.

1.1.5 Senator T.A. Le Sueur:

First of all, I want to make it quite clear that my support for this proposition is one very much of a personal nature and is not one in which I am speaking on behalf of the Council of Ministers. The process for this proposition began with Senator Breckon's proposition, P.70, which I think both the chairman of Privileges and Procedures Committee and myself felt was an initial move but not perhaps the most effective one. We believed that, sitting around a table together, we might be able to come up with something better. Whether we have or not remains to be seen. But that was the objective that we all had and I must say that, looking at the composition of that working party, it is quite a varied cross-section of Members of the Assembly. It may be only 5 and maybe those 5 are not representative, but I got the feeling at those meetings that we held that there was a large measure of agreement between the parties concerned that this was a move in the right direction. Now, the last speaker suggested that we were in danger of moving from one imperfect solution to another imperfect solution. I have no way in assessing whether what we are proposing here is the perfect solution. I suspect it is not the perfect solution either, but I think it is a step or several steps in the right direction. If we are going to wait for perfection before we make any decisions then we are never going to get anywhere because I have said on various occasions that Ministerial government is still in its infancy and it will, no doubt, evolve. I believe it should be an evolutionary process rather than what someone has described as a seismic change. That is not the way that we do things in this Assembly. The proposition starts with a view that the present States is not sufficiently inclusive and I recognise that, just as other Members have recognised that, and there may be varying reasons for that. But I go back to the Committee for the Review of Government, which has been referred to earlier, that required, for the Ministerial system to work, that it should be complemented by a strong system of Scrutiny and other Members have referred to that. Now, I believe we do have a good Ministerial system with a good Council of Ministers that is working well and is a significant improvement on the committee system. I go back to the opening words of Senator Beckon when various options were being assessed including either the Ministerial system or a Ministerial committee hybrid or the existing committee system and, of those options, the existing committee system was by far the least favoured. Some form of Ministerial system was almost universally acclaimed as the way forward and it is a question of how we get the best out of

that process. What we have here, I believe, are ways in which we can improve that process, strengthen the Scrutiny role and strengthen the role of the ordinary States Member.

[11:00]

There have been a variety of comments made about this proposition that make me wonder whether some members have read it as clearly as they should have done. I take, for example, part (a)(ii) where the members of the Ministerial board should be elected and removed from office by the States. That was suggested that it was going to impose upon Ministers a number of members that they could not put up with. I suggest that Members read annex A of the proposition, which makes it quite clear that the Ministers will propose members of their committee, just as has always happened in the past and continues to happen now. Ministers will propose the members of their board and it will be up to other States Members, as is their democratic right, to put forward other names. But the expectation is that normally you would have a Ministerial board reflecting the balanced needs of 10 different Ministers. With 10 different Ministers, just as we used to have with something like 20 different committees, there was give and take and maybe a bit of horse trading done between one committee president and another (you can have him if I can have him and that sort of thing) and I see no reason why that consensus arrangement should not continue in the future to the benefit of every single Member of this House. There was a suggestion that too much power is concentrated in the hands of Ministers. The ultimate power rests in this Chamber and one of the amendments to the Clothier proposal - if I may use that name in vain - put forward by a previous Deputy of St. Brelade was that there should not be a majority of Members in the Executive. Indeed, even among Assistant Ministers there is no doctrine of collective responsibility that binds every Assistant Minister to the Council line, as the voting in this House clearly shows. So the question of power and authority remains in this Chamber and remains, hopefully, in a Chamber well-educated in the activities of each individual Ministerial department balanced by a Scrutiny process that, it is acknowledged, for one reason or another, is currently not working as well as it should be. Deputy Southern, in his comments, made some disparaging remarks about the P.R.C. - the terms of reference of which were set out on pages 20 and 21 - the Policy Review Committee. The group of people that put forward this proposition were quite clear of the importance of Scrutiny and indeed laboured that point by suggesting that the Chairman of that Policy Review Committee should be elected at a very early stage; identifying the importance of that and giving that person the authority to orchestrate the way in which Scrutiny should continue in the future. I believe that that is a role that, if you like, is currently undertaken by the Chairman of the Chairmen's Committee but perhaps not in a perfectly satisfactory way. I believe that this method, strengthening the importance of that role, is a far better way forward. I think my final point of concern about States Members' understanding relates to delegated authority. I believe that the laws about delegated authority are perfectly clear and have been perfectly well explained by the Solicitor General. Some Members may not like the answer but that is the law that we have passed and that is the way in which we deal with delegated authority, in that a Minister can delegate to someone else one or more of their functions. The delegated person has the authority to carry out those functions but the Minister still retains the ultimate responsibility and the ultimate liability and he or she will only delegate those functions if they are satisfied that the person to whom they are delegating is capable of carrying out those delegated functions in a responsible manner. Let us have no doubt that there is a difference between delegated power and just an interest in a subject. There may well be cases where someone simply has an interest in a particular part of a Ministerial function without having necessarily the legal authority to make decisions about that and nothing in this changes. Assistant Ministers now can have an interest in areas outside their delegated authority. It does not give them authority to make those decisions. So what we are doing here, as I see it, is indeed that evolutionary process. It is evolution from a system that we all, I think, accept is not as inclusive as it should be and where Scrutiny is working as well as it should into something where I believe we can see arrangements that will show an advantage. So it is a question that, I think, other people have asked: are these proposals a change for the better? I believe they are. Should we change at all? Yes, I believe we

should and if we are going to change this, I think, is a catalyst; a move in the right direction. I acknowledge that other people may have different points of view and this is a tricky subject but I fear that we are trying to find excuses where none exist. I have said that I would like to see this approach from a 'can do' culture rather than a 'cannot do' culture. As I said, although I am speaking purely for myself and I will not be here if and when this is ever implemented, I do believe this is a step in the right direction.

1.1.6 Deputy P.V.F. Le Claire:

I really do want to begin by asking the Chief Minister to please forgive what I am about to say, but I really do think that is probably the most important contribution I have ever heard him make to what is going to be, hopefully, now a more positive and 'can do' debate. Not only has he pointed out one of the fundamental failings of this Assembly this morning and yesterday but he has also, succinctly and far more eloquently than I can ever do, brought us back into the world of clear thinking. The reality is, and I mentioned it yesterday, I am sorry to say, it is clearly evident that some Members, by their speeches, have just not read this proposition and the report that accompanies it. There is just no way, in my belief - I may be mistaken but I certainly do not believe I am - that the Members who have spoken in the ways they have can hold their speeches up against the report and the proposition that we have before us today. Yes, there are issues about how we flesh-out the detail. One of the issues I would approach the P.P.C. in relation to what needs to be considered is legal advice. When we get legal advice in the future and it is a board making a decision, debating issues with the Minister and helping formulate those issues with the Minister, is that legal advice available to all the board or is it just held solely by the Ministers? Things that are important: do we need 10 Ministries? The numbers that people have spoken about; it may be that we can reduce the Ministries. I have said time and time again that I believe the Ministries can be absorbed into larger organisations but smaller numbers in terms of manpower and provide significant savings across the board; so as Clothier had indicated, between 7 and 10 Ministries. I do not believe 10 Ministries, under our current economic situation, is something that we can maintain. I think we need to start thinking seriously about merging them and, if nothing else, we should have (I will bring one myself) an "in principle" debate about that. The Chief Minister's speech, I think it was absolutely brilliant. I thought it really brought us back to the nub of the issue. Deputy Duhamel, returning to the Chamber now, stood up and made a series of points and raised clouds of confusion if not ... well, not confusion but certainly questions in relation to a whole manner of things and we had Her Majesty's Solicitor General standing up and clarifying some of the areas that he could do. There are going to be things to be worked through. I cannot stay with a system where I see the Assistant Minister for Planning and Environment, who has failed to get the head Scrutiny job, sitting where he is with no real authority or no real power other than the fact that he is recognised to be very good at what he does. I supported him and I continue to support him for his knowledge but I do not support a system that says: "No, he is not good enough to be in charge of Scrutiny. So we will make him the Assistant Minister" or, rather, we will not make him the Assistant Minister. The Minister will choose to have him as the Assistant Minister. I would like to have had a say as to which Assistant Ministers went into which Minister's department. This proposition addresses that; that way we do have an effective check and balance. I cannot agree with the fact that Deputy Southern says this will be the death of Scrutiny. I was on the first Shadow Scrutiny Panel that Deputy Southern and I and Deputy Martin formed in relation to should we move the tourism building. We said: "No, it does not seem to make sense. The foot-fall is not where it is." Completely ignored us; did it anyway. We did independent Scrutiny on the Waterfront, said it was a complete disaster. Completely ignored us; did it anyway. The migration review, the first migration review we did as a properly formed panel, Deputy Southern and myself, who had done most of the issues in relation to migration, during the migration debate the cut-off came; the guillotine motion came into effect; neither Deputy Southern nor myself were able to speak. So they took all of the work that Scrutiny had done and did not even listen to it. They refused to listen to it. This system is not working. We need to move forwards in a slimmer

Assembly with a slimmer machinery of Government into the future. There are challenges all over the world and we certainly do need to change the way we are doing things. The public and now, lambasted by the media ... I did not read yesterday's paper until I got home last night. Now lambasted by the media as to the quality of membership; criticism of the States at the moment in this Island is throughout the Island in every sector and it has probably been driven by a certain element of fear: fear for the future, fear for the fact and the recognition that the finances are starting to be affected, fear for our future, fear that people are at the helm that should not be and other people that should be are not interested and our system is failing people. I certainly do not want a ship that is steered by the rich, for the rich, going towards the rich. But I do not want the rich off the boat either. I want social issues considered, paid for and enabled by a thinking cross-section of individuals that govern our Island. I am going to ask Members to really consider what the Chief Minister said today and if they have not had a chance, rather than me sitting here and reading it out to them, Sir, through you, I would encourage Members to read the proposition because it is remarkable. All of the issues that relate to how Ministers will be held to account and how Scrutiny will function in the future are tackled under: "The role of Ministerial boards." Page 13 in case some Members did not get that far; it is all there in the proposition, in the appendix. Senator Breckon is going to be able to tackle this, I am sure, when he sums-up. Do Members believe that this is the system that we want to continue with? Do Members like the animosity and the level of acrimony in the Assembly that has been permeating for the last 6 or 7 years? I do not. Do Members really believe, with their hand on their hearts, that all of those people that can make a difference are given an opportunity to? Deputy Southern highlighted how people would delegate authority. I highlighted yesterday how I was given authority by a former Senator in relation to tobacco and how, for the first time, I was able to bring about a change. I was given an opportunity to do something and I worked with the officers, I worked with the Executive, I worked with the professional people we employ to bring about a better community and, one part anyway, a better part of Jersey. I managed to do that, if nothing else. I will rest my hat on that for the rest of my career. There are only so many other things we can do as individual Members. I have tried. I have brought some propositions based upon other Members' ideas. Depositor compensation scheme: I could not bring that to fruition. It could only be an "in principle" decision. It was not based upon knowledge. It was not based upon legal evidence. It was not based upon mature reflection.

[11:15]

I had a feeling that is what we should be doing. Thankfully, 6 months later it was something that we all wanted and needed to be doing. So I managed to get that right. But that is not the best way for us to go about things: *ad hoc* Scrutiny, *ad hoc* propositions, good or bad. We need, in my view, to adopt this proposition today. We need to move forward with the 'can do' attitude that the Chief Minister has set. No doubt Members will pick up the areas that have been mentioned already and we certainly need to take 5 or 10 minutes during the rest of this day, if we have not done so already, to read the proposition.

1.1.7 Deputy R.G. Le Hérissier:

I implicitly put my views forward. I believe that there has been a lot of nostalgia about returning to the committee system, and while I do not wish to re-embark on the very interesting discussions I held over - inconclusively it should be said - a long period of time with Deputy Duhamel, I believe he is harking back to a nostalgic age where 53 people ran and managed and governed all the details of the States. The result was, as quite clearly identified by Clothier, a system that sunk into the morass of managing detail and that much more enjoys detail. Yesterday afternoon was a classic throwback to that particular approach and keeps away from the strategic issues because it is not comfortable in dealing with them or it has not found a way in how you can get 53 people all at the same time having a constructive, meaningful and well-researched discussion. That is Clothier and I think we have to remind ourselves. I wish to deny the impression I may have given a week ago, that I have a slavish endearance to Clothier but it happens to be one of the most elegant well-

researched and well-expressed reports, whatever one may think of the contents of the report. I look at 3.4: “An effective democracy requires not just an Executive but the balance of a strong Assembly which holds the Executive to account and scrutinises its actions, as well as contributing to the formation of policy.” The point remains that not a philosophical sense of the kind of almost Jesuitical question that Deputy Duhamel has posed who is the Government but in the sense of how can you get 53 people doing that? Clothier tried to put some answers forward. One of them was that there had to be much greater clarity about the different roles that a legislature and the Executive performs. One of the major roles that we were failing in as a legislature was holding people to account and we still fail in that regard. We failed under Clothier’s analysis because we were wishy-washy. There were 53 people running helter-skelter from one committee to another, deciding often quite minor issues that could have been left to the Civil Service. That was the thrust of the analysis of Clothier as to why the committee system was sinking fast into the bog. The feeling of why we are failing now is that we have brought clarity, certainly theoretically speaking, and we had made the Ministers perform a clear role. We have given them corporation sole, which I know works to people who want a party system, it works in a very individualistic way. We do not have corporation sole married to collective responsibility but we do not get accountability in this system because, in terms of conceptually speaking, we have divided the Assembly. The Ministers look after the Executive side, we look after the accountability side but we know when push comes to shove it is impossible, because of the entrenched voting majority on key issues, to get issues like votes of no confidence through. Basically, we are stuck in the middle. We tried to move away or we have moved away from the so-called consensus system. We are having a very, very difficult birth - if “birth” is the right phrase - of a system based upon more varied views but somehow they cannot be expressed. The people who want to be in opposition or who feel there is a need for opposition, some of them have ended up on Scrutiny where they try and, perhaps wrongly, perform an opposition role. That again has muddied the waters with Scrutiny because people are accused of following personal political agendas, as I have said, of using it as an opposition forum. Where does that leave us? I appreciate Deputy Le Claire’s optimistic take but I am afraid I go back to my original point that I made in the reference back in many a debate, that I think we either revert to a committee system where we try and reinstitute consensus, which I do not think will work because I think a lot of it will prove to be false consensus, or we try and make the Ministerial system work in a better way and hope that groupings will emerge in the Assembly; not rigid party groupings, not rigid, perhaps, Left/Right groupings, because there is no doubt that rightly or wrongly - and I underestimated this totally - Clothier was predicated upon the emergence of parties so that people in groupings could exercise more influence upon the workings of the Assembly. That has not proved to be the case. We have not had, so far, the accountability which was implied or implicit in Clothier. I would love to support this because I think Senator Breckon has put his finger upon major, major issues but I am afraid I cannot go along with the analysis of the situation, that if we ended up in a hybrid of the kind being proposed it would somehow make things better. I do not think it would and I am terribly sorry to disappoint Deputy Le Claire because it would be nice to be positive about this. I think there is a future for Scrutiny. I think there has been some very good work done on it. I think we have been reminded by the likes of Deputy Vallois when she came into the Assembly that we have to be far smarter about how we handle the politics of Scrutiny. We have to push propositions more clearly. We have to examine and be much more rigorous about the responses from Ministers that sometimes drift, that sometimes lack substance and that need to be responded to in a constructive fashion. There are lots of things we can do to make it better, aside from the kind of technical issues that Deputy Southern mentioned about our questioning techniques and so forth. I am really fearful that it will entirely disappear and as the Constable of Grouville said: “We will go back to sort of quasi-committees where we will discuss matters in closed session.” Although a lot of people do not like the way we discuss matters in open session at the moment at least it is in open session. We have been slow, and I give credit to Deputy Duhamel, he tried to engage us and move discussion forward on this but there are lots of ways further in which we can look at the engagement of the public in the Scrutiny function and make it more positive.

There is no doubt that the issue of accountability hinges upon the fact that at the end of the day the admittedly nuclear option of votes of no confidence and other lesser mechanisms, so to speak, which can be used to hold Ministers to be accountable, cannot work in this Assembly given the current voting patterns that exist. That to me is the real, real paradox of Clothier. He wanted more accountability but we are still not organised to deliver it.

1.1.8 Deputy J.B. Fox of St. Helier:

No, it is not perfect but I am going to support this proposition because there is no other proposition that I have sat in the States for the last 10 years that looks as though it could move this Assembly forward and make us inclusive. I tell you why I say that, because at the last minute I went to the Isle of Man with the recent Commonwealth Regional Conference, and the Constable of St. Peter, and indeed Deputy Power from our Housing Department were there. We saw many of the principles contained in this proposition work. In the short time we were there we cannot honestly say that we saw every detail and had a chance to discuss every detail because we had other reasons for going there. But 2 of us went and went out with an officer who had a responsibility on, let us call it, the board and full of enthusiasm, full of knowledge, could be considered a brother of Deputy Duhamel in his knowledge and his enthusiasm but, at the same time, when it was not a subject that he was responsible for he was a member of the Scrutiny Panel, and that is the point and it does work, but you have got to think of a positive vein. The States ask P.P.C. to look at some of the ailments in the workings of this Assembly and I, under the chairmanship of the Deputy of St. Peter, was on the Business Organisational Sub-Group and we were supposed to be looking at how long a speech should take, having clock systems and all sorts of other things that might improve the current situation. The conclusion of the sub-group was not necessarily going to be popular, but it is broke in a lot of a bigger way, and all we would be doing is tinkering at a problem instead of moving forward to find a solution that might take a bit longer but at least would go a long way. But it was not one of these that we were going to discuss for the next 10 years, it was one that we could bring forward for the next election at the end of 2011. A consequence to that, P.P.C. put their report in and then Senator Breckon comes up with P.20. Following that we had, I think, quite a wide range: we had Senator Breckon, we had the Deputy of St. Peter, we had the Chief Minister, we had Deputy Vallois - have I missed anybody out - that sat on this group to look at here. This is not in principle debate. Yes, we have heard from the Crown Officers - the Solicitor General - this morning, but if the argument was that we should have had the legal information at this sub-group stage while it is a discussion, I suspect that some of the Members here would be screaming about wasting the Crown Officers' valuable time before the matter had come to the States so that you could all have your opinions and I could have my opinion. That is what today is all about. You might not agree with the individual things in the report but we have been told countless times: "It is not what is in the report that is everything, it is the proposition." Reading the report is important but reading the proposition is even more important. This is a principle that we are debating. No, it has not got all the detail. We do not know all the detail yet because it has not gone out for discussion. It has gone out to a sub-committee to look at it. I think there is merit if we intend to try and make this States for the future inclusive and better than what it is. I am one of the few in this States that has sat on the committee system; I was a vice-president, I was a member, *et cetera*. I am now on P.P.C. and I was an Assistant Minister in Education. I have had a pretty good round robin of it and I do not sit on fences, I am giving it straight out. I recommend and I hope that this States will, as we have just heard from Deputy Le Claire, look at it in a positive vein, looking on the way forward and what we have heard from the Chief Minister of course and others, that we accept this as a principle that we look at a broad church with the P.P.C., which I am on, bring other people on board so that we have an even broader church and then bring it back to the States and let us see what you think about it then. But give us the opportunity to move forward or do you want to carry on the way we are now? I do not think so. Thank you.

The Deputy Bailiff:

Deputy, as a matter of order, I did not want to interrupt you while you were in full flow, before you sit down as it were, the proposition does incorporate part of the report in the sense that it incorporates the annexes as the briefing instructions to the Privileges and Procedures Committee. I just thought I would make that point for the benefit of the Members.

[11:30]

Deputy J.B. Fox:

Thank you, Sir.

1.1.9 Connétable J.M. Refault of St. Peter:

I stand with some great disappointment at the moment because literally 2 minutes ago we were at the crossroads of a possible change to the way this government is working and yet there were only 30 Members in the Chamber, I wonder where the other 23 are; a very important time for the future of this Chamber and the States and Jersey as a whole. Anyway, coming to the point of why I am standing is that following Deputy Fox, and obviously Deputy Fox and I have witnessed a broadened Ministerial system working in the Isle of Man. They are very content with their system, they are very enthusiastic, they are very well informed and they are very well engaged. It is a totally inclusive system; they encompass many roles, both within the Ministries and within Scrutiny, and they are delighted with that. We were delighted to have been given the opportunity to see it working. Talking about Scrutiny; there has been a lot of mention about Scrutiny and referring to my fellow parishioner, Deputy Le Hérissier, talking about Scrutiny has not been working well but we can make it better. If that is the case why has it taken, in my time, 2 years to do that and probably a full term before that? Why has it not been made better yet? Is it because there is not the will or is it because there is not the scope to make it any better? Again, as a relatively new Member, 2 years into my first 3-year term, the mood in the Chamber is not generally a good mood. The dynamics in the Chamber are aggressive and they are confrontational. That is not good for government. It is not good for Jersey. What is it like for people thinking about coming to Jersey? If they are listening in to Jersey radio today and thinking about: "I wonder what they are talking about in Jersey today?" and they hear the sort of things going across the floor. How does that influence people to come here? We could say: "Well nobody is leaving so it must be all right" but we do not know how many are willing to come because we are sending out the wrong message and the wrong image. Coming to the proposition itself; thank you for pointing out, Sir, that the annexes are contained within the proposition itself. I had missed that when I requested a point for clarification. But when I look at the proposition I consider that it is really a planning application. It is going forward to get approval - planning approval - to move forward and I still see a tremendous amount of work to be done on the by-laws, the regulations and that one needs to come next. Unfortunately, in the landscaping, as Deputy Le Claire reminded me, that the important thing is to show commitment to recognise that what we have got is not perfect and to recognise that we can possibly make it better and in the Chief Minister's words: "Let us be a 'can do' government here and see what we can do and try and moving the thing forward." I would just like to pick up the comment of Deputy Le Claire, as he was talking about consolidating Ministries to make a smaller number of Ministries and broadening them with Assistant Ministers. There are some potential opportunities in there for this Chamber to show some lead and actually reducing numbers because if there were not so many Ministries and so many people required to run this government, then perhaps this Chamber itself could make some savings, some cuts, that people out there in Jerseyland want to see us doing. Perhaps this is another way that can be seen as a seed towards looking at these opportunities to, at the same time, improving government, is saving money at the same time, which is what we are telling everyone else to do. Come on, let us do it as well. Thank you.

1.1.10 The Deputy of St. John:

A lot has been said this morning from Members who do not want change or who in fact want an alternative type of government with its party politics or an alternative. I think this is a step in the right direction. It is only a step because I think over the next 5 or 10 years we will be having a number of alterations to our Government to get it right. Since my return to Government I find that the Government in Jersey is in 3 parts: the Ministry, Scrutiny, and Members who play basically no part in Government. This is a big worry, not only to me but to many of the people I speak to out in the street. We had a committee government for generations, it was slow but it worked and 7 or 8 years ago we decided to move to a Ministerial government. I hate to say that the current bit of Ministerial government is not working as it should. I am not saying it is totally broke but it is not working as it should because decisions are taking equally as long as they did then and being overturned. What I want to see is some clear leadership. We need leadership that is going to take us through these stormy seas that we have at the moment into calm waters. This can only be done by working together in teams. Yes, where Scrutiny does not have to be at each others throats and trying to put up an opposition, we try to be constructive. Yes, I can be an awkward chairman when somebody comes up to give evidence but, at the end of the day, I believe that with my fellow members on any panel we are getting good results out of the work that Scrutiny is doing but that can be improved. I believe that it can be improved in possibly the way that is being suggested. I do not like what I am seeing with the distrust across the Chamber from both sides. I see Members here doing this to a Minister. I do it to a Minister at question times but he knows there is a jest in it. But when I see the venom coming from some Members that is not jest, that is venom because that person has not been getting his own way and it becomes a 'them and us.' That is a real sorry sight to see in this Chamber. I have sat through 2 or 3 low periods in this Government, not this particular Government, but in my term over some 15 years. There were times where we had 2 Members over those periods of time who were very destructive and they were very low periods in this Chamber. I am pleased that at least I am not seeing that at the moment, but I do not like what I see in the way that Members deal with each other in the Chamber and outside. I can leave what I say in this Chamber and go out and have lunch with the person I have been chastising across the Chamber. We can go out and have lunch together and have a laugh and joke, whether it be the Chief Minister and myself or some other Member of the Chamber. As far as I am concerned the public see that and they think: "Well, at least we have got some people who leave their problems in the Chamber" but unfortunately quite a number of Members will not do that. They feel that because they have this axe to grind that they have got to keep on grinding the axe continually, week on week, month on month, year on year. It starts breaking government down and that is not a good thing at all. Back-Benchers, whoever they may be... and as an Assistant Minister, when I go to the Council of Ministers, as a chairman of a Scrutiny Panel, I will see them sitting outside and I think: "I would have thought possibly they could sit in", and it may happen but not when I have been there. They could sit in at the Council of Ministers at the back and be part and parcel of the bigger picture within the Council, not passing comment but just, shall we say, learning the job. But that is not happening and has not been happening when I have attended the Council of Ministers. Some other Assistant Ministers in fact have told me that they do not really know what their position is. That is of concern if there is an Assistant Minister who is not being used to the full, we see it at the moment, shall we say ... In fact I was asking the Minister directly behind me this morning how much work his own Assistant Ministers, within the current debate within Education, are taking some of the responsibility on their shoulders and going out and meeting parents and the like? They may be but I am not seeing it. The emails we are getting, in that particular scenario, are directed to the Minister. There has been no mention that the Assistant Minister will partake in that debate. We need to see a much closer working relationship where everybody carries a bit of weight. If you ask somebody to assist you I would expect that if there are going to be meetings, like possibly the Town Hall on Wednesday or Thursday on that particular one, that somebody goes along, but I am not going to get involved in that one any further. It is time we all started pulling together. Just think you are in a rowing boat and you are only pulling on one side and you finish up going round in circles: that is what we have been doing for the last 5 years, going round in circles. Everybody

needs to get on the oars and make it happen. I think at least with this proposal from Senator Breckon it is a way forward. It might take us longer than making big decisions but if, in the next 5 years, we can move on to possibly putting more amendments to the Government, and I hope P.P.C. will listen to this, and really consider looking at putting a second Chamber in place. Because unless we are going to have party politics or a second Chamber, I cannot see us going forward in leaps and bounds and putting the right things in place for our children and our grandchildren. If P.P.C. can come back with some more reforms and all of us give it some serious thought to the second Chamber, where you would have elected people in an honorary capacity going over the work that this Chamber is doing and kicking it back down to us if we have not done our job right, as happens in other jurisdictions, I think a lot more work needs to be done in where we want to be in 5 years' time or 10 years' time. But I believe everyone here owes it to the people of Jersey to work together. I really mean work together because if we have people who are not involved in government, and I can look across the Chamber and the Senator's benches and the like, we do need everybody - whether it is Senators, Deputies and Constables - who are not active in government at the moment from one side of the Chamber to the other, to put your shoulder to the wheel and in the next 12 months let us start making things happen. By adopting this we could probably hopefully put shadow boards in place just to see if we can get things going, if we adopt this today or tomorrow when we are finished this debate, and let us see if we cannot move forward and do what is right, what the people out there in Jersey want us to do. At any one time nobody is happy with the Government they have but at the moment they are very, very unhappy because on top of the recession and everything else that goes with it they do not believe that this Chamber is working. We are admitting it ourselves. We have had the Chief Minister admit it: that is his own words. I think most of us in here, if we search our hearts, we know there are a number of areas that need reviewing and amending. By doing this, this is not the full answer but this is part of the way forward. The other system or the system we have at the moment is somewhat dictatorial in what happens. If we can move away from that, in part by putting in boards, that with time will become respected.

[11:45]

I am sure amendments will be brought over the next few years and once they are in place for things to be improved then we can move forward. But unless we are going to work as a team to make it happen and not all be negative, and I am sorry if people want to sit on the fence but some people are negative. Let us be positive and see if we cannot sail our ship into calm seas because the stormy seas we are in at the moment are a problem. Let us be positive. Thank you.

1.1.11 Connétable M.K. Jackson of St. Brelade:

I have to admit I do not particularly like these debates which I and others I think just consider navel-gazing, which I do not think is terribly productive. But on first reading this proposition really is quite appealing because it would bring into play a collaborative view and could assist in making policy more efficiently passing through this Chamber. It is clearly perceived by some that the democratic debate which has taken place here in the past frustrates the implementation of policy, and this is construed by some to be negative. I differ in that I consider this to be the place where challenges to policy need to be put up in the time honourable way. We are still in relatively early days of Ministerial government and the development of the Scrutiny function and there are instances where the system is working well. There are clearly areas where Scrutiny has moved from being a critical friend to just plain critical. My perception is that this is simply a question of the personalities involved and does not necessarily need to be a prompt for a change in the system. We have been made aware that the old committee system did not work, and I am apprehensive that this proposition is erring back to the old ways. Can there be any certainty after one of the proposed boards has discussed policy or strategy in a department that there would be a guarantee of support here in the States? There are always some with polarised views, as we well know, and I am certain that any contention within boards would simply find its way here and only serve to frustrate what is

now really quite a simple process. It must also be noted that while the Strategy and Policy Group could be beneficial there is notably the thought that there could be a considerable additional load on the department in terms of administration which presently is not required. There have been, in my view, difficulties with those in the Executive not working with Scrutiny, probably simply because they have never been involved themselves. We have not really completed the transition period between the committee system and our present Ministerial arrangements. I prefer to see the present system evolve for a further period, maybe with tweaks but not quite so fundamental as that being proposed. I can see merit in a wider spread of responsibility in the larger departments, such as Health and Education, but it could be said that both these departments almost have a board in that they have a Minister and 2 Assistants, making 3 already. The question has to be asked, are they working any better than this as a result of it? I do not believe the smaller departments will be better served by the proposals in that the present challenging Scrutiny Panels will, in effect, be replaced by what could be regarded as a cosy compliant board. This may be nice in all truth for a Minister and will satisfy the philosophy of finding States Members something to do but does nothing, in my view, for the public in terms of added value. The present system of Ministerial decisions is, to my mind, transparent in that supporting papers are downloaded and made public. I am not clear whether or not the proposed board minutes will be public; the old committee minutes, I am given to understand, were not. I have, during my term of office, created sub-groups and panels, committees, boards, call them what you will, to consider various issues where I felt that additional input would be beneficial. My invitations to States Members for input in these areas has been based on their experience and interest and the perception from me that they will add value to the decision making process. This has worked for me and I would respectfully suggest that my Ministerial colleagues, and myself, need to continue to use States Members to their advantage and thus render this proposition superfluous. Having said that, if this debate stimulates further inclusive activity, such as I suggest, then I would see it as being successful in involving the Ministerial government in a better way. The financial and manpower implications, as is now apparent, have been somewhat understated and this does concern me. I would thank Senator Breckon for bringing this proposition, which I am certain will sharpen minds but will not, I believe, bring desirable results and I therefore cannot support it. Thank you.

1.1.12 Deputy M. Tadier of St. Brelade:

I was just talking to my colleague on the right and we have noticed that, quite interestingly, the previous Chair started to refer to certain individuals by their title as Minister rather than necessarily by Deputy, Senator or Constable, which you can do. I think it is important to note that because it highlights again the idea of who the Government is, the idea of sole responsibilities. That was just a note that we have made, which I think is pertinent to mention at this time. I want to address a couple of issues: first of all I think certain Members need to wake up in the sense that we have heard a few Members complaining about the mood in the Chamber that has become too confrontational and too aggressive. Certainly no one wants to see unnecessarily aggressive politics but I would say that is politics. If you do not like the nature of it then get out of the job. Certainly I know that the Constable of St. Peter did come on a trip for new Members to a question time in London at the Houses of Parliament and if he wants to see something which is truly confrontational and possibly overly-aggressive you have a completely different system there. But that is politics and it is quite right that we have robust debates. Politics is about conflicting ideas and conflicting ideologies. When I hear these platitudes about the myth of consensus politics, and that we are in the same boat and we have got to paddle and all pull together so that we are going in the same direction; well, I am sorry, if I do not agree with the direction that the boat is going in I do not want to have any part in that particular boat. In fact what we should be doing is having a different boat and try and get as many different politicians in that boat as possible and then let us see who gets to the goal that we are all pulling towards together first. That is called party politics and that is essentially what we need in Jersey. We are fiddling round the edges here because we are trying to mend something which has not been implemented in the first place and 10 years later on from

Clothier we have put in some of the less democratic parts of Clothier, the Ministerial government, and we have not done the rest. We are wondering now why does it not work. Then you get brave efforts like we have seen from Senator Breckon here trying to make a system, which certainly does not work as well as it should do, better but unfortunately I also feel that it does not address the underlying issues. I think the changes that have taken place do suit themselves to party politics and certainly that is what Clothier had in mind, I would say. There are a couple of problems that I do have with this. Initially I treated it very much with an open mind, and I do have to say that the dynamics of a committee system or a small group of politicians, whether they are like-minded or not, sitting round a table can and often does end up in a more productive outcome than simply the entrenched positions which you see on the floor of any parliament. That is probably logical because you want more relaxed surroundings. You are in a position where you probably treat each other with more respect; you are all sitting on the same level. You are more likely to listen to an idea and a good idea is a good idea wherever it comes from, is the old adage and I still stand by that. But unfortunately I do not think that this proposition will achieve this. I suspect what will happen is that you will still have the sole responsibility of the Minister and that Minister will probably, through all intents and purposes, keep the real power for himself, in this case. I really think that it is just going to be for ego-stroking. You are going to get Members of the Assembly who are going to be offered a position on a panel and it is going to say: "Would you like to come over here and you can have your little pet project, which you may or may not be able to make any progress with? Essentially you will be kept out of the Scrutiny function in any meaningful way because you will not really have the time or the capacity to look objectively at policy formation. By the other token you also will not really be kept in the loop because probably all the important information will still be kept for those who are in the know." On page 4 of the report it talks about the fact that the present system is not working well; we need a more inclusive system of government. This was felt by the working party to be the general consensus among States Members. This may or may not be the case but even if it is that does not necessarily mean it is a systemic failure. I think it is simply because information is not shared in the way it should be. We do not yet have an ethos of accountability and transparency to the extent which we should have. We also do not necessarily trust other States Members with the information, possibly because they might have access to the same information but come to different conclusions and we certainly could not have that if we want to keep our power base selfishly guarded for ourselves. Another issue I have is that although there are clearly issues with Scrutiny and it has been addressed a lot more eloquently, I believe, by Deputy Southern than I could do it... and that is because of his experience with the system, clearly this proposition will decimate Scrutiny. There is no 2 ways about that. You can either think that is a good thing or not a good thing but let us do the maths on this. If I understand correctly you cannot be a member of a board and a member of Scrutiny, that is what it says in the report, unless it is your own board, okay. But in reality I think what is going to happen, certainly for my part, and other Members have said that, is that if you are on a board you are probably not going to have much interest nor any time in being on Scrutiny. Certainly that is the case if you are on 2 boards, you would not have any time. If we do the maths, and let us say there are even 4 States Members on 10 boards, and let us say they are spread out with 2 people on each board, you are going to look at at least 20 people on the board. Again, you are going to have 10 Ministers and that is going to leave a minority of members. It does say in the report that, effectively, the Troy rule, which requires less to be in the Executive than in the non-Executive, will effectively be disbanded. That is not something which should be done lightly. That was put in place for good reason because under this system we need to make sure that there are more in the non-Executive than in the Executive. You are really going to get people who are simply not in the club, which is kind of what you have got at the moment. The Select Committee system in the U.K. works slightly differently because you have 650 M.P.s (Members of Parliament) there and the makeup of Select Committees reflects the makeup of Government. If you have, let us say, a 50 per cent Conservative Government then you have 30 per cent Labour and 20 per cent Lib Dem, those are not the actual figures, that would be reflected in the Scrutiny function in the Select Committees

but in Jersey it is completely different because the Scrutiny function must necessarily be made up of those who are not in government. Because those in Government currently tend to have one political ethos, that is quite normal and certainly would be normal under a party system, but under the current covert party system that we have it is obviously normal that the opposition Members would not be on the Executive so they will have to be the ones in Scrutiny. That is already a problem because it means that Scrutiny, if it is not careful, can become politicised, but it will become even more so under these proposals because you will have simply the ones who cannot get in to the Ministerial boards and so Scrutiny will not be balanced. I do not think I need to say any more because I think the legal issues and the problems of this proposition have been flagged-up. I am sure that Senator Breckon will be able to give partial reassurances in his summing-up, but I suspect as things currently stand I have not had enough reassurances. I would simply say that I think we have all agreed that, contrary to the Chief Minister's comments, the Council of Ministers is working well. We all agree that there is definitely room for improvement on both sides of the House, both in the Scrutiny function and in the Council of Ministers. I really think we just have to get real.

[12:00]

Until we have a system of government whereby people can choose a policy direction *en bloc* and that a Council of Ministers can be appointed either by having an absolute majority in a party system or a coalition system, that there will never be any kind of real accountability and we will just be navel-gazing and chasing our own tails for the next 5, 10, 15 years until we get down to the nub of the problem which is representation, proportionality, making sure that the views of people outside are expressed correctly through the ballot box in a meaningful way, otherwise we are all wasting our time.

1.1.13 Deputy C.F. Labey of Grouville:

I enjoyed Deputy Southern's very amusing account of his time on Home Affairs and how things work there. I think what was demonstrated in his speech was how it worked, how the committee system worked, how people were delegated certain functions and how they were responsible for them. I think that is probably what is missing here, the responsibility, Members taking responsibility for different issues. If he had not had that experience he probably would not have learned how things worked out in the country, so I am sure he will regard that as a sort of beneficial experience. I would like to thank Deputy Duhamel, who I think probably gave his best speech I have ever heard him give in this Assembly, which I feel got to the nub of the issue and that is what has been lost in Ministerial government is the fact that this Assembly is supreme. That has now been delegated to the Council of Ministers behind very tightly closed doors. I would have to disagree with Constable Jackson that the system we have now is far more transparent. Yes, things are minuted but unfortunately the 'Part A' agendas are not worth the paper they are written on and everything is on 'Part B.' The transparency, I am afraid, just simply does not exist.

The Connétable of St. Brelade:

Could I ask the Deputy to give way?

The Deputy of Grouville:

Yes, of course.

The Connétable of St. Brelade:

My point was really towards minutes in committee meetings or within departments. As I see it, the Council of Ministers are a complete separate entity but my point was that Ministerial decisions at present are publicly accessible.

The Deputy of Grouville:

Whatever has been raised about the possible problems with Senator Breckon's proposition, I feel is nothing compared to the system we have now. We have a closed shop. We have a clique. The power base, as I said, is behind firmly closed doors. We have disenfranchised Members and by dint of that we have disenfranchised members of the public and they feel it. We have civil servants acting for their Ministers but by acting for their Ministers they have unprecedented assumed powers whereby they deny elected Members certain pieces of information which, in my opinion, simply cannot be right. We have a Scrutiny system that will not be broken by this proposition but was, in actual fact, broken last week in the decision that was made here. **[Approbation]** In that decision Scrutiny members' work was deemed worthless and not worth waiting for because some States-formed quango denied Scrutiny the information they were waiting for and thus, the Scrutiny Panel was unable to complete their work. This Assembly chose that that piece of work was not worth waiting for so Scrutiny was deemed worthless last week, that was when it was broken. We have a confrontational atmosphere which is not pleasant to work in. Senator Breckon has indeed proposed a hybrid. It is not perfect, I am sure, and I would like to thank the Solicitor General for explaining some of the tensions that he foresees possibly with the Ministers and their panels. But, in my opinion, this is a step out of what we have at the moment because what we have at the moment is not good. It is not good for us and it is not good for the public. I can say that I have worked in the committee system, I have worked as an Assistant Minister and I work on Scrutiny. I have enjoyed working in all those areas and I have gained a lot of experience but if this Government is to serve the Island, the system that we have is not the right one. I will be voting for Senator Breckon's proposition because I think, like the Chief Minister, it is a step towards getting something else. Not perfect, and I am sure there will be certain other propositions and amendments in the future, but I think it is a step forward nonetheless.

1.1.14 Deputy S. Power of St. Brelade:

I rise in acknowledgement of Deputy Duhamel's reference to me earlier this morning. I have to say that I thought the tone of this debate was going to be slow and almost turgid and boring but the speeches of Deputy Duhamel and Senator Le Gresley and particularly Deputy Southern, have made a big difference I think to this debate. In actual fact I think it has galvanised Members to speak a little better. I preface my speech today by saying that a large part of my concerns on P.120, on this report and proposition, are to do with the future of the Scrutiny function as we understand it to be, and I will deal with that in some detail as I progress. I was glad that Deputy Duhamel asked the Solicitor General the question he did because had he not done so I would have asked exactly the same question and I had the same concerns. That was how we deal with the tension that might exist between Ministers and their boards and the use of the word "significant" because I had problems dealing with that. I think the Solicitor General's speech was very clear in that he confirmed the legal status of a Minister as corporation sole; he confirmed that in his view there could be friction in the entity between the board and the Minister; and he then said that the interpretation of the phrase "significant decisions" was problematic and could be open to interpretation, and I have the same concerns. As I have said many, many times before in the last 5 years, I do not enjoy these debates, and I think the Constable of St. Brelade referred to navel-gazing, and these debates do seem to come up with regular monotony. But I do want to talk about Scrutiny and I want to talk about the Scrutiny function. As some Members will realise I spent 3 years on Scrutiny and I enjoyed my work on Scrutiny immensely. I was a new kid in this Chamber and I had an awful lot to learn. I accepted that if you are coming into the Chamber and you are asked to do something, you do it to the best of your ability and I did try between 2005 and 2008. While I was on Scrutiny I had no aspirations whatsoever to do anything else. So, for those 3 years I worked on Scrutiny and also, as Members will remember, the Planning Applications Panel and it was quite a significant amount of work. But I have to observe this morning that between 2005 and 2008 the Scrutiny function, for whatever reason, operated differently and, in my view, in a more principled way than it does now. I am not criticising all members of Scrutiny on the 2008 to now group, I am making that observation. It is an observation more than a criticism that something has

changed. I have to say to Members that when you compare working on Scrutiny and being a Parish Deputy, and in my case being on the Planning Applications Panel, there was a set of demands on your time and on your stress levels. But I can say that being on the Council of Ministers is far more difficult than being a Parish Deputy, a Minister or being on Scrutiny, and I define the difference between on the Council of Ministers and being a Minister. As Members will know I did not plan to become a Minister this term, circumstances happened but I have to say that of the Council of Ministers 4 Ministers have been on Scrutiny for 3 full years and they are the Deputy of St. Ouen, the Deputy of Trinity, the Constable of St. Brelade and *moi* and I have to look back. I took some time to look back at the work of the Scrutiny Panels between 2006 and 2008 and I have to say that there were some fantastic reports done that directed the work of this Assembly. The results and the interpretations and the recommendations of those reports and those reviews were incorporated within the work of this Assembly afterwards. I just want to identify a number of reports that I think were important in 2006, 2007 and 2008: the “*Age of Consent Review*” was a really important one that went forward to a debate in this Assembly; “*Designer Homes*” under Deputy Duhamel had a big input in the Planning Department and in the current evolution of room sizes and every other aspect of planning process; we had “*Waste Recycling*”, which is another one that I worked with Deputy Duhamel on, and we had the one that I chaired, the “*Review of the Social Housing Property Plan*.” As I have said before, I have now crossed the Rubicon and I am dealing with the results of that as the Minister for Housing. There was another very important report which was the “*Phone Mast Review*”, which was a highly controversial period of time in 2007; the “*Sale of the Former Jersey College for Girls*”, led by the Constable of Grouville, and it came out with some incredibly relevant recommendations; “*The Planning Process*” under a former Deputy from St. Clement; the “*Overdale Review*” under the Deputy of Trinity. All of these reports were relevant and were incorporated into some work that was done here in the Assembly. I also note the statistics between 2006 and 2008 and 2008 and now, I think there were over 40 Scrutiny reports completed between 2006 and 2008 and to date, from the beginning of 2009 and now, there are just about 20. The productivity of the Scrutiny process has diminished to a certain extent and - I do not know why - the quality. I would say to Members that my own work on Scrutiny in those 3 years, I think that colleagues who were on the Scrutiny process in those years would say that we did put principles before personalities, and that was an incredibly important part of our work. We did put the principle of the Scrutiny process first. I have to say also in this Assembly that we were bashed from time to time by Ministers who did not like what we said. I am not going to be specific about what Ministers were difficult to work with but they were but we worked diligently, we worked with a degree of professionalism, and with a degree of integrity and we produced these reports. I think we need to remind ourselves, whether you are a Minister or whether you are on Scrutiny, that the principle of what we do- whether it is a Minister in charge of a department or whether you are a Scrutiny chair or whether you are a member of Scrutiny - that the principle of what you are doing is important. What is important is that the work you are asked to do at that particular time is carried out to the best of your ability, and sometimes I feel that that is not happening at the moment. Deputy Le Claire made a reference yesterday to Ministerial silos in one the amendment debates and I find it unfortunate that there is a tendency within the Assembly and within the media, to a certain extent, that one tends to generalise about the Council of Ministers as distinct from individual Ministers.

[12:15]

I have to say that within my role as a Minister for Housing I do not believe in the silo principle. I do not believe that there is a silo called the Housing Department or the Minister that is responsible for housing law and I know that many colleagues here today that have contacted me, both as an Assistant Minister and as a Minister, have come to the Housing Department or to the Housing Law Office, and have gotten the information they needed, and if there is somebody out there, if there is a colleague that has not received that information, I challenge them to say that now.

Deputy P.V.F. Le Claire:

Can I ask the speaker to give way for a second, please. I really cannot recall in my speech yesterday talking about silos, maybe he has mistaken me for someone else and, if I am mistaken, I will check on Hansard, but I really do not believe I mentioned this at all.

Deputy S. Power:

We will both check on Hansard, silos, not silage. **[Laughter]** It may well be that, in the many references made to the Council of Ministers, I think it has to be said that some Ministers are willing to work with Members perhaps more easily than other Ministers, but I do not have any evidence of that. All I know is that I try, and I really try, to work with colleagues when they have a request of me either as Minister for Housing or in charge of Housing Law. We discussed this at Council of Ministers and I expressed my concerns about the Scrutiny function and, to be honest with you, I said then, and I will say now, that I have reservations about what this report and proposition is going to do to the Scrutiny process. I am not clear in my mind at all as to how these boards will work, and I think the Solicitor General has clarified my thinking on that, and that the Minister has co-operation so, and then other than that I am not quite sure what the boards could bring to the table. This Minister would be certainly willing to share information and ask a possible Housing Board to sit in on a policy meeting monthly, plus whatever, but I do not know, and I think this is an important point, I do not know how the adoption of this proposition will deal with the tension that is now in this Chamber, and I do not know whether that is the personality of the combination, the collective personalities of the Chamber, or what is going on. Deputy Higgins asked a really relevant question yesterday and I might link this to the 2 examples the Solicitor General gave. Deputy Higgins asked in oral question 4 yesterday: “Will the Chief Minister give an undertaking that, if Senator Breckon’s proposition is accepted, all Ministers on the respective boards will give unrestricted access to all information that is available to the Minister of each department and to all civil servants and, if not, why not?” I give a specific example of where that might cause me a problem in the Housing Department. In the Housing Department we have a computer system called Saffron, and what it does is record the details of all our tenants, their addresses, their ages, the ages of their children, the names of the children; it records whether they are in rent arrears; it records the length of time at that address, the family details, the head of house, and so on. Now the previous Minister for Housing, Senator Le Main, and Deputy Hilton to my left, never asked to have access to the Saffron system, and when I was an Assistant Minister I never asked to have access to the Saffron system, and indeed the Constable of St. John, my Assistant Minister, does not have access to the Saffron system. So, in that situation, I would say that, were a Ministerial board to be empowered, it would be inappropriate for Members to have access to that information, because we let the officers deal with it on a day-to-day basis, and, if there is a particular issue with a particular tenant, or a particular problem, whether it is a credit issue, whether it is a child protection issue, whether it is an anti-social behaviour issue, it is the exception that is brought to our attention and not the general detail. So I would say in that particular situation it would be inappropriate to make all that information available to a board. I ask another question. How many States Members would volunteer to go on a Planning Board, because as far as I am concerned the Planning Department is regarded as a poisoned chalice. The people that are putting their hands up already are on the Planning Applications Panel. **[Laughter]** My concerns therefore are that there are many, many unanswered questions and my view is that this process, and I think Deputy Southern has elucidated very clearly that, if you are on one or 2 Ministerial boards, that could absorb up to between 45 and 50 States Members, including the Executive, and I cannot for the life of me see how any Scrutiny function could ever work on that. I am taking the Housing Department through a very complex process at the moment, which is examining the work to be done to prepare a report and proposition to come before the Assembly on moving towards an association status, and all the associated regulatory framework and legal stuff, and I want the Health, Social Security and Housing Panel to come with me on that and examine the work we are doing. In this regard I had a meeting with Deputy De Sousa this week, I know she is not here today because she is unwell, and I explained to Deputy De Sousa at the Housing Department how important it was that we brought the Housing

Scrutiny function of the H.S.S.H. (Health, Social Security and Housing) Panel to the work that is being done. To give an example of the work that is being done, there are 102 different areas of work within that move. So, in my view, this report and proposition will effectively end the Scrutiny function that I love and admire and that I spent so much time on in the previous 3 years, and I cannot accept that. I feel that, whether it was the role of the Centeniers in the Magistrates Court, or Early Years, or whatever, it has been an effective research and productive tool, and I am not happy to see it be terminated in this way and I have difficulty accepting what States Members are saying; that it could carry on afterwards, I do not accept that. What else do I want to say? I do not think there is an awful lot else I want to say, no. Finally, comments have been made about the power vested in individual Ministers and the Council of Ministers, and a lot of criticism has been made about that Ministers do not share power, do not share information with those that are on Scrutiny. It may very well be that some Ministers perhaps need to engage and communicate better with other Members of the Assembly, and sometimes they feel blocked that this is not able to happen because of the advice they get from some of their officers, and I think that may be an issue. I know finally that there are at least 4 States Members - maybe 5 - that have a specific interest in the work of the Housing Department and my work on Housing Law, and, depending on the result of this debate today, I would be happy for those 4 or 5 Members to come and sit in and see the work of what we do at the moment in terms of policy meetings and the association work, to get a better feel for it. So, that is all I want to say. I cannot support this proposition; I fear for the future of Scrutiny and I do not think that this has been thought out in the way it should have been.

Deputy G.P. Southern:

Can I ask a point of clarification of the Minister. Could I ask him why he approached a member of my panel about H.S.S.H. business, and not me as Chairman?

Deputy S. Power:

That is very easy to answer. Deputy De Sousa came to the Housing Department on another matter, which was to do with a constituent of hers, and in a course of a cup of tea we discussed that area, it was nothing to do with a lack of respect for your role as the Chairman, it was the fact that Deputy De Sousa was in my office.

1.1.15 The Deputy of St. Mary:

I think it is, to make a preliminary remark, good to see a full House nearly, it is not always the case in debates. **[Laughter]** Well the first has just left. But that is quite right and it is an important issue, and the reason I start by saying that is that one or 2 Members - 2 Members I think so far - have talked about navel-gazing, and I really have to disagree with that comment and what underlies that comment, it sounds like, I have to say, a quasi piece of playing to the gallery, but these things are really important. Process drives outcomes. That is what this is about, it is about process, and if you have your processes wrong you will get the wrong answer, you will get the wrong decision. The key question about all this, this kind of proposition, is, will the right decisions come out, and taking a leaf out of Deputy Le Hérissier's book, I quote Bismarck - I think it was Bismarck - who said: "Politics is like a sausage machine." So what matters is the design of the sausage machine, because, if you design it right, clearly you are going to get better sausages, better decisions. I think we should all be grateful also to the team who put hours of work into this report and proposition, notwithstanding some of the things that I will say later about its shortcomings, but nevertheless it has performed a useful function. We are now looking at how we decide things, and, as I say, the question is how to make things better and how to get the right decisions. Before I really begin, I think I do have to say a few words about this issue of the annexes and the way the proposition is constructed. As the Speaker ruled - the previous Speaker, not the one who is sitting there now - in response to Deputy Fox, pointing out quite clearly that Annex 1, and I think it is Annex 3, are part of the proposition, and in subparagraph (iv): "The Boards will operate in accordance with the

procedures set out in Annex 1 to Appendix 1.” There is no Appendix 1, so I take it that means Annex 1. In subparagraph 5 ...

Connétable J. Gallichan of St. Mary:

Can I just clarify for the Deputy, there is indeed an Appendix 1, it is on page 4.

The Deputy of St. Mary:

I beg your pardon, the whole thing is Appendix 1. All right, that is fine. But Annex 1 is how the boards will operate, and in subparagraph (v) we have: “The Scrutiny Panels will be established and will have a system of operating as set out in Annex 3.” I do have a real problem with that, I will come back to it at the end of my speech, but it is important to say it at the outset, because we have been told that: “Well we will come back to all this later and we can deal with the details.” But there is a real problem that Annex 1 and Annex 3 effectively say how it is going to work, and I see the Chairman of P.P.C. nodding vigorously, and in fact, as someone I think said yesterday - it might have been her - that: “We have worked through this and done the work up front and that is why Annex 1 and Annex 3 are there.” Well yes, it is helpful to have a view of how it would work, but it should have been presented as that I believe; it should have been presented as: “And it might look like this.” But it has not been presented like that, it has been presented as: “If you vote for this, it will work like this.” That is a real problem. Senator Le Main said yesterday, interestingly, in one of the debates on the amendments, he used the phrase: “Come back for input.” In other words, come back to Members for input as we go through the process of turning this proposition into the reality of what might happen under paragraph (b), which says: “To charge P.P.C., in consultation with the Council of Ministers, to take the necessary steps to bring forward the necessary legislation to give effect to these changes.” Now, in that sentence, there is an awful lot of work, there is a lot that needs to be done, and Senator Le Main talked about coming back for input, but the problem is that Annex 1 and Annex 3 have already said how it has to be.

[12:30]

I think there is a real problem; I hope that the proposer tackles that, because it is absolutely key that it is already tied down. The key thing that is wrong is Annex 3 and the way it tackles Scrutiny, and I will come back to that later, but I just wanted to make sure that people realised the importance of this Annex 1 and Annex 3. The key issue around getting things right is that first of all it is a big issue, and my goodness we have some errors and mistakes to look back on, not with pride, and that is the issue, is it not, how we can avoid these disasters: child protection; the serious case review, what that revealed; Family X; we have the suspensions; we have the toxic ash dumping; we have Fort Regent and the saga of the Waterfront pool; we have the incinerator - coming to the bigger issues - the incinerator; population; and the backlog, this incredible backlog that has been allowed to be built-up over the years. That is the kind of decisions that we have to get right in future. How do you get decisions right? The first requirement that goes right through getting decisions right is genuine open consultation, really listening to stakeholders, including States Members, but not only States Member. You have to define the problem correctly and there are issues around that. Defining the problem; that is the very first step. How often do we do that? Then alternative solutions; what are the possible ways of dealing with the problem. Then you have to evaluate. Then, if necessary, you bring in experts, and all the time you are taking feedback, and then finally the Green Paper, the White Paper, and the decision on the floor of the House. Now, I mention that because, to start with, in this proposition, we need to know what the problem is, and Deputy Duhamel had a good stab at his idea of what the problem was, he said that the system itself places divisions between us. He said: “It is not a case of mistrusting Ministers”, and he said that: “The structure led to the animosity.” Well that is his definition of the problems; I agree with some of that. But, if we look at the definition in the proposition, there is not a statement of what the problem is really. There is not an analysis. I look in vain for: “This is what the problem is.” So we have a report and proposition, which, as with I am afraid the P.72 about how to reform the States in

terms of electoral reform, we do not have a good definition of the problem, and I looked again at the report and what is there in the first paragraph: "For some time I have been concerned that the system of government put in place in December 2005 is not working as well as it should and one way forward is to create a much more inclusive form of government in the Island." Another phrase is: "Many talents are being wasted." I do not think that is a definition of the problem, and, if we have not defined the problem, I am not sure we are going to get the answer with this solution, and that is pretty fundamental. So here is a stab at some of the problems. The first one is information and openness, and I too will quote from Clothier - and Clothier made it absolutely clear how important this is - and his paragraph 10.2, and he is talking about the new Ministerial system he is proposing: "For this pattern of democratic partnership to flourish, there must be a preference for transparency and dialogue as opposed to secrecy and governmental dogmatism." Transparency and dialogue, as opposed to secrecy and governmental dogmatism, and I am afraid that is a definition of the problem we face. In paragraph 10.6: "It would not be possible or desirable to go through all these prior stages in every case", he is talking about Green Papers and White Papers and so on: "but the underlying ethos should be strongly consultative and consensual." So there is a statement of principle, a clear statement of principle, how important information is. Someone mentioned in the debate this morning: "Why would we not trust people with information?" or saying that some information... there was this problem of Ministers being coy with information. Why would we not trust people with information? Why is there something to hide? Why should everyone not be in possession of the information surrounding a decision? Of course I take into account what the Minister for Housing just said, some information you do not publish; you do not give access to. But, in general, the principle must be openness. But what is the reality? The reality is completely different. It can be summed up with the phrase: "If you want information we do not want to give you, forget it." I will give 3 examples, this is a really important issue, one was the last sitting, referred to by the Deputy of Grouville, where a Scrutiny Panel wanted information that they thought was important for the debate; does not matter whether they were right or not, they thought it was a critical piece of information, they had asked for it for months, on the day of the debate the Managing Director comes running to the House with the document that they required: "If we do not want to give you the information, forget it." With the euro and the incinerator, key information was withheld from the House and we are £8 million poorer because of it. The third example is a written question at a slightly smaller scale that the Minister for Economic Development replied to yesterday to my question about the funds spent on tourism and promoting tourism in European countries - European markets - and he said he could not find the information before 2008. So we do not know how much was spent marketing in Germany and France and Benelux before 2008. What has happened to their record keeping, do they not know what happened 10 years ago? I am sorry, that really is pretty extraordinary, so we cannot see the trend, we cannot assess their policies at present. The second big point is consultation and the attitude to the public. If you are going to get the right decisions, then you talk and you listen. But the attitude we have - and this is a question of attitude - we are talking in this proposition about how to rearrange the nuts and bolts, but if the attitudes are not right, again, are we going to get the right decisions? I asked a question of the Minister for Treasury and Resources about the consultation process for the tax and spending cuts. You could not get a bigger issue. I asked what specific consultation was undertaken with regard to the 50:50 split between tax increases and spending cuts. I asked what form did the consultation take; what documents were published as part of this consultation; how were the benefits of public expenditure of different types explained; what steps were taken to reach all sections of society during the consultation, and the answer was: "None, we did not do any public consultation about the most important issue facing the Island." So that is the extent of our willingness to engage and seek the views of the public that we represent. The second example is Hopkins' report. Hopkins listed, dealt with, consultation that was in agreement with what they were saying. When I say Hopkins, I mean the first North of Town Master Plan, they took onboard and described the consultation about Ann Court, or rather the public feeling around the Ann Court car park suggestion, but the consultation with respect to the town park was airbrushed out, it simply

did not exist, all those hundreds and hundreds of emails and the consultation, the survey work, the workshops, was not in the report. So there we have the attitudes to the consultation. Consultants' reports: is this going to be remedied by the new structure, the way that they are biased towards the desired outcome? We have seen this with W.E.B. (Waterfront Enterprise Board), where the DTZ report was got at, and I know heads shook when this was debated last sitting, but the fact is there were changes made after the draft went to people for comments on the facts, changes in tone and content were made. The D.C.S. (Depositor Compensation Scheme) report we know was tailored to the desired result. The retail report... well there are 2, and they both say completely different things, even on the facts, depending on who commissioned them. Can we not even get the process of commissioning consultants' reports right, and Hopkins that I have mentioned. Pre-determined answer, will tailor the report to fit; it cannot be right. How are we going to resolve these issues? Then we have delay and the way things get bogged-down, and this is a major bugbear with the public, and rightly so. The Police Complaints Authority: 10 years to get nowhere. I think it is on the agenda now, the Police Complaints Authority. If we had ... sorry, not the Police Complaints Authority, I mean the Police Authority. Sorry, I mean the Police Authority. Then maybe the whole Power and Warcup thing would have been resolved in a better way, Haut de la Garenne and so on. But we did not have it. Suspensions, fight and fight and fight for progress on suspensions, and only the persistence of one Back-Bencher created some progress there. There is a kind of almost mechanism for just getting bogged-down in the sand. Claremont; no proactive attempt to redefine the problem by Ministers. So, will this new setup help? That is what Members have to ask themselves. Finally, trust, and trust is the big one. Will the Ministers change their spots when they become Ministers running Ministerial boards? We have seen the problems we have around Napier and Graham Power. From 26th September, we read in last night's *J.E.P. (Jersey Evening Post)* ...

The Connétable of St. Mary:

Point of order, Sir. I believe the previous Chair of the Assembly did give directions that we should not be mentioning people by name, and I know, sorry to tread on your toes, but ...

The Greffier of the States (in the Chair):

No; that was right.

The Deputy of St. Mary:

I beg your pardon, it is so difficult to remember that names must not be mentioned so that the public have no idea what we are talking about, but that is all right. The gentleman who was tasked to investigate the circumstances around the suspension of the former Chief Officer of Police, now that would have been easier with 2 names, and it would have been a lot easier for the public and for us to understand, I do find that Standing Order extremely difficult and I referred yesterday to the former Chief Adviser of the States, and who knows that is a first name begins with C and whose second name begins with P. But, anyway, from 26th September, the gentleman wrote in his report, roughly - and I am not quoting - planning was taking place around the suspension of the former Chief Officer of Police, and at that time there clearly was not enough evidence for such action, and there are lots and lots of connected issues. I will not go into more detail than that, but there is a huge issue of trust there, and if we cannot solve that, and the way that Ministers behave in response to critiques made of the way that even former Ministers behaved, then how can we make serious progress? The other major issue with trust is the one-dimensional nature of the present Council of Ministers. "Inclusive", said the present Chief Minister in his speech to get the job of Chief Minister: "I will be inclusive." We do not have an inclusive team at all, and that is at the root of a lot of the problems. Some issues are dealt with in a way that is mutual, if you like, or above politics, and I would cite the recent deal with Health and the cuts at Health, and the sustainable transport policy; those seem to proceed in a fairly sort of rational way. But there are some issues that are not open for discussion and they tend to be the big ones. One is tax and spend, which I have already mentioned: "We cannot have a proper open discussion or ask the public." The other is

population: “An absolute no-go area, and we will spin and we will dodge the figures, to fit our preconceived view as Ministers.” That cannot be right. No holds are barred in making sure that policy of increasing the population goes through the House, and that cannot be right, with the 2,800 who were airbrushed out by manipulating the statistics - the Imagine Jersey 2035 - which was misrepresented to the public. The public said yes to net inward migration, which would keep the population stable. No net inward migration would lead to a population that was less than now, the population would decline to 80,000, so there had to be some net inward migration to keep the population as it is. That was spun to be: “The public want more people to come to the Island.” That is true, net inward migration is more people coming to the Island, but it does not mean an increase in population. That was the kind of spinning and, I am afraid, manipulation of public opinion that was happening, and this structure will not survive that anymore than the present one. So, Scrutiny, detailed comments on Scrutiny, and I am aware of the time.

[12:45]

Deputy R.G. Le Hérisier:

I wonder if it is an appropriate time to call for the adjournment.

The Greffier of the States (in the Chair):

If Members are content and the Deputy is content to carry on after lunch? Very well, Deputy, do you have something you will not be able to finish in 5 minutes? Are you able to finish in 5 minutes? If you would prefer to carry on after lunch it may be better.

The Deputy of St. Mary:

I just know that people’s tummies start rumbling and, whether I say what needs to be said about the Scrutiny proposals now or later, I do not think it matters. But it does matter whether people’s tummies are rumbling.

LUNCHEON ADJOURNMENT PROPOSED

Deputy M. Tadier:

The adjournment has been proposed I will second that, and I think it should go to the vote.

The Greffier of the States (in the Chair):

Those in favour of adjourning now kindly show. Very well, the Assembly stands adjourned until 2.15 p.m.

LUNCHEON ADJOURNMENT

[14:15]

PUBLIC BUSINESS - resumption

The Deputy Bailiff:

The debate resumes on P.120/2010 with the Deputy of St. Mary on his feet.

The Deputy of St. Mary:

Thank you. Just a brief recap and then on with Scrutiny.

Connétable L Norman of St. Clement:

I told them I need another hour before I can find my seat.

The Deputy of St. Mary:

So, did Senator Breckon and his team define the problem? No. Did they attempt to define it? No. In my view the problem is there are 4 aspects, 3 of which can all be bundled together and summarised as one thing: withholding information, consultation and engagement with the public only on some issues and not on others - the big issues are excluded, there are no-go areas - and the abuse of consultant's reports. All of those can be summed-up as a dogmatic and one-dimensional approach over the key issues, and I must stress that individual Ministers behave differently from each other and there is no casting aspersions on the way each one does their job. But there is, at the core of this Government, and the way we do our business, there is an exclusive, or non-inclusive, and uncaring approach, and I fear that not really having a look at what the problem is, is in the D.N.A. (Deoxyribonucleic acid) of this proposition; it is a solution to a problem that has not been defined, and that is a serious problem, and when we look at Scrutiny in more detail, you will see what I mean. If I refer Members to pages 21 and 23, starting at page 21, I have 2 main issues with their presentation of the Scrutiny function as it will be, and I raised this immediately the proposition came out, I sent an email to Senator Breckon, because of the concerns... well there were 3 concerns. The first - and this is what I mentioned in my email - was that P.R.C., the new super Scrutiny Committee, the Policy Review Committee, the Chairman will be elected as second in priority after the Chief Minister would be elected as, in a sense, the second most important person in the new structure. Straightaway alarm bells were ringing because we have seen, in the way that the House operates at the moment, a very black and white, one-dimensional way of operating. Why that happens, whether it all stemmed from the Chief Minister's initial choice of Ministers, I do not know, but the fact is that there is a real danger of that Chairman, him or herself, also being basically part of the apparatus of the Council of Ministers. If we look at the key positions now, we have a Council of Ministers where the Chairman of Corporate Services and the Chairman of the Public Accounts Committee are basically in the pocket of the Minister for Treasury and Resources Minister.

Senator S.C. Ferguson:

Absolute rubbish. [Laughter]

The Deputy of St. Mary:

Absolute rubbish; but the fact is that when the Minister for Treasury and Resources wants £50 million worth of cuts in 3 years, up jumps the P.A.C. and says: "We can do £80 million in 2 years", or whatever it was, and up jumps the Chairman of Corporate Services and says: "Give us another £15 million of cuts and give them now." I am sorry, but the issue is positioning the Minister for Treasury and Resources somewhere in the middle. But he is nowhere near the middle. That is part of ...

The Connétable of Grouville:

I am sorry, did I hear you say the P.A.C., because as far as I am concerned it was the Corporate Affairs Committee that asked for extra cuts, not the P.A.C.

The Deputy of St. Mary:

P.A.C., I would remind the previous speaker, P.A.C. brought a proposition to this House saying: "Can we have the cuts quicker? Can we have them in 2 years?" I cannot remember exactly whether it was the same cuts but it was certainly 2 years, and not 3. The Council of Ministers rightly wrote a report saying: "3 years is difficult, 2 years is a joke", and it got thrown out, and thank goodness it did. But the point I am making here is that is we have, not only a one-dimensional Government, but one that fixes ... we, I suppose, elected those people, but the fact is those chairmen are in those positions, and that brings me back to P.R.C, Policy Review Committee: who would be in the chair? It spells-out how important that role is. It spells-out how important that role is. All right, let us have a look at 2 of the details, hardly details. Part of the Policy Review Committee's role, number 8, page 21: "Determine the Terms of Reference, the project outline with

target deadlines for review completion and estimated budget allocation.” The P.R.C., not the review panel, would determine the terms of reference. In the light of what I have said about the way that the Chamber operates, and that is not addressing the proposition unfortunately, and that could continue, then we would have terms of reference being having to be agreed by the Policy Review Committee, and in particular their Chairman. On page 23 we come to the next major problem in the second paragraph: “Review Panels should be able to select co-optees” and I fully agree with that, I think that extends Government, it allows us to bring in expertise from outside, as is already done with P.A.C., and rightly so: “Review Panels should be able to select co-optees with the agreement of the P.R.C.” So, if a review panel really wanted so-and-so, or possibly 2 so-and-sos, to come in from possibly different angles, to help with the review of, for example, provision for the elderly in Jersey in every aspect, then the P.R.C. would have to okay the co-optees that panel might wish to have. Those 2 things show the degree of power that the P.R.C would have, and of course, by extension, the Chairman of the P.R.C. I would remind Members this is all in Annex 3, this is part of the proposition. If you vote for the proposition, as it stands, and maybe the proposer will comment on this when he sums up, but, as it stands, Annex 3, what I have just referred to, is part of this proposition. So those aspects, the importance of the Chairman’s role, the fact that the terms of reference have to be agreed by the P.R.C., the fact the co-optees can only be allowed with the agreement of the P.R.C., would all be built-in. I would just like to bring Members’ attention to this matter of who would be co-optees. There is an extraordinary paragraph here about the sort of people who might be co-opted, they would: “have relevant knowledge and experience of the subject matter” - amen to that; and secondly they would: “be objective and free from personal views.” They would be free from personal views. Well, show me a human being who does not have personal views, and in particular human beings who are expert in a particular area. Because they are expert in the care of the elderly, they will have accumulated a view based on their experience and their knowledge and so on. So that again is built into the annex. We are going to appoint people who are free from personal views. It is not a very happy prospect; it has not been thought out. Page 9, again on that Scrutiny: “Scrutiny is an overarching, impartial look at policy and legislation through the gathering and consideration of evidence and public views. Scrutiny must be totally free of political and personal agendas whether or not those agendas support or otherwise what is found out.” Amen to that, but I just wonder whether the structure that is being proposed with this enormous amount of power vested in the P.R.C. and the Chairman, would deliver that, and in the context of what I have said about the issues around how this House works, or is working at the moment, I have severe doubts about the independence of that P.R.C. and whether they would in practice choose topics that were perhaps uncomfortable for the Council of Ministers, choose to recommend things, and if they did recommend, whether any notice would be taken at all, because this issue of control and animosity has not been sorted out, and the underlying causes of that. A couple of minor points, but I think I would welcome the comments of the proposer on these, in subparagraph (iii) of the proposition, which has not been discussed at all so far in this debate I do not think: “Ministers would continue to be appointed by the States as at present, but the Chief Minister should be given the power to dismiss a Minister with the prior approval of a majority of other Ministers.” I know that the report suggests how this would be remedied by the House if they did not agree with that, but I think maybe that does need a little bit of exposition by the person summing-up, or indeed by other speakers. The other issue that bothers me is legislation, and the report - possibly one of the annexes - says: “Ah, well, legislation would be better dealt with now because it would be within the Ministerial boards, and by the way they would operate, they would give legislation better scrutiny.” I think some meat needs to be put on the bones of that; the report rightly says on page 11 that legislation requires much greater scrutiny than is possible under the current system, it then mentions associated additional resource requirements that, if there was a specific legislation committee that would be required. But surely, if the Ministerial boards are going to do the job, they too will need an additional resource requirement, you cannot pretend that legislation scrutiny can be done somehow for nothing. I just think that aspect of this proposal could definitely do with clarification. So, in conclusion, when I

came to look at this proposition, as others have said, it sounded better than what we have now. It does read, at first glance you think, this has to be better, it brings Members closer to decisions, it brings them further up the chain to the original information and the beginnings of policy. But, I do have a real problem that, because they have not looked at, or stated what the fundamental issues are, there is a real problem that the solution does not match the problem, because the problem has not been analysed. There are one or 2 points: there must be open information for Members, there must be honest engagement with the public - and those 2 things are currently missing. Another important point that cannot be covered by this is we have a non-representative Assembly, and maybe that is part of the problem. That, because we have such a lack of proportionality, then the connection between the electorate and us is really very much weakened. Finally, this question of how we are going to get around Annex 1 and Annex 3 being built-in, and there is a lot of working out, we saw from the Solicitor General, there is a lot of working out to be done, and I just think that should have been somehow done before, it should have been mashed further with Members before it came here. The same problem is going to exist, can the proposer guarantee that, as this is worked out to the final solution that comes to the House in terms of legislation, it will be run past Members at intervals, so that we can make sure that this camel comes out as a well-designed camel. Thank you.

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

I have been in the States for 5 years now, so therefore I did not have the benefit of the committee system, but I hear from previous members that it was quite slow and cumbersome. When I was elected to the States I immediately went on to the Economic Development Scrutiny Panel with the now Minister for Transport and Technical Services, the Constable of St. Brelade, chaired by Deputy Southern, with Deputy Martin and myself onboard. I thought it worked quite well.

[14:30]

But, knowing the problems that can occur, when the Constable of St. Brelade became Minister for Transport and Technical Services and asked me to be his Assistant, we immediately agreed that we would be as open as possible with the Scrutiny Panel, with as many site visits, Bellozanne installation, Energy from Waste Plant, and I like to think we have a very good working relationship with the Scrutiny Panel. The Deputy of St. John and his team hold us to account robustly. I am of course well aware that States Members are unhappy with the present system, and you cannot really blame people, the people of Jersey and the media, for criticising the States when there is so much in-fighting within the States. So I would like to see an inclusive government, but I am not sure if this proposition by Senator Breckon would work. I really want to vote for this, but I think it would cause more problems than it would fix. I will therefore wait for the Senator's summing-up before I make up my mind, but, as I say, I would really like to vote for this, but I am not sure if at this stage I can. Thank you.

1.1.17 Senator P.F.C. Ozouf:

When this proposition was discussed at the Council of Ministers and lodged, I was supportive. Like many Members, I wanted to see an evolution of our system of Government, which tried to deal with some of the divisive elements that have clearly emerged since Ministerial government, to a greater extent than even it existed before. Yesterday I re-read the Clothier Report and I did a straw poll of some of the new Members of this Assembly of those who had read the Clothier Report, and, without revealing any names, there were quite a number of people who had not read the Clothier Report. So I would commend to Members to read the Clothier Report, and it is interesting that many criticisms of Ministerial government, and indeed the way this Assembly operates, have been spoken in this debate today, and in some ways I would say that the conclusion of that is it is probably about the people who populate whatever system of government we have, not the system itself. However, the system is important. I was mildly amused by some of the criticisms of Ministerial government about civil servants running departments, as opposed to

committees, and other things, and I would say very respectfully to the Deputy of Grouville that all of that is in the Clothier Report, and in some cases Clothier is right, it is up to Members to decide whether or not that is right in terms of some Ministerial departments. I hope that could not be said for my department. I have worked in both systems, because I believe that politicians should be in charge for the avoidance of doubt of Deputy Le Hérissier. **[Laughter]** I have worked in both systems of government, and I have to say it is very nice to think back to the committee system, of a lovely system of the past in a bygone era, but it had major inefficiencies and faults. I believe that Ministerial government is, for all of its criticism, more accountable; you do know who makes decisions, and the current system of Ministerial government is more responsive, it is more joined-up. From a Treasury perspective it is without question, in my view, more efficient from a financial point of view, and I think that in these times that is important. Indeed, re-reading the Clothier Report reminded me that Clothier recommended there be a Treasury and Resources Department, well we named it Treasury and Resources, but we did not create the unified resources department, and that is not a grab of responsibility for the Treasury and Resources, it is a structure, which was designed to create appropriate tension between the Treasury and departments in the issues of financial management. I am pleased to say that is going to happen as a result of the Business Plan debate as of 1st January 2011. So the real problem with this proposition is the supporters of it clearly have 2 interpretations, some Members want to go back to the committee system, other Members want to evolve the system of Ministerial government that we have and for it to become more consultative and more engaging. I do not want to go back to what I regard as the nightmare of committee government, I do want to strengthen and see Ministerial government strengthened. I think one of the problems is that this proposition creates some fog on the issue of Deputy Ministers and board members. Using Deputy Ministers and board members on a statutory basis, or to attempt to try and put that on a statutory basis, is one of the core problems - or challenges should I say - of this proposition, because it does create effectively a blur between Executive and non-Executive. For my part, I know that some things have been said about Corporate Affairs, but I think that Corporate Affairs are a good example of Scrutiny working. **[Approbation]** I would not say that the members of Corporate Affairs are lapdogs of the Ministers, certainly if people had been in on meetings, the public meetings or the private briefings, I do not think that Deputy Tracey Vallois ... **[Laughter]** I do not think that Deputy Vallois could be described as a lapdog, neither do I believe that the Deputy of St. Peter **[Laughter]** could be described as a lackey of the Minister for Treasury and Resources. They have been testing, but they are not examples of perhaps topic-based scrutiny that was originally envisaged. The Corporate Affairs Scrutiny Panel do examine me on issues that are across the brief, they hold quarterly briefings and they test, and they know what is going on. They do know what the key decisions within Treasury and Resources are, and they get information, and in some ways that perhaps is a model, and it is not only Treasury in Corporate Affairs, but they have, as other Members have said, as Deputy Lewis and others have said... there are examples where Scrutiny Panels have genuinely worked and engaged and consulted, and I think that is something that I would not want to see an end to. I think that consultative engagement is really important. This proposition has been worked on by the Chief Minister, the Chairman of P.P.C., Deputy Vallois, and indeed I think the Deputy of St. Peter in some of the evolution of some of the work that he did. I want to support this proposition because I agree with the underlying sentiments that it is about, but the proponents of it - the proposers of it - and Senator Breckon, are going to have to make some convincing speeches that this is not a step back to committee government. I look forward to hearing from the Chairman of P.P.C. and the summing-up of Senator Breckon to put Members' fears at rest that this is not a step back; that this is an evolution of what we have, building on the strength of Ministerial government, building on the independence of Scrutiny. I think that, if ever there was perhaps a proposition that ought to have been scrutinised, and examined, this perhaps is one of them, but we are in the last stages of being able to make decisions of the direction of travel of the future system of government, but we are going to have to work on the detail of this if we are to bring the statute forward to bring any changes to this Assembly. I offered... and I hope that other Ministers and Scrutiny Panels, if this proposition is successful,

would set up a shadow Ministerial board system, with appropriate learning and experiences of how the system could work, to understand where the wrinkles are and certainly to understand where some of the detailed implementation is going to work, and I think what the remarks of the Solicitor General mean that there are certainly some real issues about implementation and detail. I really want to support this proposition because I do not want to continue with the system of real division that has become worse in Ministerial government, but the proposer and the other supporters of this are going to have to give me confidence to press the pour button as opposed to the abstention button.

1.1.18 Deputy J.A. Martin of St. Helier:

I was asked after lunch by the Minister for Social Security how was I, how was I feeling, and I said: "Not that great." I just feel like I have stepped into the Twilight Zone this morning, or the old Wolfenstow Dogs Track, and there are so many hares running with a pack of hounds... a pack of dogs running after them in all different directions. I cannot believe what I am hearing, the people who proposed Scrutiny as not great are now loving it, but they are all Assistant Ministers; the people who are Assistant Ministers are saying that Scrutiny is fine. Scrutiny itself, which does not like it, is also saying: "Oh we must have Scrutiny." I start with the speech of Deputy Duhamel, who has been in this House long enough to know he cannot stand up on his feet and make a major amendment. This has been lodged for a very long time, and he pointed out ... somebody said that was a very good speech, the best they have heard, unfortunately I have heard it for the last 5 years, and before Ministerial government came. It may have slightly different branches and curves to it, but it is the same speech, and he has done nothing about it. He has done nothing about it, so he has had his chance, basically. He has pointed out he said he tried to do it when he was on the Chair of Scrutiny. My biggest disappointment of the ... I mean it was a very, very entertaining speech from Deputy Southern, and it was so ... his contrast of being in the House, I think I have only been in the House about 18 months longer than him, but his contrast of being on committee was totally different to mine. He was on Home Affairs, he accused people who worked under Senator **Syvret**, and I think I am allowed to mention an ex-Senator, and ex-Deputy Senator **Vibert**, that we had ... Education President and Health President, that they delegated nothing and we did not have robust debates around the table. Well I am getting a lot of nods from people I worked with on both those committees, and oh yes we did. We were no nodding dogs, to answer - Deputy Le Claire was on that - and yes, you did have to fight and you did have to consult. So I was very disappointed. Deputy Southern, when we heard it, this is what I am saying, Deputy Southern says: "What is wrong with this system of government is the Ministers, the secrecy, the tight lips, they know nothing." Ministers say: "What is wrong with this system of government is Scrutiny." This has been the theme all this morning, I am sorry. Deputy Southern has nobody, on most of these Scrutiny Panels, lining up to be on Scrutiny. Even hearing rumbles after last week's debate and other things that have happened in the last couple of years, nobody wants to work with Scrutiny anymore. They are putting in a lot of good work, a lot of hard work, I did it myself for 4 years, a year on Shadow and 3 years on Scrutiny, and half the time I suppose, some that we were listened to, we were not listened to, but people are then telling me the system ... Deputy Southern is absolutely adamant the system of Scrutiny is only wrong because we are not trained well enough. Absolute rubbish. People do not even want to train. The Ministerial side of government never came to a Scrutiny training session because they never saw themselves being in that side. This is where it is, there are sides, and we are now absolutely polarised to which side you are on. I was very impressed with the speech ... which normally I would agree with Deputy Southern, everything he said today about the system, I totally disagree with. I listened to the Chief Minister and I did agree with everything he said. Be warned, if you do not think this system of government is working, I would say this is your one last chance, before the next system, and your one last chance with a reasonable... he is not a dictator supposedly, that you work with this. It might not be what you all want, and I knew this debate was going to be what it was. Senator Breckon does not have it right, and the other 52 Members, or how many are going to speak, know exactly how it should have

been - and they have not done it, they have not done the work, they have not worked with all the people - but they know how it should have been. What the Chief Minister did remind you, and what you do not have now, when the Minister is appointed under the new system, the people that he works with on the board will be appointed by this House. You are told they do not like the friendly... who asked me to be Assistant Minister for Health? The Minister. Was it because I am her friend? Not necessarily, I was the ... **[Laughter]** But nobody in this ... my point is, nobody else in this House, and I am supposed to be ... you know, I can stand in for the Minister when the Minister is away. I have delegated functions. But nobody in this House had any right or any say that the Minister for Health and Social Services wanted me, and say somebody else wanted Deputy Vallois or the Deputy of Grouville, they could have put their names forward, and this House would have decided, and that is fair.

[14:45]

All these red herrings going about: “Oh, it could not possibly work because you are going to have people you do not like on your Board. The States are going to vote.” Well we are a bit older than that, you do not like ... and that is another thing - I mean the Deputy of Grouville and everyone else remembers - you work with other people. We are in such silos now, I bet nobody... some people do not even know a lot about the other people, you do not meet them, you do not see them, and this is exactly where we are. I totally agree with ... we seem to be in this new thing now that I am going to call him, from what the Chair calls him, the Minister for Treasury and Resources. I do not know if I am supposed to because as I am understanding it, all I am supposed to address you by are your names, but suddenly everyone is Minister. Anyway, you are a Minister, and you are the Minister for Treasury and Resources. I do not want to go back to the committee system. It was a great one from the Minister for Transport and Technical Services, and his Assistant Minister, they are worried about all the administration costs of getting these papers, people talking, working around a board... well who does get all your information ready for Scrutiny and question time and everything now? Who do you think does it? Do you not think ... and they love working with the Scrutiny Panel, but do you not think, if a couple of those members were on your board it would save a lot of time and it would save a lot of hassle and it would save a lot of arguments. You would get the expertise around you. I mean, it could not possibly work, consulting with other people. I am quite disappointed with Deputy Tadier because he is a young person, a young politician, but he spoke with a 70 year-old cynicism today that I have never heard from the older men in the House, he is totally, totally cynical. It just goes on. The Deputy of St. Mary said: “What is wrong?” and then somehow ... and I love the Deputy of St. Mary very much, he does his research and we came back to the incinerator some way or other. **[Laughter]** That is why this system of government does not work, because we now have an incinerator; I never voted for it, he never voted for it, but... Well we had lots of reasons, but not why he could not support this. He said there was ... the Deputy thought strong consultation and consensus was a good government. This is what the first part of Senator Breckon’s proposal says: “To agree the current system of government in Jersey should be amended so that a more inclusive system is established with the aim of giving all States Members greater opportunities” not take away... but: “greater opportunities to influence Executive decisions and to achieve this aim”, and then there are points, there are points, there are points. Now, more inclusive, is that not what we are all shouting for? Do you want to be shouting across to the Ministers: “You have not answered ...” Like the debate we had last week. Deputy Southern also says: “If, you know, there will not be time for Scrutiny.” Well if we all worked the 90 hours the Deputy of St. John works, which he told us last week, we could sit on every panel and do ... we did hear 90 hours, did we not? Me and the Deputy, we said it was either 19 or 90, but it is a lot of hours at any rate. But what my point is, there will be good reason to scrutinise, but would you not be better, on a board, seeing a subject coming over the horizon, having a slightly different political view, and saying: “Hang on a minute, have you thought this through to the end?” I mean I can think of a very topical current subject, and maybe if somebody had been on a different political platform, maybe we would not be where we are with one of the Ministers today. We have done it

before and it is not this Minister's fault, but we have a smaller concentration. The advice. We work - myself and Deputy Noel - with the Minister for Health and Social Services and we do have the open discussion around the table, and if I think something is going to be politically a death knell, it might be my political philosophy, but I am free to say, with open debate, sometimes and many times we find a different way to come around, and it is ... but we always discuss it, and it works. So, I really just have to go back to this question, and that is why I am saying it works. I really, really, really mean no disrespect to the Solicitor General, I respect him very well, but ... **[Laughter]** The Deputy of St. Mary reminds us, this is the annexes, so it says: "The Minister should consult them on major or contentious ..." and we have a lawyer as the Solicitor General himself said, he gave us a lawyer's answer. What is contentious? What is major? Well I am very sorry, if I was with a Minister who did not know what was out there that was contentious and major I would be very, very dubious about working with them, and I would be very, very dubious that they ever got that position. In law, different, I totally agree, but the Solicitor General told you he gave you a lawyer's answer. Will it be tested in law? No, it will not be tested in law, it is about common sense, it is about working together, and I am very sorry that, as I say, we ... Senator Ozouf was the one that really did make some play of Clothier and I just said to the Deputy of St. Mary ... just let me read this out to you: "The weaknesses we have found in the function and structure of the States are in our opinion serious. It is the weakness of a National Assembly, the Members of which are so divided among themselves that they have difficulty in arriving at and maintaining any decisions, which permits the balance of power to pass into the hands of the very few. This is an unhealthy development in any society, however honourable and well-intentioned those few may be. It is clear from evidence that we have heard that for many years this has in reality been government by small numbers of States Members, not so much by design, but as by accident of the strong and clever rising naturally to the top." This is not this system, this is the system before Clothier. Does it ring true today? Yes, it does. So does what we had to get where I think Senator Breckon wants to go? No. But of course we have Members who know better, they have to be persuaded, they cannot do Scrutiny. Small boards, again. The Minister for Housing, he wants his new policies scrutinised by Deputy De Sousa and Deputy Southern, and he would be happy to work with them, but he would not ... cannot support this because he would not be happy for them to be on the board advising him. Why not? I do not get it. Is it about power? He loves Scrutiny. **[Approbation]** He loves Scrutiny so much and there he is, you know, but he will not have ... he could have those 2 Members, he could have Deputy Southern, who knows so much about Housing he could probably teach the Minister a few things, and Deputy ... well he probably can teach the Minister a few things. Is Deputy Southern that far removed that he would not want to work? Maybe, as I say, his terrible experience with Births, Deaths and Marriages under Home Affairs has probably scarred him for life, but it did not me, and we had this discussion, I am not going to be on a board to be a nobby dog, to be a soft touch or to be there just because somebody says: "Oh, here is a job, Jude, be on that Board", and not ask questions. I have said it before and I will say it again, at Health we had the biggest budget, I need more people to have ... they might not give me direct responsibility, but I can ask the questions, I can go down that route, I can go a little bit further down, I just need more people, not necessarily with my political views, but more people that will ask questions, and that I think is what the States Members ... what the people elect, they do not elect nodding dogs, they do not like this system, and, as you can see, from Clothier, we have not moved one jot in 10 years, that description in the front of Clothier is exactly the same as it was then as it is today, and, as I say, if you have any qualms about how this system works, and you are not sure that all the 'T's have been crossed and the 'I's dotted, you have to vote for this, because you will not get another chance. You do not know who is going to be Chief Minister next time, you do not know what crowd of friends they are going to get, you will be less inclusive, you do not even know who is going to do Scrutiny. It is not working, and if it was not broken I would say do not fix it, but it is not just broken, you have a very experienced Senator who has left Scrutiny, he gave up being a panel chairman. Why? Well for his own reasons, because he felt he was banging his head against a brick wall, and he is a very experienced ... and he is not confrontational and he has done things over the years, and he has

brought this, and today we are told it is not right, I cannot support it because it ... Deputy of St. Mary agrees to the annex, it agrees that, you know, there are words in it like ... yes, the words: “major” and “contentious”, and we cannot agree to that because, as Deputy Duhamel says, the Solicitor General has told us, well, corporation sole, and all that, that Deputy Duhamel has never liked, this does not get rid of it, so he will not vote for it, it still gives you a Minister. So, that is where I am, I will sit down and I will probably go back into the world of the twilight land, but I really think, anyone who has been in all the systems knows what he is proposing, more inclusive, there will be enough for Scrutiny, but they will not need ... and I do not talk happy families, happy little boards, people there to ask the questions inside the tent, basically, not fighting across this Chamber and getting nowhere. What will we achieve, we are going to be here another day now, and all we ... this is a very important subject, but to them out there, we need to get it right now, and we need to start moving forward, and please, even if you vote against all 4 of these, do not go down the route of the Deputy of St. Mary, at every stage bring it back to this House, please no. Yes, the Deputy of St. Mary did, he said at every stage he wants to see how this is progressing.

The Deputy of St. Mary:

Can I correct that, Sir, because she has misled the House.

Deputy J.A. Martin:

I am not giving way, sit down. **[Laughter]** I have nearly finished. The Deputy ... no, I am not giving way. He did say that, he wants to see how it expands and he wants everything brought back to the House. Today is the day, as far as I am concerned, is when people decide whether it is right or whether it is wrong, whether we have moved forward in 10 years. No we have not. The only thing Clothier had wrong, and you can read it and read it and read it, we introduced Ministerial without reforming the Government, and so this is where we are. Thank you.

1.1.19 Senator J.L. Perchard:

A past member of the States said the other day something, which I thought was quite amusing and correct, was that, if ever you bought a piece of flat-pack furniture and chose to assemble it, but halfway through you threw 2 or 3 of the pieces away and continued to assemble your piece of furniture, you would find that it may look like a piece of furniture, but it will have no integrity and strength. He likened that experience to the States of Jersey and the way they have selected parts of Clothier, the parts that have suited the Assembly, and Ministerial government was obviously an integral part of the *Clothier Reforms and Recommendations*, and it was implemented, but various pieces of this flat-pack furniture to make Ministerial government work were neglected or discarded, and one of those very important ingredients I think was the reduction in the number of States Members. I think Clothier recommended 42, and that is a reduction of 11 States Members. I highlight this point because I believe this is one of the key problems that we have. Ministerial government itself is functioning, the trouble is there is a dozen States Members that are not part of it and are frustrated by it.

[15:00]

Our inability to reduce the number of States Members means that we are now looking for another system of government to accommodate 49; it is going to be ... what did we just agree, 48 or 49? So, we are having a stab at getting down to the optimum level recommended by Clothier of Members, but we are not there, we cannot see a way of doing it, so we are looking to tweak the systems of government that we are employing to suit ourselves. Possibly. Somebody is shouting get rid of ...

Deputy P.V.F. Le Claire:

He just said to get rid of Senators in his review.

Senator J.L. Perchard:

A Member has just interjected there and brought it down to the usual banter. The fact is that Sir Cecil Clothier recommended Ministerial government with a reduced number of States Members for a reason. There are too many Members around this Assembly kicking around, not involved, and we are looking to tweak the system to engage everybody. Now that is where we are, and I am not going to comment further on it. We are where we are, so what we have now is an interesting position where we have 2 unlikely sets of bedfellows coming together to oppose this new recommendation or proposition from Senator Breckon. They are unlikely bedfellows because they come from completely different political spectrums. As I say, I would almost say the attack on Senator Breckon's proposition is coming from the left-front and the right-front, and one side is probably... and we have yet to hear from most of the Ministers, but I will bet you that most of the Ministers will object to the proposition and recommend that we reject it. We have heard from Deputy Power, who was very worried about his Saffron system and that the board cannot see it, well that is of course, the board will not see any health notes that are on file at the Health Department, they will not see any income tax receipts that are on file at the Treasury, that is quite normal. So I think the desperate attempt to discourage Members by Deputy Power, saying that: "If they are going to be inclusive and on my board the problem is I cannot let them have all the information." Well that is right, there will be levels of information that has to remain confidential, and I suspect there will be other Ministers getting up and speaking why this will not work. Well their resistance to any change I would take, and suggest Members take, with a pinch of salt, because it is going to be self-interested and they just will not want the hassle of being held to account by their colleagues and other States Members. Then we have the attack from the left-front, the opposite from the dried-up Tories. I do not know what you would call them, wet wishy-washy socialists, or what we would call them, but there is an attack on the system from the wet wishy-washy socialists, who perhaps again are self-interested, they do not know quite where they will fit in these new arrangements, and their objection is one of nothing more than self-interest. So I think we have a problem. A very important reason why we should consider setting up Ministerial boards - and Senator Ozouf has denied this when he spoke just now - is that we need to hold an increasingly powerful Civil Service to account. We have... and I will be blunt, because I think we need to be blunt, we have a situation here now with Ministerial government where Ministers - and I like them all - are being ... **[Laughter]** and their Assistant Ministers in most cases, are being appointed, not necessarily on their ability, but because they are agreeable. I am worried that, if we do have a weak Minister with a couple of agreeable Assistant Ministers running a department, they simply become mouthpieces for the Civil Service, that increasingly powerful chief officer and his advisers, and I do not think that is good for democracy. It is difficult. I know I have had an experience of being a Minister, and it is difficult to resist the barrage of pressure you are put under to take a party line, just look at the mess the poor Minister for Education, Sport and Culture has got in recently with undoubted advice being given by officers of his department that are interested in preserving the status, the size and the integrity of his department, he has been pressurised into accepting something that is not necessarily what is right for the people of Jersey. We have a T.T.S. (Transport and Technical Services) Department that is reluctant and, under great duress, accepts that recycling and reuse is the way forward. They have struggled to embrace this initiative, genuinely embrace this initiative. Not the Minister, but the department. I have been told rubbish. But I believe that the T.T.S. Department, over the years... and not under this Minister and this Assistant Minister necessarily, over the years have resisted the inevitable drive to recycle and reuse, and they have put barriers in the way at every opportunity, and I suggest it is because they are self-interested. They have other agendas, and Ministers have been used to represent that self-interest. Look at another example of powerful Civil Service, and developing an empire, and I will just talk to you about the environmental initiatives, the Environmental Department that has grown under our noses, like Topsy, since the winding-down of the Agricultural Department. It is an industry opportunity, it has grown like Topsy. Now, did the Minister promote that? I do not think so. I think that was driven from within the Civil Service. Who holds this to account? Who holds this desire to expand and maintain your status and portfolio and develop it and keep all your ... who

holds these Ministers to account? The States try, but ultimately they do not have access to the information. Scrutiny cannot, it seems. I think Ministers, many Ministers would benefit... one or 2 may welcome the support of a board that can help them in representing what people want and not what the Civil Service desires. I think we should ... Senator Breckon's proposition is not perfect, as has been said, but we should embrace the principle, the detail is to come back, we do know that, and, if we reject the proposition today, it will be gone, as Deputy Martin has just said, for many years. If we accept the principle, the detail is yet to be formed. There are details like possibly how a Minister would dismiss a Member of the Board in whom he has no confidence, or he or she has no confidence. I would like to see the Minister being able to do that, rather than have the States have to do that. The Minister must have authority. But that is a detail. I think it would be a shame if we reject this proposition today, and it would be the wrong thing to do, because we have a problem; Ministerial government is not working, we are not prepared to address the numbers in the States Assembly that may allow it to work. Clothier has said it may work, and so we have a problem, we have to deal with it. I think a more inclusive government involving Members in support of the Ministers is the way forward, and I recommend that Members are not too suspicious of the proposition and any slight weaknesses it has, because the detail is to come back to the House, and, as I say, I recommend the proposition to Members and hope that they support it.

1.1.20 Senator B.E. Shenton:

I find it a little bit ironic that this House repeatedly asks or says that we want smaller Government. In effect what we have is a Government of 10 Ministers. I do not know how much smaller you can get than 10, because that is the size of the Government that we have. The problem is, on all sides of the way Ministerial government operates, and I have been in the fortunate position where I have sat on various different sides of Government... and I notice that we do tend to use the word "side" when we are talking about the Chamber. Ministers themselves often operate in silos. There is no collective responsibility, and this was picked up at a recent P.A.C. hearing. There is no glue to bind all the Ministers together, apart from at the end of the year when we come to budget allocations where there is a little bit of "I will scratch your back if you scratch mine", where there has been overspends or underspends. There is no party system, so there is no common beliefs or common goals to bind everything together. Then we have the Assistant Ministers, which is an animal or position that, after 5 years, I still cannot identify. What exactly are Assistant Ministers? When I became Minister for Health and Social Services, I invited Senator Perchard as my Assistant Minister, to attend all the Council of Ministers meetings. I thought that he should be fully in the loop in very much the same way as a Deputy Chairman or Vice-Chairman or Vice Deputy Manager in an organisation would operate, and able to step in to replace the Minister if he was otherwise engaged. There was complete and utter opposition among the Council of Ministers at that time. How dare I invite an Assistant Minister to the high table? I was one of the few Ministers that passed all information to my Assistant Minister and kept him fully in the loop. There were Ministers at the table that would not even keep their Assistant Ministers informed of what was going on within their own departments, even at a very, very basic level. So what exactly are Assistant Ministers other than a useful vote to have when the going gets tough? On the other side of the Chamber we have Scrutiny, which is a high budget item - there is a cost to Scrutiny - and it has been failed by some politicians who are more interested in personal agendas than effective Scrutiny. Indeed a number of Members - Senator Le Gresley, Deputy of St. Martin, Deputy Fox, Senator Le Main - refused to get involved in Scrutiny at all. Senator Breckon has become so disillusioned with the Scrutiny process that he has resigned from it as well, and I can understand why there was this disillusionment, because what happens with the Scrutiny reports when they are published? At times these are high-quality, highly researched documents that go completely against the policies of the Ministers and their Chief Officers. I had the opportunity, by being elected as a Minister, to see what happens to Scrutiny reports when they hit the table of the Council of Ministers. I was treated, in respect of the Income Support amendments brought by the panel, which consisted of Deputy Martin, Deputy Southern, Deputy Pitman, to see how it was handled at

Council of Ministers level. What I was entertained to was a short presentation by the Chief Officer of the department and some assistants, I think it was on PowerPoint, which basically rubbished most of the findings of the Scrutiny Panel and put their own spin on things. Ironically, many of the recommendations that were subsequently thrown out by the Chamber, have been brought in by the Minister himself because he realised that there were gaps there.

[15:15]

So there is no point in Scrutiny producing quality reports if it is going to be rubbished by the Ministerial side. I honestly believe that in many cases that is what happens, the Scrutiny reports will get a little bit of publicity, a few sound bites: “Yes, we will listen to it” and so on, but after that nothing at all. So I think what this proposition does do is it makes the States Assembly more inclusive, it does pull together Members from all sides and it gives greater responsibility and influence to Members that currently have none. I think it slims down Scrutiny to a more cost-effective size. But also, more importantly, by having the board there, it gives the Minister a sounding block - an ear other than the Chief Minister - to develop policies and listen to what may be said. Would the Minister for Education perhaps have approached the school fees differently if he had had a Ministerial board as a sounding block? When you are the Minister for Health and Social Services, you only really have the Chief Officer to rely on to give you your advice, there is no one else there. I had one Assistant Minister, Senator Perchard, but his hands were full trying to sort out Social Services. You do need to utilise other Members of the Assembly to try and make sure you are doing the right decision. I did ask, at one point, Scrutiny to scrutinise a policy, because it was the only way I could see that I could get independent advice. But then that was refused because it set a precedent whereby the Minister was telling Scrutiny what to do, so I was in no-man’s-land. In the end, I had to go along with the advice of the Chief Officer. We hear a lot of people talk about Clothier. I have not read Clothier for quite a long time, but Members of the Assembly seem to hold the report in high esteem. But I think that it was a flawed concept, because it did away with the Island-wide mandate that the public want; it did away with the Constables out of the States, which is not what the public want; and it was only a system... or it seemed to me a system, that only worked if you had a party political system. But the Island, I do not believe, wants party politics. The advantage of a party politics system is, you have the parties providing checks and balances; you have the parties to keep Members in line; you have consensual government with firm policies. It is not up to the individual to go astray. Deputy Le Hérissier mentioned that Scrutiny can be made to work, but 5 years have gone by, and Deputy Le Hérissier has been in the perfect position to try and make it work, and it is not working. It is not working because Members are fed up of not having their work regarded by the Ministers in the proper way, and Ministers are fed up of the aggressive behaviour of certain Scrutiny members. The system that we have, I believe, has insufficient checks and balances, because we do not have the party system, and without these checks and balances, I believe the system is quite dangerous. I often wonder whether the Haut de la Garenne debacle would have happened if we had had Ministerial boards to hold the Minister to account and to give a sounding block for the Minister in respect of what was going on. There were no checks and balances at that time, in this period. There were not any Ministerial board members to hold the Minister to account, and what was the function of Scrutiny? There was no relevance to Scrutiny at the time of the Haut de la Garenne. I believe that this is about evolution and about moving forward, and about making things better. It may not be perfect, but I think it is much, much better than the place we are in at the moment. It aims to achieve a more accountable government, a more involved government, and above all, a much more inclusive government. I fear that if we throw away this chance to become more inclusive, we will deteriorate further, because the Assembly will be split into 2 sides, and the power will not be in the hands of 53 Members, it will remain in the power of 10 individuals. I urge you to support the proposition.

1.1.21 Deputy A.E. Pryke of Trinity:

It has been a long day, and I shall be brief. I hope we have all had a very good debate about this, because this is important. Being one of the few Members who have held several positions... and I take to task Senator Shenton on using sides as positions. I have been on Scrutiny, as Deputy Power said, on Overdale, with Deputy Ferguson on the dairy and importation of semen, and the G.P. (General Practitioner) out-of-hours, to name but a few. They were very good reports, and I would like to say that we did have full co-operation at that time, with the Ministers. I would like to see an inclusive government, and I would like to stress that we are all here for one purpose, to serve the Island and to serve the people. As I say, we did have some good Scrutiny reports, and some of the recommendations were put into place, and now, as the Minister, I think, one of them - which I am pleased to say was the G.P. out-of-hours - I would like to say that we were proved right, if someone had listened at that time. But there you go, that is hindsight, and hindsight is a wonderful thing. During the course of this debate I have flip-flopped, I have gone from one side to another. I agree with some of the points that are made but also, I can see... I disagree with them. Are we replacing a system which is not effective for another one? That is my big question, and we do not know. Ministers are corporations sole, and I am concerned that if we have a board, will it work, can it work? But also, it is essential to spend time trying to make a consensus. I can see the benefit and the disadvantages of both sides. As Deputy Martin said, at Health and Social Services, it definitely is just the 3 of us - the 2 Assistant Ministers and myself - and we each come from different backgrounds, different thoughts, and I like to think that we all thrash-out what we do not agree with and come to a consensus, and that does work. Usually, we do all agree in the end, but we must work together. As I said, we all come from different sides, but we must try and work as an inclusive government. Senator Shenton said about Health, when he was at Health, about the Chief Executive, but I would like to say that if I do not agree with my Chief Executives, I tell them so. I would find... I would not just only talk to one person, one officer. I do walk around the hospital, I go around to other areas, and I hear it from the front line. I make up my own mind; if I do not agree with the officer, we work from there. As I said, I can see the benefits of both sides, and I wish I did at this point have the hindsight to look further ahead to make this decision. Before I do, I shall wait for the summing-up from Senator Breckon. My real aim is to try and be inclusive; I try to be that within Health and Social Services. If any Member did approach me with a problem or wanted to be included, as Deputy Le Claire has done on many a time, I do try and include that person. As I said, I will wait to hear the summing-up.

1.1.22 Senator P.F. Routier:

Over the years that I have been in the States now - 17 years - I have experienced committee membership, being President of a committee, then from there becoming a Minister and also now as an Assistant Minister. I have not experienced Scrutiny from the Scrutiny side. I have, obviously, experienced Scrutiny from being called to have policies scrutinised. I have to say that, at the outset, when Ministerial government came into place, I did my utmost to try and involve the Scrutiny Panel, which were looking at - particularly - income support, to meet on a very regular basis, to discuss on the way to try and formulate policy. That worked very well for quite a few months, but unfortunately as we went through it, the regular meetings fell away and it just did not happen the way I would have liked it to have happened, where we could have helped each other out in formulating the income support policy. But while I think of it, I will just pick up on something that Senator Shenton said in his comments. It was about some of the recommendations that came forward in the Scrutiny report which was presented to the Council of Ministers. I have to take exception to ... he does say that the Chief Officer and some officers came along and put forward, and trashed the recommendations. But it would have been my policies that the officers would have been putting forward in a presentation, so please do not criticise the officers for having presented what was at that time rejected policies on the basis of cost alone. The reasons the recommendations of the Scrutiny Panel were rejected is because each one of them had an additional cost. At that time there was not sufficient funds to bring forward those things. As we now know, the Minister has brought some forward. Senator Shenton is quite right, that some of those things have been brought

forward now, because the money was available. What will happen in the future, I am not sure, with the cutbacks, whether those policies may have to revert back again, but that is the nature of decision-making. When I first saw this proposition, I read through it in total, all the appendices and everything else, and I thought: “Yes, this is a really good proposition, this is something which I am going to support.” During the day, I have gone backwards and forwards, backwards and forwards. I have made my mind up now, but I have got to a situation that I know I am going to support it, because I believe that what is being proposed is better than what we currently have. What we currently have is very, very difficult to work in, and I really would like to think that Members can see that this is a step forward. No system is perfect; whatever system you have there will always, always be problems. Senator Ozouf picked up on the point, it is not necessarily the system that is at fault, it is often the people that are in it that are not prepared to work with the system. So I have now decided that I am going to support the proposition.

1.1.23 Deputy J.G. Reed of St. Ouen:

I, perhaps unlike too many Members in this Assembly, have participated in the old committee system. For my first 3 years I was on the old Housing Committee. I then spent the next 3 in Scrutiny, a member of the Chairmen’s Committee, and Vice-Chairman of P.A.C. and now, following a States decision, I was elected to become the Minister for Education, Sport and Culture.

[15:30]

So I have been fortunate to experience all the aspects, if you like, and different variations of government. I am certainly not a believer that you should chuck the baby out with the bathwater, and that is what, I believe, this proposition seeks to do. I would like to remind Members we are only just 5 years into the new Ministerial form of government and indeed, the Scrutiny system. I, together with Deputy Le Hérisier, have worked hard at quite an unenviable task at times, to develop an identity for Scrutiny, to get Members to consider what Scrutiny was, what it was supposed to do. We developed working practices that we put in place to create the foundations so that Scrutiny would further develop. I think, unlike the Ministerial side of government, the problem is that Scrutiny has yet to have... or Members are able to rely, perhaps, and have confidence in, the officers that support the Scrutiny function, because they are able - very able - to guide Members in their roles and responsibilities. I think that there is a frustration from the officers within Scrutiny that, indeed, States Members themselves are not necessarily focused on what is required. Then we come to this proposal, and we are saying: “Let us have a Ministerial board, that sounds great.” What have we got now? We have, in my case, 2 Assistant Ministers, who, I agree, I selected and the States did not select, but that in fact makes up my Ministerial team. It was a difficult process, 8 States Members identified and indicated their desire to become my Assistant Ministers, I went through a selection process. Should, perhaps, the States elect Assistant Ministers in future? Perhaps, yes. Is that a need to scrap this current system? No. What else is this offering? Well, if you turn to page 5, one of the comments in support of Ministerial boards, it says: “It was recognised that, notwithstanding its many shortcomings, the former committee system had engendered a knowledge of the working of departments, as well as allowing a greater engagement for all States Members with departments, their staff, and with the public.” Yes, absolutely right. Is that a barrier for any States Member, whether inside or outside Scrutiny, now? No. I certainly have experienced the ability to walk into any department, even before I became Minister, and speak with officers and other individuals to gain any information, any information that I required. It was perfectly acceptable and recognised practice. I would ask, and in fact I can tell you, that quite a number of States Members that have been offered the opportunity to visit my department, speak to my officers, do not. Will Ministerial board systems and the proposal in front of us make any difference? I do not think so. What is the way that they are promoting this particular Ministerial board? It says that: “In support of this proposal, committee members have been able to attend departmental public events, such as prize-givings, retirements, concerts, *et cetera*, as political representatives of the relevant committee, and this gave a political presence that was appreciated by

staff, users of services and the general public.” Again people - and States Members in particular - can do that now. There is every opportunity for States Members to participate in any events that are taking place within their Parish, within the Island. They have regular invitations, and there is no need to, just again, create a new system to allow that to happen. If it is going to happen, it will be because the States Members themselves wish it to happen. They will have to want to get involved. This is the other issue: we have a situation where States Members are able to select whether they get involved in Scrutiny. Has anyone asked the question, is that beneficial? If Scrutiny is supposed to be there to hold Ministers to account - which I believe it does - then why not get involved? Why not fulfil an important role? The other issue, and again it is to do with the current system, we have the ability now for Scrutiny Panels to meet informally, if they choose, with the Ministers to discuss matters out of the public eye. There are certain panels that choose - and obviously, again, it is down to their choice - not to engage in that particular matter, and conduct their business in public only. Is that beneficial to the development and understanding of policy? Does it enable the Minister to explain exactly some of the thinking that is going on as the policy is developed? It does not. Does it mean that we have to scrap what we have to move to something to completely different? I do not believe so. It needs a concerted effort, and I am not suggesting that Ministers and the Executive side of Government is right... we need to be more open, we need to be able to ... and encourage more States Members to feel able to come and talk to us. We should not be conducting a question and answer session every time the States is meeting, for 2 hours. A lot of those question and answer sessions should be taking place with the departments, with officers present if necessary, and with the information at hand. That is the way to properly engage, not just by tearing-up what we have and starting something else. Furthermore, who is to say, and no one has proved to me today, that what is being proposed is something that will equally last and equally stay and be able to stay the distance, as it were. Is this going to be something else that we will tear-up in 5 years’ time and move to something else? I think we need to leave the current system in place. Yes, we need to improve it, and I would suggest that all our efforts be directed in that particular area.

The Deputy of St. John:

I wish the Minister could engage with his school people.

1.1.24 Connétable D.W. Mezbourian of St. Lawrence:

I am aware that most things have been said about this, but I would like to describe this proposition as a rose by any other name, because to me, it is quite clear that the term “the board” (the Ministerial board) is exactly the same as the Assistant Ministers’ position. I think it has been mentioned that all we are doing here, rather than calling it a board of 3 or 5 Assistant Ministers, they are a Ministerial board. The improvement is that they would be elected and removed from office by this House, whereas at the moment, Assistant Ministers are not, they are appointed by the Ministers themselves. I do not see anything wrong with that at all, I see that as being an improvement, that it is the House who decide who sit on these Ministerial boards. I see it as being an improvement, inasmuch as the boards would consist of between 3 and 5 Members, whereas at the moment, most departments are restricted, I believe, to 2 Assistant Ministers. On page 13 of the proposition, we have a definition of what the role of the Ministerial boards would be and, to me, that is the first attempt that I have ever seen that describes to me what Assistant Ministers should be doing now. A rose by any other name, I do not have any problem with this. Like Senator Routier, when I first saw the proposition I thought it was pretty straightforward and I agreed with it. It seemed to me that by having boards of between 3 and 5, we would have more inclusive involvement. As the debate has progressed, I have vacillated, I have gone one way and the other. But reading it again, it is quite clear to me, a rose by any other name; a Ministerial board as opposed to Assistant Ministers, 3 to 5 Members sitting on that board with a definition of what their responsibilities would be. We do not have that at the moment; we need it. Finally, the replacement of the 5 Scrutiny Panels with the Policy Review Committee. I have read it through again and again,

it does not cause me any concerns, it allows more flexibility for all Members to participate in functions that they perhaps would not have done before. Like Senator Routier now, I have decided to support the proposition in its entirety.

1.1.25 Deputy C.H. Egré of St. Peter:

This debate has swung like the proverbial swing under the tree. I just want to clarify a few points. I am sure that the Chairman of the P.P.C. will cover the areas I do not cover. I have seen many changes over the last 7 years. As people will be aware, I spent 3 years in the committee system. That system has been declared as imperfect, and I agree, it certainly was not perfect. What we have had since, with Ministerial government, is an evolution. I see that the Deputy of St. Ouen has left for the moment, but he is talking about that we have only had 5 years in which to bed the Ministerial system. I have to say, in that 5 years, I have seen some changes in that Ministerial system, and they have not been for the better. In times gone by, one could go into the Members' Room, one could go into the coffee room, one could go into the corridor; one did not see huddles of people whispering to each other, and toning-down their conversations when other people walked past. That worries me. I had confidence in the Executive and I had confidence in Scrutiny. That has been somewhat diminished over the last 2 months, and especially over what happened last week. The Minister for Treasury and Resources declared that the Corporate Scrutiny Panel was a shining example of how Scrutiny should operate. I would have concurred with that, and we have had, certainly, a very good working relationship with the Minister for Treasury and Resources and the Chief Minister. I have to say, that relationship was shattered over what happened over the last few weeks, and that was more to do with the ability for the civil servants that sit behind these organisations to manipulate some of the issues that were going on, and I do have evidence of that occurring. I think, if those people who still have copies of my report, you will see letters there which indicate that particular problem. We have heard today about the fact that, if we took on this proposition, it would have a huge increase in costing. I have to say, specifically to the Minister for Transport and Technical Services, I do not read the same book as you, because I think that, if this goes through, it will be in part, money-saving. The Minister for Treasury and Resources talked about people, not the system. I would agree that people are the most important agency that operates within this Assembly. However, the system that we have in current use- the system that we have in current use - does allow people who wish to hold power and hold power close to their chest, the ability so to do. So the system, in part, is at fault as well. We put an awful lot of work into setting up this proposition. We worked as a team, and we did have diverse views, and talked them through. The final proposition I commend to the Assembly. There is a follow-up to it, as you will see, in that the Privileges and Procedures Committee will be tasked to put the flesh on the bones that come out of it. I commend it to the Assembly.

1.1.26 Senator T.J. Le Main:

There have been some very, very good arguments, for and against this today. I have always seen the need for more inclusivity with Members, and Members being able to gain information.

[15:45]

There are many Members in this Assembly that need and want more work, and they do need more information and to be part of the team. There are several Members of this Assembly - I am one of them at the moment - that is in limbo. I would like extra work, and I would like some kind of responsibility, or have something that I can hang my hat on. This proposal today does worry me slightly, although I am, as I said yesterday, I like the idea of Ministerial boards. In fact, when I have been President of several committees in the past and when I chose committee members, I chose, (a) people that I was able to work with, and (b) people that had specific skills either on the finance side or other issues. I was very much one of those that liked to delegate and give the responsibility to members to be involved. The advice given today by the S.G. (Solicitor General) is a worrying factor and I am a little bit concerned about that. If we go down the road of Ministerial

boards it will be, in my view, like the old committee system. It will, in my view, bring more secrecy to Government because I believe that although Scrutiny had not ... not only Scrutiny but the whole general issue with the Cabinet has not worked properly. At least with the Scrutiny functions it was open to the public and the public had a wonderful opportunity to either listen or to gain information. On many of the issues that I have learnt, perhaps recently... and most of the time, has been by reading the *J.E.P.* unfortunately, because it has been the Scrutiny Panels that have got the information out of officers, Ministers and other issues. Whether you like it or not, I thank the Scrutiny system for giving me, and many people, an opportunity to know, at least, what was going on. When I first became a Minister under the new system I gained much more information, I felt as a Minister, of the workings and the policies and the decisions of all the Ministers and all their departments. That was all right because I was a Minister, but it quite clearly does not give that information out, certainly to many of the Members. They do not have the opportunity to gain that kind of information. There is nothing stopping a Minister, at the moment, enrolling several Members to give advice on policy and decisions. As I say, I have been a proponent of this and I have always done this. As a Back-Bencher now, I can see the frustration of non-Executive Members, those who are not involved. So my view is that if you reduce, or get rid of Scrutiny, how am I, as a Back-Bencher, going to get a policy decision if it is not published in the *J.E.P.* because unless you allow the media to attend when policy decisions or information, which did not happen during the committee, but if it is going to be an advisory board, in my view, one has to be open with the public. As long as the public and the media know that it is discussion under policy under certain circumstances - not all the time - there must be times, when, perhaps, the media should not be involved, but generally I believe that this proposal, in my view, will have a detrimental effect. I have not decided which way I am going to vote because I am swinging right and left all the time. But I do believe that the information that is going to be given out to the public through the media and otherwise, in my view, will be a lot less and we will go back to the old committee system where we had people saying nobody knew what was going on. Most of the stuff in those days was leaked to the media, everything was being leaked and leaked and bad information was getting through to the media, wrong information at times and people were being misled. I am concerned because I do believe that Ministers should, even now, be involving more Members within their departments. There is a huge opportunity for departments, like Health for instance, Education and others where one or 2 other Members could be involved sitting, advising and helping the Minister and the Assistant Ministers. So I am going to wait until I hear the proposer of this proposition, but I am concerned that Scrutiny is going to reduce. I think they have done a good job. I do not always agree with them, and they will not always agree with me, but I think they have done a good job. As I say, they have put out information to the public and if we give the public less information in the future, then we are going to have more aggravation from the public than ever before. So I am going to wait and I have not made up my mind, but I have some grave concerns and the advice given by the learned S.G. is a worrying factor in how I am going to make my decision.

1.1.27 Senator B.I. Le Marquand:

This has been an unusual debate for me because I either start with no ideas whatsoever in a debate and make my mind up as I go along, or I start generally with a clear idea. In this particular case, I started generally positive towards the proposals although I did not agree with the second paragraph. I think that Ministers should have the choice of their own board members or Assistant Ministers or whatever. But I was prepared to generally support and to leave the details to be sorted out later. But very early on warning bells began to go off in my head. They particularly went off in relation to the taking of formal minutes by the independent States Greffe because it seemed to me that that fitted much better with going back to the old committee system which did not work. There were other comments made by some Members which led me in the same direction. Those warning bells went off again on the correct advice of the Solicitor General. There are difficult issues, is it going to be legally binding on the Minister that they consult. Will there be disputes arising from that, will proper decisions have been made or will they be invalidated by a failure to consult? It is an

absolute nightmare scenario there. So I am supportive of the general principle of wider consultation but I would just like the details. There are, in my view, 4 issues which arise here in relation to the problems that we are trying to improve. Firstly, there is the issue which, in my view, the current system is too dependent upon the abilities of the individual Ministers. That, I think, is a failing of the current system. The second issue as to whether civil servants have too much influence, I think that is an issue and not one that we can ignore. Thirdly, there is the issue that the skills of Members, who are not Ministers, or Assistant Ministers, are not being sufficiently used within the Assembly. Fourthly, there is the issue as to whether Scrutiny is providing effective scrutiny, effective opposition - perhaps opposition is not the right word - but effective scrutiny of the Executive. I want to be positive in relation to this and I have been thinking about this throughout the day and, in fact, I have come to this conclusion at the end of the day - and I am sorry to drop this into the pot so late in the day - but my thinking has been developing. I think this is much too complicated. I think this is much too messy. I think there are far too many difficulties associated with it. I think there is a very simple route available, which I have been showing to some of my colleagues with all sorts of different responses. In my view, we can improve the system much more simply by doing 2 simple things. Firstly, (1) do away with the Troy rule. I think the Troy rule properly belongs within a party system and not within the type of system that we have in Jersey and are likely to have in the future. In any event, this proposition would effectively do away with the Troy rule; and (2) allow Ministers to have the number of Assistant Ministers they want, allow them to choose them and allow them to have whatever number they want. That leaves Scrutiny intact. That is a very simple change and does not require a great upheaval and a great reinventing of the wheel. So I am going to vote against this but if this proposition fails, as I think it will, just; then I would urge those who have brought it to bring another proposition along the lines that I am now suggesting.

The Deputy Bailiff:

It may depend how many swingers there are, Minister.

1.1.28 Deputy F.J. Hill of St. Martin:

I was waiting for a title, can someone find a title because I feel a bit out of place this afternoon because I have not been called up as the Minister for Home Affairs or Minister. Maybe, we could all have a title rather than being called the Deputy of St. Martin. Just to bring us around to a couple of issues that have not really come up during the course of the debate, although it has been aired. I would like to draw Members' attention to part (a)(ii) and part (a)(iii). I think, we are trying to have an inclusive system and yet at the same time we are having an anomaly in it. It is the way in which Members and Ministerial boards will be elected and removed. I do not have a problem with (a)(ii). I think the Members and Ministerial boards should be elected by the States and, again, would be removed by the States. However, I do not agree with the way in which (a)(iii) is interpreted because what we are going to have here is a system where the Ministers will be appointed, or we assume, elected by the States, which I agree with, because that is consistent with how we will have Assistant Ministers too. However, I am not happy with the way in which a Minister can be removed. I believe the system should be consistent. So, in other words, if it is right for the States Members themselves to elect the Minister then, indeed, it should be the right for States Members to remove that Minister. I, certainly, will be voting against (a)(iii), and I would ask other Members to look carefully to that when we get to that point. Now, many other things have been spoken about this afternoon so I am not going to go over them all but I do think... again, it was Senator Le Main who reminded us that, in fact, the present system allows for advisory groups. It is a shame during the whole course of Senator Le Main's tenure as the Minister for Housing I do not think he ever utilised the skills of others but at the same time he might remind me that he did. The system does allow for it. One of the reasons why this particular proposition is being brought to the House really, is because it is to acknowledge that failure of the Ministers to utilise the skills of Members and non-Executives. I think the Minister for Home Affairs is a bit too bashful, maybe, not to

mention but he has called a group of diverse States Members. I look across at the Connétable of St. Ouen, Deputy Fox, Deputy Pitman and myself and Deputy Egré to assist with the Police Authority. I think it could be argued that we have had a good old bash at the system. We have come through with various sorts of ideas. In fact, it has not been concluded but I think the system is working that way because the Minister took the trouble to look for a group, now, if only that had happened again. It is a shame, that same Minister, with all that knowledge, did not do that when he looked at the suspension of the Police Chief. Just imagine if the Chief Minister had called in the sort of people like, maybe the Deputy of St. Martin, maybe the Connétable of St. Helier, maybe Deputy Pitman, what a lot of time and money we would have saved. So you see there is a system in place, but, of course, it does not automatically work, simply because we do not have, maybe, Ministers or Chief Ministers with sufficient vision, but there again...

[16:00]

I am not going to support this. Yesterday, I spoke in support of the Deputy of St. Peter's proposition because I believe there should be minutes, but I just felt that what we are proposing, really, is a halfway house; it is neither fish nor fowl. We should be utilising the skills we have got. I do not think we have given the present system sufficient time. It did work well. One of the reasons it started having a breakdown was, I think personally, Scrutiny was too successful. That is one of the problems. As soon we got certain opposition from the Ministers, we had a cry: "Oh, outcry, we are following a personal agenda." Well, personal agendas, as far as I am concerned, is getting to the bottom of a solution or a problem. One of the problems we have had, of course, is that there has been this sort of breakdown of trust at the fact the more you dig, the deeper the hole gets, simply because the Ministers have failed to come up with the answers. That is a shame really, because, again, I do not take a problem at all; a good House has cut and thrust. I think this House... having been here for a long time, I believe in many ways we are all healthier for it. As far as I am concerned, and I know I mentioned this to the present Minister for Home Affairs only yesterday, what we do in the ring is in the ring. Once we go outside we are different. I hold to that and I would ask that all Members hold to that, which is very important. It is important to have cut and thrust and have a difference, but leave that difference in this Chamber. Anyway, I think what we have had is an excellent debate. I think most of us had something to say and I think it will be a close vote. I would ask Members not to go with it, partly because I think we should give the present system a full run. I would ask the Ministers to be much more flexible and utilise the skills of those who are not Members of the Executive and also respect those who are part of Scrutiny. Last week, I thought, was a bad day for Scrutiny when we failed to respect, again, the Deputy of St. Peter's request to hold back the debate. So we have had a good debate, a number of issues are raised. What I would hope is that we can go back and build on what we got today from all the ideas that have come forward but, at the same time I have to disappoint Senator Breckon. I am not going to support it but maybe he could, in his summing-up, assist us with part (a)(iii). Will he consider to withdraw that and so it can become equal with (a)(ii)?

1.1.29 Deputy I.J. Gorst:

There is a saying, which probably is no longer politically correct, that an individual is all things to all men. So, perhaps this afternoon Senator Breckon is about to pull off a political masterpiece by proposing a proposition, which appears to be all things to all Members. It is also said that if something is too good to be true, then it generally is. I do not believe that during the course of this debate any Member, to my satisfaction, has been able to answer the question: "Are these boards part of the Executive, or are they Scrutiny?" I believe that we have heard speech after speech, excellent speeches in fact, excellent speeches, where Members, dependent on their opinion, depending on what they think the problem is. We heard the Deputy of St. Mary say that he did not believe that proper problem analysis had been carried out, and I tend to agree with him. Depending on what a Member thinks the problem is, they believe that this proposition will solve that problem and even if it does not solve it, it will work, or move some way, towards solving that problem. As I

see it, there are probably 3 choices when it comes towards moving the machinery of government forward. None of those 3 choices are what is before us today. We could move back to the old committee system. I think a lot of arguments have revolved around harking back to what some might think were the glory days where the committees were, in effect, the Executive and people felt that this House ruled supreme. However, I think, in law, it was the committee that was, in effect, the decision-makers and then they brought those decisions to this Assembly in much the same way that a Minister might do now. We could move, and we have heard this said, towards an Isle of Man system. Perhaps the proposer of this proposition feels that that is what this is, but I would say that it is not. The Isle of Man system has just over 30 members, getting towards the 40 members that Clothier recommended, and I believe that that, probably, is where we should go and that, yet again, is not what we have before us, where every person truly is responsible and does have an area of responsibility. Again, we have this confusion today about responsibility or inclusivity, which are the problems that we are trying to solve or are we trying to say that the board will solve both problems and yet, as it is proposed, it cannot solve both problems. That is where we have, I believe, a fundamental problem. We have also heard a very strange argument with regard to what the Solicitor General said to us and that was: "Well, of course, yes, the Solicitor General would give us the advice of a lawyer." Well, indeed, I hope that he would [Laughter] because that is exactly what we want from our Law Officers, good sound legal advice. Why is that important? Because we are a legislature and we must operate, (a) within the law; and (b) where we believe the law is inadequate then we bring forward amendments or new laws to deal with those inadequacies. So, it is absolutely right and proper that he gives us good solid legal advice from the position of a lawyer. It would, indeed, be very remiss of us not to be cognisant of that advice, and therefore make our decisions in the light of that advice. I, for one, believe that he has cast enough doubt for us, today, not to be able to accept this proposition. One or 2 things have also been said about the power of the Civil Service. I would just like to think about that for a moment. There was no doubt that moving to the Ministerial system that we moved to was going to, in effect, create greater power at the level of the civil servant where they were offering advice to Ministers and to Assistant Ministers. I have to say that some civil servants I have spoken to would like to go back to the old committee system because they, for one, feel that, perhaps, they, as well, have been alienated from other States Members, they do not have the communication with States Members. They feel that States Members do not understand the burdens of running a department. That is an issue which needs to be addressed. That is, perhaps, what could be said for this proposition that would help to address that one issue. So, it is not fair to say that civil servants have relished in this extra power that they have undoubtedly been given, they would rather be more inclusive and they would rather have States Members involved in understanding what the pressures are and the situations are in the decisions that departments have to make. I believe that most of the arguments, unfortunately, and it is perhaps somewhat ironic that I would say this; most of the arguments in favour of this proposition today are asking us to accept it on a wing and a prayer. One of those perhaps I would associate with, the other one I am not so certain of, but in my opinion it is certainly no way in which we, as an Assembly, should make our decisions. Yes, there are problems with the current system. I am the first to admit that. I am afraid that this does not answer those problems because we do not know whether it is Executive or whether it is Scrutiny, and therefore we cannot accept it but, yes, we must keep working away at this problem. I believe we should go back to the report that the Deputy of St. Peter produced on behalf of P.P.C. I believe that one of the recommendations there was that we should go away and do a proper thought out and appropriate review of what type of government we wish to move forward to in a reasoned and balanced approach, not just this wing and a prayer approach that we have been given today. So I would ask that Members do not accept this proposition.

The Deputy of St. Mary:

On a point of clarification, may I ask the previous speaker; he mentioned that there were 3 choices which he would put in front of the Assembly, none of them are here, and he mentioned 2. I would dearly love to know what the third one was.

Deputy I.J. Gorst:

I thank the Deputy of St. Mary for allowing me to extend my speech slightly. Indeed, we, in Jersey, have a history of consensus politics. The system that we have now, I am afraid, if we analyse it in the cold light of day, is really a system for party politics. It is a lot more confrontational, but there must be checks and balances when we have decision-making processes in play. It is only right that Ministers and departments are held appropriately to account. Therefore, that holding to account within the system that we have is, whether we like it or not, going to be more confrontational. In a way, perhaps if we are staying with this current system we have to get used to that, we have to expect it because we should be held to account and those Members who are not part of the Executive should be holding the Executive to account. So perhaps it is just a slight change of what we are used to from the consensus approach. We have one of those 3 choices to make. As I said, none of them, perhaps, apart from that third one, is before us today with the *status quo*.

1.1.30 Connétable P.F.M. Hanning of St. Saviour:

As they all say, I will be brief. After 5 years, nearly, every Member that has spoken has criticised the system that we have now. I am not going to go over all the arguments again because we have heard good speeches and it has been well debated. I would just remind Members this is a chance to improve the system that we have. It may not be perfect but it is better than what we have now. If we wait for perfection, we will wait for ever.

1.1.31 Connétable S.A. Yates of St. Martin:

At the very last minute, and it is also going to be very short. I had a line of thought prior to the Minister for Social Security speaking and that line of thought was that the 4 previous speakers were not part of Scrutiny; at the present moment, I am. I sit on a fairly confrontational panel. Then the Minister for Social Security spoke and I understand that he was almost inviting the Scrutiny process to become more confrontational. I must say for the last year I have become more and more frustrated about, seemingly, the lack of progress of my personal role and the Scrutiny Panel's role. I have been listening quite closely to the proposition of Senator Breckon and although I do agree it is not perfect, but it does seem like a little bit of evolution. I would welcome a bit of evolution rather than more of the same.

1.1.32 The Connétable of St. Mary:

As Members know, this is not my proposition, but I have been heavily involved in the working-up of it. In fact, I chaired the group that looked into Senator Breckon's original P.70 proposition with a view to seeing could we do what is often asked to be done, and that is put some flesh on the bones. I would just like to say I have heard some speakers today, noticeably the Chief Minister, talk about the 'can do' attitude. I would like to say that on that committee that looked at P.70 and brought it forward, I have never come across such a productive, co-operative body, really focusing purely on the aim for making things better. There were no egos. There were no threats. Everything was put on the table for discussion. Everything was available to be discussed. We certainly did not agree on everything at first glance. But what we did was try to find a way that the general feeling that Senator Breckon had engendered in his P.70 proposal that we could make it work. As that original proposal suggested that P.P.C. and the Chief Minister... the committee, I think it was, got together and found a way to bring things forward. We thought what we have to do is, we have acknowledged we can make this work. We have acknowledged it is worth doing. Let us get together, let us do it and let us set out how this proposal would work. In doing that it may well have been, and in fact it was, that P.70 itself evolved because we found better, tighter ways of

doing things. Senator Breckon was never coerced into changing anything. I am sure anybody who has ever worked with him will know that that is not likely to have ever happened. There is always a fallback position available anyway because P.70 was left on the table and could have been debated at any time. But as a committee, we really felt that there was a way to move things forward.

[16:15]

As the committee, we involved the officers who were responsible. We had fantastic support on a very tight timetable. We set ourselves a time frame; we came in, as they say, under budget and on time. There was a great feeling that we really were looking for a better way forward. So having said that, what did I hear from the proposer? I heard some good concepts, possibly more involvement, greater accountability, a return to consensus. I never worked in the committee system but over the last 2 years, certainly, I have heard more and more people harking back to it in its heyday, expounding its merits. They have told me about the inbuilt criticism akin to Scrutiny that came as part of being on a committee, the way that differences could be thrashed out around a table and not having to wait until things came to the floor of the Assembly. The way people felt more involvement. There was a sheer volume of committee acts that were recorded, showing that work was being driven forward. But then I have also heard the criticisms of the slow progress of business, the difficulty of getting different people working different committees who had maybe shared or liken responsibilities, getting them all together. The example I was always given was that of the corporate parent. Three different committee presidents with their committees perhaps trying to get 21 people to come around together and just schedule a meeting so you could agree something that was incredibly important when you think about the things that the corporate parent had to deal with and how difficult that was. So what is on the table here is certainly not - and I repeat not with as much emphasis as I can for those who have not understood it - a return to the committee system. It retains at its core Ministerial responsibility and that is exactly what we are looking at. This is not a break from Executive Government; this is an amalgam in some way bringing out the best of both. But, if you like, last week we heard Senator Le Marquand talking about metamorphosis of the caterpillar to the butterfly. I sent him a note saying: "You left out the bit in the middle where there is uncontrolled mush." I think perhaps at the moment we are in the slightly decomposed state between the caterpillar and the butterfly. Certainly still alive, certainly organic but not functioning to our full and optimum capacity, and certainly not very pretty. The chrysalis cannot become a caterpillar again, it has to evolve into something else, it has to move forward, and that is what we are looking at here. We are not looking back. Just a slight pause, I have got so many diverse notes. So will I hope that this will achieve? One of the saddest things for me about the current Assembly is I find ... it is difficult to say but I have to say, there is an underlying suspicion and a mistrust on behalf of some Members that in my opinion goes far beyond the healthy scepticism which is entirely appropriate when we are looking at questioning. Sometimes I even feel it is bordering on paranoia and I hope that this will change when Members are closer to the Executive coalface, if you like. I hope that there will be, and in fact I believe truly that there will be a revitalisation of the Scrutiny function. I was intensely proud to be a part of Scrutiny during my first 3 years when I was Deputy of St. Mary, but lately it seems to me that Scrutiny has become less engaging, certainly for Members. There are a greater number of less full committees, if you see what I mean. There are certainly vacancies on Scrutiny which Members are not queuing-up to fill. I think that is incredibly sad because I have always have had a strong feeling that Scrutiny was valid. I am hoping that there will be more focus to the propositions which are brought because they will be better considered by more Members in advance of being lodged. Although there is no intention anywhere, and certainly nothing in this proposal, that would take away from the workings of Back-Benchers, hopefully Back-Benchers will not feel that they are driven to produce propositions as often because they can achieve getting their views across in the evolution of the Executive propositions. Maybe there will even be a change in the tone of question time, and I do not mean a diminution of it but I mean that a lot of the questions that you need to ask initially to get to the nub of things will be asked on the

Ministerial boards. You will be able to use question time for what it was really for, to get incisive looks into things where you have not been able to gain initial information. I think that overall this really would and could and should - in fact it must - lead to a more cohesive States of Jersey, more effective and sharing the workload more. It could be a really positive thing and it could make States efficiency ... it is not something we aspire to but something we say we have achieved. There are some things certainly ... when I started to hear the speeches this morning, I was amazed. First of all I went through the feeling ... I ran the whole gamut of emotions that somebody else had said, it seemed to me that a lot of Members simply had not read the proposition and those that had read it maybe had not read it properly. On the other side there were people who were reading things in the proposition that simply were not there. A lot has been said about the Solicitor General's advice and certainly I am very grateful for what he has said. I agree that, yes, there may be issues that we need to be refining when we come to what will be necessary changes in the States of Jersey Law. That is something that obviously was always going to be required. But the Solicitor General, even though he has a deceptively youthful appearance, is incredibly competent in what he says, and he was very careful, as ever he chose his words with care and emphasised in fact the fact that there might be a potential for tension; a potential. Well, of course any tension would have to be addressed but the best wines do not necessarily come from the grapes that have the easiest, sunniest position. Tension can, in fact, be a good thing. I choose my words carefully too when I say that tension does not necessarily equate with conflict. What we often see in the Assembly at present is, I venture to say, much more akin to conflict than to tension. I do not think that that is productive at all. Deputy Southern, to quote him, referred to what would happen if Members found the same Minister making 3 pigs ears on the trot - or on the trotter perhaps. Does Deputy Southern really think that this the sort of thing that the Ministerial boards will allow to happen? Would boards be continuing to support a Minister who was so patently failing to perform? Would the boards not be bringing that Minister to account themselves on the floor of the Assembly? What we are going to have to understand is that with the Ministerial board situation there would have to be true politics. People would have to realise they would have to engage with their boards. Ministers would need to take their board members with them. We are not talking about the boards having any kind of over-ruling for the Minister but the Minister will have to be certain if he chooses to go consistently against the advice and the feeling of his board that he is capable of standing his ground on the floor of the Assembly, which is obviously where it will end up. That is where the politics comes in. Deputy Le Hérissier unfortunately wanted to debate a different proposal than the one that was on the table, and I am sorry but we cannot do that. But what we do need to do is make sure we have given the proposal that is there the full consideration that it does deserve. I would like just to briefly look at the amended proposition that we were very helpfully provided with by, I presume, the Greffe this morning, where all the changes that we agreed are laid out. I would just like to run through, just to be sure that everybody has really understood what this is. In paragraph (a) I think the key word is influence. "All States Members will be given greater opportunities to influence Executive decision-making." To have a part in, not to dictate how it evolves, but have a real influence on what comes on. I think (a)(i) stands for itself. If we are going to go down this road we have to relax that infamous rule. (a)(ii) I think is completely relevant and very important if we are not to have what the Minister for Transport and Technical Services described as "cosy and compliant boards". To ensure that we do not have the Minister picking only his best, closest, dependable allies, the Minister will be able to nominate the board but it will be open on the floor of the Assembly for other nominations and for a vote. That, I think, is incredibly important. The Minister should continue to be appointed by the States in (a)(iii). This is what the Deputy of St. Martin did not like. But the Chief Minister should be given the power to dismiss the Minister. What does this do? This gives accountability. At the moment the Chief Minister has no say on who the Ministers are, whether he can dismiss them or not. He has to come back to the Assembly. We are making him accountable because if he stands by his Ministers then he must stand by what they do. If we do not like what they do then we can ask the Chief Minister to please resign, please stand down. It is all about accountability. Senator Le Marquand was not convinced about the

minute-taking, but the minute-taking is entirely appropriate because in a situation where the Minister may have to justify - if there is vote of no confidence brought for example - why he has consistently gone against the advice of his board on one or 2 occasions or perhaps even more, he will need to say: "This is what I was advised. This is what the board wanted, but this is why I had to say no and stick to my guns and make the decision that I needed to make." That is why we need to have a trail. It is all about a trail. A lot has been said about this being the death knell of Scrutiny but really I cannot see how anybody can think that is true. We are elevating the issue like the chief of the Scrutiny function to the second most ... this is the Chairman of the Policy Review Committee, to the second position. Deputy Tadier: that people on Scrutiny would be only the people who could not get a job anywhere else, but we are choosing the members of the Policy Review Committee before we choose the members of the boards. We have moved them all up. We are giving more credence to Scrutiny. The Policy Review Committee is elected ... *ad hoc* members join for different reviews but there is a core committee that is there at all times. I think that is really important and I think that many Members, in thinking we are diminishing Scrutiny's function, have overlooked how this will function. I urge those Members to reconsider their opposition. We have talked this through, we have discussed how it will work with the Scrutiny Manager. This is perfectly feasible. It would make leaner, tighter scrutiny. I think that is where we need to make it more effective. I think most Members will acknowledge that on many occasions recently the best Scrutiny reports have been those done on sub-panels, where sub-panels have looked at a focused issue, where they have taken people from other areas of the Assembly as fitted their interests. Really what we are doing here is enabling the sub-panel ethos of working to come out across Scrutiny. I think that is really important. What we have tried to do, as we have tried to pick up the best from committee and Executive, we have tried to pick out the best functioning ways of the Scrutiny system as it is now and given it more emphasis. Certainly whoever takes on that job as Chairman of the Policy Review Committee - and Deputy Vallois and I had a joke about this several times as we were working this up - that is going to be awesome responsibility. It is going to be a lot of work but it is going to be an awfully interesting job. I think there is plenty of scope there for somebody to turn this around and fulfil the true promise that I honestly believe that Scrutiny showed, for which I think it is perhaps lacking on at the moment. Senator Le Main was quite interested in putting things out in the open, and I am very grateful for that because I am so looking forward in a couple of weeks' time to Senator Le Main's unfettered support when I bring the Freedom of Information legislation. I am so looking forward to that and I am really grateful for his...

Senator T.J. Le Main:

If the money is there, I will be supporting you. [Laughter]

The Connétable of St. Mary:

I am just trying to make sure I have not missed anything because although this is not my proposition I do feel a certain love for it, a certain nurturing has gone on but really I think possibly I have said quite enough and there is going to be, I am sure, an excellent summing-up.

[16:30]

But I do urge Members, do not criticise what you have not read - read it. Do not dismiss this proposition because it has the annexes. The annexes are there for a purpose, they are there expressly to show how this must work. Because it is like States reform: you can think of a lot of ideas but unless they hang together in a cohesive fashion when they are put in front of you, you will not end up with anything that works. I can assure you that all the Members on that committee that looked into this and put forward this proposition for Senator Breckon's consideration, we all believe that this can work and we all believe that it can work in this way. I am sure that it is not beyond the wit of man to work out any technicalities when it comes to the changes in the States of

Jersey Law. They will, I am sure, be overcome. I really do commend this proposition to the Assembly.

The Deputy Bailiff:

Does any other Member wish to speak? Deputy Trevor Pitman. I did not see either of you behind the Mace so whichever one would like to go first, please go first.

1.1.33 Deputy T.M. Pitman of St. Helier:

Deputy Le Fondré always like to come in right at the end, we know that. I think we have spent a day and a half talking about symptoms instead of the illness and if you just look at symptoms I think you rarely get better. So how hung-up are we on achieving consensus? I think it was that great champion of social democracy who I am very familiar with, Margaret Thatcher, who suggested that all struggling towards consensus brought you was an erosion - some might say a selling out - of your values. Whether that is true I will leave Members to decide. But I came into Government willing to work with anyone and I still feel that way. I do not need to like them, I do not need them to like me, which I can hear someone muttering: "Probably just as well." But there we go. What I do need to feel is a mutual respect and I think that is at the bottom of all of this. But the bottom line, whichever system is in place, is that you have to have a strong opposition to hold the Government, be it left or right, to account. That I believe is the much deeper reality that underlies all of this. Is Scrutiny broken? Absolutely, in my view. Is it all the fault of those of us who sit on Scrutiny? Of course not. There are obviously clear faults with many of us who sit on Scrutiny, not least being the feeling of being completely disenfranchised, of being wholly without the means to hold the Executive to account, even when our argument is cast iron solid. Let us also be quite honest, just as it would be the case in a full party system, as in the rest of the world, there is bound to be frustration arising from the fact that if you believe the current Executive policy has Jersey heading for the abyss and you cannot influence it - and I do believe that - then how could you not be frustrated. It is both politics and it is human nature. While I think the true problem does indeed lie within the fact that we have cherry-picked the Clothier proposals and, worse, we have put systems in place that are just not fit for purpose, one of the results of this has inarguably been in my view that we now have an Executive who, with little fear of being held accountable, have grown arrogant - I am sorry but I can only describe it as that - and increasingly secretive and elitist. I think they have become that way because they can. In this particular term of government, this really began - and I think someone else referred to this - with the Chief Minister promising inclusion in his election pitch, yet then doing exactly the opposite, exclusion, where apparently having head-nodders was much more important than individuals having ability. If that offends anyone, I do apologise but if you just look at the facts, if we were serious ... if the Minister had been serious about inclusion then surely people with ability like Senator Breckon, the proposer, and Deputy Southern would have been given Ministerial roles. How could we ever hope for inclusion when that has not been the case? As has already been alluded to, getting information from the Executive, whether as part of Scrutiny or as a Back-Bencher, is all too regularly as difficult as getting blood from a stone. Maybe this proposition can improve that. I say "maybe" because I am still going to have to be convinced by the proposer. With exceptions perhaps, the Executive does not, in my view, really value Scrutiny. Indeed I believe that what many in the Executive like about Scrutiny is that it ties us up in ... what might be dissenting voices in subjects that all too often become meaningless, because resultant reports, as has been highlighted, will simply be ignored. Senator Shenton gave a very good example, I read that review into income support. I was not the Pitman involved in that, it was Deputy Shona Pitman with Deputies Martin and Southern. As Senator Shenton said, that was ignored by the Executive yet nearly everything had to be put in place. What message does that send out about value of Scrutiny? Is the current atmosphere unpleasant, confrontational? Well, one man's definition of being aggressive will be another's definition of being assertive. Regardless of this, as Deputy Tadier rightly said, that is all part of the cut and thrust of politics with conflicting ideas. If anyone cannot take it, as the old saying goes, get

out of the kitchen. If you are a politician who will not go along with the *status quo*, if you question - and we have seen a lot of this recently - you are always going to be criticised by those who just do not like you. The question today is obviously what Senator Breckon is proposing, will it make it right? Listening to the debate, and the very diverse voices I have to say that are suggesting the proposals would, I do find myself asking if the reasons for their support is exactly the same. Why does the Chief Minister give this his support? Is it because he will no longer be here and has indeed seen the failings of the present system? Maybe. Or is it because he, like many of the Executive, to use the words of Dad's Army Corporal Jones: "They don't like it, up 'em." That is what I think. They are looking for a way out to further dilute any dissenting voices. The possibility of burying those within our boards and simultaneously eroding the Scrutiny holding to account, that is one possibility. I hope I am wrong but I think it does have to be flagged-up. After all, what guarantee can there be that the 12 or 15 realists in the House will not just be portioned-out, in divide and conquer fashion, among the boards. A dissenting voice here, a dissenting voice there. Or may be excluded from a board altogether and then probably told, as seems to be the move at the moment, that they will get less pay, quite likely through no fault of their own because nobody wants to give them a home. Equally are some from within Scrutiny and the ranks who play no part in either Scrutiny or the Executive just going along with this proposal, because it seems to them it can hardly be any worse than where we are now. I can understand that belief. We heard someone mention how it would have been different if we could have analysed Haut de la Garenne. Well, as a panel we tried to look at that and were told for various reasons we could not go there. What point Scrutiny, as I was asked by many people. Where do I stand then as someone who has and continues to play a full role in Scrutiny? I think it has become sadly a complete and utter waste of time. Primarily because what I see is that arrogance of the Executive and their followers. The way many, I am afraid, vote against proposals simply because of who is bringing it, which is sad because whatever people think of my politics I have never done that in this House. But I will make the prediction right now that regardless of how this vote goes Scrutiny will collapse before Christmas, because there are many of us who have stuck with it and after what happened last week there are many of us who have pretty much come to the conclusion that we will finish the work we are on and then that will be it... enough is enough. It takes many, many hours for Scrutiny if you want to do it to the best of your abilities, as many in this House know, and if you are not going to be listened to - as was the case last week with the Deputy of St. Peter and Deputy De Sousa - what is the point. You could use the time much better; certainly those of us with very large constituent case portfolios. So can I vote for this proposition? I have got a huge respect for Senator Breckon, he is a people politician, I think he is a commonsense politician and he has got the best motives in bringing this. But I do need convincing, primarily around how these boards are going to operate and whether they will have any more say and influence than the present system. If he cannot convince me of that - and I know the Chairman of P.P.C. has just done her best to do so - then I will not be supporting it. Maybe the best long-term way forward is to vote for the system that you think will undermine Ministerial government the quickest. The system that will bring about the crumbling of a vested interest-driven right wing apologist for greed and elitist faction that is driving Jersey full steam towards the rocks; that never holds any civil servants to account ever. We have seen it yet again; it even apologises for their misdemeanours. Whichever system that is, it is the true failing that probably needs to be set against people like me and others - the 12 to 15, the realists as I call us - it is that there has not been a co-ordinated opposition because that is absolutely essential to all democracies. It does not matter whether those in the majority are right or left, you need a good co-ordinated and strong opposition. That is not the role of Scrutiny but this what underlies all this. You need that as a check and balance against extremism. I am afraid that is where we are going with this society slipping towards an ever-widening gap between haves and have nots. We have seen it again today. I honestly think that calling ourselves Executive or Scrutiny, it is quite irrelevant to creating democracy and good government that will only flourish when we look at the deeper issues. I really want Senator Breckon to convince me as to the power and influence of those boards. At the moment I do wonder that they will just be a way of diluting

the dissent even more. I will leave it at that and hope he is going to do one of his best summing-ups. Thank you.

1.1.34 Deputy J.A.N. Le Fondré of St. Lawrence:

I was assuming it was going to be Deputy Higgins first. It has been a very interesting debate. As we will see, some very unusual alliances have been developing, I think would be the answer. But for the avoidance of doubt I am supporting the proposition and I do feel rather sorry for Senator Breckon because, as the point has been made already, he lodged this quite some time ago. He emailed us to draw it to our attention and ask for comments. Now we find out that some people only read it yesterday and are now trying to take it to pieces on the details that they have not necessarily understood or are casting aspersions on. I listened to the Solicitor General and I think the point he was making was that certain aspects would require careful consideration. This has been referred to again and I agree entirely with Deputy Martin and also the Connétable of St. Mary; it was about potential. As far as I am concerned this is fundamentally a political decision and we as politicians are quite used to operating in certain grey areas and making that sort of call. I think we are getting hung-up, to an extent, on an absolute certain form of words, in my view it is in (a)(iv), which says - I had better refer to the amended bit - "Ministers should" and then it is the next 3 words "be required to consult." It seems to be one of the areas where we have got very hung-up in the very early parts of this debate. To me, that is the type of issue where if it gets to P.P.C., which I hope it will do, that issue can be resolved then. As I say, nothing is certain in life and nothing is perfect. If the world was perfect my friend and colleague Deputy Gorst would be tall, good-looking and have a waistline that took account of all the cakes and sugary items that he consumes. But that is not the case and that is life. I referred to interesting alliances but from what I have seen today it would seem that the Minister for Social Security and Deputy Southern could work quite well together on a Ministerial board because they do agree wholeheartedly on this whole matter. But to me this is about an in-principle issue, about developing perhaps more well-rounded decisions and a more consensual approach. At the end of the day - and let us go back to this - the proponents include the Chief Minister, the Chairman and Vice-Chairman of P.P.C., Deputy Vallois and Senator Breckon. If you take them all in the round, that is a very experienced group of Members and they have a very wide-ranging political view and broad base of support. That, to me, says quite a lot about the experience of all of those individuals and about how the system works. I listened with interest to my Connétable, the Constable of St. Lawrence, say it is a rose in any other name, and I agree with her on that. I listened to Senator Le Marquand and his ideas about the Assistant Ministers, I have an issue about that I have to say. To me it leaves the role very undefined, whereas the proposition does set out some quite clear guidelines, and I am also very concerned leaving numbers undefined, *et cetera*.

[16:45]

It seems very loose. I appreciate it was an idea that was being evolved as he spoke. I came back to a very practical point - or I hope it is practical - in my own experience. One of the roles I have is Chairman of the Legislation Advisory Panel, that is made up of a broadish-base of Members, we consider legislation and we make advice and comments to the Chief Minister. The Chief Minister decides whether or not to accept that recommendation. To me, in essence, that is what we are looking at today in how the workings of these Ministerial boards might be proposed. Therefore, as far as I am concerned that is a working example of what is being talked about and, as far as I can see, it works reasonably well. I am going to stop there because it has been a long day. In my view this should be supported. I think it is a step forward, nothing will be perfect, P.P.C. will have some work to do but I think we should allow them to do that work. Thank you.

1.1.35 Deputy M.R. Higgins:

Members will probably realise already which side of the fence I am sitting on from my earlier suggestion to Senator Breckon that he withdraw his proposition. My reason for asking him to do so

was because I felt that it was too vague, too woolly in places, and leaves too much uncertainty as has been illustrated today. Also because I do not believe the process should have been conducted in the House. I think the ideas that were formulated by the working party should have been dealt with without the formal structure of this House, exploring all the issues with all the Members before the things were put together and brought before the House on a formal basis. I am also concerned, too - and I am a member of P.P.C. - that the proposition in part (b) is saying that to charge the Privileges and Procedures Committee in consultation with the Council of Ministers to take necessary steps to bring forward the necessary legislation. I believe there should be a lot of consultation still with States Members, it should not be just left to Council of Ministers and P.P.C. What I am going to do to start with is to say what I agree with in the proposition and the report with a little bit of analysis and then come up with some of my criticisms. I agree that we need a more inclusive system of government, that the present system is not working well, that the talent of many Members with knowledge, experience and ideas is being wasted, that there is negative confrontation taking place in the Chamber. I will address some of the reasons why I think there is negative confrontation later. I also believe that there are occasions, normally outside the Chamber, where Ministers and Back-Benchers do work together. I also agree that the public may get the impression that we are always at each other's throats inside the Chamber, but outside we do talk to each other quite well and do get along. I also believe that many Scrutiny members feel excluded. I agree with the perception that Scrutiny is not working effectively, another point I will return to. I also agree with the fact there is a growing disconnect between some Members and the workings of Ministerial government, and further agree that as a result of that there has been a lack of contact between senior officials and many States Members. I agree that if there was greater political input from States Members into decision-making then there would be less risk of senior officers ... I slightly disagree with this, it says: "Having inadvertently taken the role of political advisers which could jeopardise the political independence of the Civil Service." I believe that some Chief Ministers and senior civil servants are running the show and I believe that we do have a politicised Civil Service. I agree that the former committee system engendered knowledge of the workings of departments and greater engagement for all States Members with the departments and their staff and with the public. They are the things I agree with. Now, why have we got the problems that we have? I do not very often agree with Senator Ozouf but I do with some of the things he said. But let me first of all go to the Chief Minister. The Chief Minister said right from the very start, the first thing I heard when I came into this Chamber, when we had the election of the Chief Minister, was about inclusivity. The fact that we are all going to be involved, we are all going to share in what was going to happen. All I can say is we have had 2 years of the exact opposite. We have not been involved in what is going on. So right from the very beginning the actions have been contrary to what was said. Transparency: we were promised transparency and openness and we have experienced the opposite. One of the issue I have got with Scrutiny is to do with information, and again Deputy Power mentioned about my question in the States yesterday about information. I will let you into a little secret. I am a member of P.P.C., I took part in a meeting with the Council of Ministers on freedom of information and at that meeting I almost got up, walked out, resigned from P.P.C. Why? Because of the attitude of the Council of Ministers to freedom of information. Now, they are going to use, when we get to the debate: "We cannot afford it." The truth of the matter is they do not want the information out there. To be perfectly honest, if we do not get it this Island is sunk because the secrecy is unbelievable. The secrecy also extends to Scrutiny, which I will come back to shortly. One of the other failings of the system, and why there is so much confrontation in the House, is that the Council of Ministers first of all does not provide information. Any information has to be dragged out of them and, secondly, when they make a mistake they fight tooth and nail to prevent that mistake being brought to light. If we look at the incinerator, did we ever get that satisfactorily sorted out? They screwed-up big time. If we look at the Napier ...

The Deputy Bailiff:

Deputy, would you like to explain what you meant by "screwed-up"?

Deputy M.R. Higgins:

Messed-up, Sir, sorry. Getting carried away and passionate about this because it is something I feel strongly about. So there is a failure of the Council of Ministers or Ministers to admit mistakes. The Chief Minister in particular. Napier, how that was massaged; the public relations, there were some procedural errors. Basically there was a complete absence of natural justice in the way that whole process was handled. Personally I think the Chief Minister should have resigned over it. In fact I still feel he should resign over it. Going back to Senator Ozouf, where do I agree with him? Well, he was talking about individuals and people. In my view many of the problems of Ministerial government and Scrutiny are down to the personality and makeup of the Ministers and the Scrutiny members. In the case of Scrutiny Panels, the group dynamics: their different interests, pet subjects, lack of knowledge and interest and competence to deal with some Scrutiny topics. Changing the structures that we are talking about are not going to change the personalities and the group dynamics. So Ministers are not going to change overnight. They are not going to be more forthcoming with information if they have not been in the past. I do not believe that different boards are going to be any different to Scrutiny Panels; you are going to get group dynamics there and different interests coming in, so that is not going to change overnight. So what we are saying is some of the problems that we face with Scrutiny and with the Ministerial system at the moment is just going to spill over into the new one. I have also mentioned about the Ministers: if they are not prepared to give information then they will not even give it to the Ministerial board. If these officers are as politicised as I believe some of them are and support their information, they are not going to share full information with their boards either. I personally do not believe there is going to be any real reform of this House until the membership and composition of the States is reformed and that is going to take another election or 2. I think tinkering around the system is not going to solve the problems we have. Unfortunately I also feel that some of the Members that we have in this House - and I am not going to name them but they know who they are - will be quite pleased to vote for this because they believe they will get a title and a role and become important whereas they do not feel they are important at the moment. Let us just go on and look at some of the proposition. Ministerial boards: the boards are going to provide for political soundings. Fine, I do not mind, I am saying what I think here now and I am quite prepared to say it out in public: if I was on a board I am going to give my views and I will be quite forthcoming on it. But I will tell you something, if I do not believe I am getting the information or being run around by the Minister or anyone else, I will resign. I am afraid the Solicitor General has mentioned about resignation and friction and, yes, there could be some interesting arguments and legal arguments put forward, depending on the nature of the dispute. Just going back again to information and Deputy Power. The information that he mentioned I accept. I certainly do not want to see that information any more than I would want to see the health records or the income tax records or anything else. That is totally a no-go area as far as I am concerned. But if I am going to be involved in anything where I am supposed to be either scrutinising or advising or anything else, I have to have the full facts, the full information and if anything is withheld, the whole system is broken, and I believe it would be. In terms of Scrutiny, I am schizophrenic when it comes to Scrutiny. You have noticed, yes. I am just trying to put things in context here so people understand where I am coming from. On the one hand I fully support Scrutiny and it has produced some excellent work, some very, very good work. On the other hand I believe it is failing and I, myself, have threatened to leave Scrutiny. In fact I have said, after I finished some of the work in hand that is coming up, I will stand down. Why? Because I am frustrated by it, as I know that many other Members are. Why? Because of a number of things. Let us go through the examples. Lack of information: yes, we have been denied information. It is not just the Deputy from St. Peter who was denied information. My panel has been denied it on many occasions. We have had to drag it out of people. We are tied-up constantly with confidentiality agreements and other things. We cannot even get to see any documents unless we sign a thing saying it is all confidence, and then you have got to try and whittle-down and get the information out into the public domain. The amount of time we spend on it. Fine it is very

time-consuming. Deputy Pitman mentioned: “Yes, it does keep Members tied-up.” You cannot ask questions except in the area you are narrowly looking at. With constituency work and Scrutiny it is quite a heavy workload and that is one of the problems. Especially when you do not feel that the reports that you produce are getting the attention they deserve. One of the alternatives put forward to changing the system was giving a bit more of a presence. For example, when Members come up with a report, the report should be debated in the Chamber. It should be aired in public and the Ministers should be able to put forward their reasons why they agree or disagree with the findings. We are not going that far so we are not even giving Scrutiny a proper chance here. Also Scrutiny is bogged-down with administrative procedures. This is one thing that I happen to agree with the proposal of the proposer in a sense that the idea of having review-based topics means you have not got all the burden of admin. We spend a lot of our time going through the agenda, looking at Ministerial decisions, looking at this, looking at that and it is amazing how much time is whittled-away without getting on to the real issues. We have made ourselves a bureaucratic mess with the way in which we run Scrutiny in that sense. Now, if that could be removed I think a lot of Members would be a lot more supportive of it. I also think, too, the way that Scrutiny is organised is failing. One of the arguments put forward in the proposition is the fact that we will have more cross-department issues dealt with. One of the problems we have is the way Ministerial government is organised, corporate services dominates the main issues. If you think about it they are covering the Chief Minister; they are covering the Minister for Treasury and Resources. Where do 90 per cent of the propositions, in a sense, come from that affect the economic and affect most people in this Island. A lot of them are coming from there. Other panels cannot get into those issues because it is the preserve of the Corporate Services Panel. When we try and speak with other panels and try and get a number of people to form a sub-panel, what do we get? We are all bogged-down in Scrutiny, we have not got time, trying to get people together is extremely difficult. So what I am trying to say is there are problems with Scrutiny but they are not insurmountable problems with Scrutiny, and personally I think I prefer to try and sort those out. I would also echo the fact that we have some excellent officers who support us. **[Approbation]** There is another, by the way, who has taken a job elsewhere today so we have lost another good one. So this is what is happening. They are defecting already because they think you are going to go this way, and I do not think we will have the support that we will have. Let us see what else I have here. Like everyone else I have been scribbling notes through the entire session. Moving on, we have got here that a robust formal structure would be needed as it would be impossible to manage the systems. We are talking about new codes of practice, yet at the same time in the proposition it mentions the existing codes, it would probably mirror them. If the other ones are that bad why are we changing them? I know here are some things that need to be changed but we are talking about new codes of practice. The new Policy and Review Committee should be established to oversee and manage the system. Unlike some other speakers, I see dangers with this. A lot of it is personality driven, it also depends on the composition of the House and so on, but there are dangers with the new Policy Review Committee. The proposals also say that it would be difficult to assess in advance how much time Members would be willing to dedicate to Scrutiny work. One of the things that was not mentioned... we talked about; yes, we will have Members on board, they can be on up to 2 boards; yes, they can go on to Scrutiny; they can certainly sit on the Policy and Review Committee, what about P.P.C.?

[17:00]

P.P.C. has not had a mention. Everybody who was involved were always attacked and rubbished and everything else, I have never seen a particular committee that has so much information to deal with, it is again quite a workload in its own right. If you are on a Ministerial board and you are on P.P.C. and you want to get involved with Scrutiny or the P.R.C. you are never going to have a life. In fact you will not live long anyway because you will die of overwork. When we talked about the maths, P.P.C. was not even mentioned in the figures. One other thing too about the figures, have we factored-in the fact that we are planning on reducing the number of people in this House. We

only decided last week to have 4 less Senators in the near future, and then there will another 4 and then another 4 and we will eventually get rid of all the Senators. I think an awful lot of people are going to be working not just 24 hours, but 48 hours if you could do it. The other thing that has been said is that if Members were actively engaged in meaningful and worthwhile work as members of boards, they might have less time to dedicate to Scrutiny reviews. Well, I can imagine some of the things on the boards could be very, very involved. One of the other things that is mentioned in the proposition is the fact that the new Ministerial boards will be excellent at scrutinising legislation. How many Scrutiny Panels have scrutinised legislation. How many pieces of legislation have gone through on the nod in this Assembly? If you want to see another one that is coming, think of the Intellectual Property Law - 400 Articles. Those of you who are

Senator S.C. Ferguson:

Clarification, Sir.

Deputy M.R. Higgins:

Sorry I will not give way. While I can think about these things I want to say them. So going back to the idea of the Intellectual Property Law, 400 Articles. Yes, it came to the Economic Affairs Scrutiny Panel, and yes some of us know a little bit about copyright and intellectual property and so on, trademarks, but we did not - and I will be perfectly honest - have a clue, it is so involved, so detailed that law it is really for specialists. So what did we do to make sure that what the department were putting forward was at least correct? We employed our own experts to examine the law and come up with comments on it to see whether it was on track or not. Those things that they came up with we put back to the department. They answered them, we consulted with our expert again and the thing was resolved that way. So we can say that it has at least been scrutinised by people who know what it is about but we are not equipped to deal with legislation of that sort and neither will the Ministerial boards. This time you will not be relying on independent experts outside the department, you will still be relying on the department's own experts. Let us just move on to the Policy Review Committee. Like many other Members I am extremely worried about the Policy Review Committee and its chairman. Now according to the proposition the Chairman will be elected by the States in an election taking place immediately after the appointment of the Chief Minister, because they are saying it is a prestigious and important role. It also says it needs to be fully independent. Let me just give you a scenario. What happens if the same grouping, let us say, or like-minded individuals who dominate the Council of Ministers also dominate the chairmanship of that body? I think when you start looking at what the committee is supposed to do - its remit - you will think: "Gosh, we could be in for major problems when it comes to Scrutiny." Say, for example, the working party has criticised the Chairmen's Committee, both the current and past Chairmen's Committee, stating they have not taken the necessary actions overseeing Scrutiny. The answer is it does not have the power to. If you read the Standing Orders, it does not have powers. It was never meant to so, yes, it is a co-ordinating body in one sense but it does not have the power. Many Members may think: "Well, let us give it the power", we are giving it the power here but you may not like what you are getting because I remember in some of the discussions we had with Members that you may criticise what is there at the moment but you would not necessarily like the alternative because if it becomes too dominant, the Chairmen's Committee, you are not going to get through what you want and there is a lot of freedom of action with the existing Scrutiny Committees. "The working party believe the committee should have sufficient status and authority for its task. We believe the committee has a very important role and a potentially very large remit." This is an interesting one, how many of you picked up on this? It is says: "The chairman of the committee will maintain close contact with the Chief Minister, quarterly meetings and hearings." This is a change, believe it or not, because the existing Chairmen's Committee, although it is not worth much, goes along to meetings with the Council of Ministers and we have quarterly sessions. I must admit we have come away many a time thinking what a complete and utter waste of time but at least we have the chance to go and see them and listen to what they said. As it stands at the

moment, my reading of this was it will be the Chairman of the Policy Review Committee that will meet the Chief Minister. He will not go and meet any other Ministers, there will be no role for the rest of the people, it is just the chairman. "Will also maintain an overview of Ministerial work." How? If we do not meet with the Ministers, you do not meet with the Council of Ministers, how? It says that the Policy Review Committee will receive and review topics: suggestions from States Members, members of the public and stakeholders. I will come to this in a second. It says the aim is to ensure that overarching States matters such as Strategic Plan and Annual Business Plan are scrutinised to assess the above and decide whether review should be taking place, getting background information, and so on. The point I am trying to come to is that the panel will basically be determining, as I read it, what issues will be scrutinised. It will no longer be for the panels to decide that we wish to look at this and put the information to the Chairmen's Committee for them to talk about it and see, obviously look at the budget and so on, it will now be down to this panel to decide what is scrutinised. As Deputy Southern has already mentioned, what happens if there is a particular problem in a particular area and you want to look at it more than once. "Oh, you have reviewed that, you cannot review it again." So we are putting an awful lot of power into this body. The same as it has the power to manage the Scrutiny budget and have responsibility for all expenditure. In one sense the body that has responsibility for expenditure at the moment is P.P.C.; the Chairmen's Committee obviously look at the budget and so on but the panels again have got a degree of freedom in what they are going to spend their money on and the experts and so on. Now it is going to go to this panel and this chairman who is going to have the power. I might also say too that much of Appendix A is largely a job description for the Scrutiny Manager, so I do not even know why it is the proposition. Let me just say that we know that we have got problems with the system. We not only know it but certainly the public outside know it. We have certainly got to do something about it, but we are not going to change the confrontations in this House for as long as Ministers refuse to admit errors, refuse to have proper ... we should not even need inquiries, if everything was out there in the open we would not get the state we have been in. It is largely because of the way that the Council of Ministers have operated that we are in the state that we are. As far as Scrutiny is concerned do not destroy it. I believe that these measures will destroy Scrutiny. I do not believe we are going to be better off than we were before. I would rather try and amend the Scrutiny system to make it far more effective. I urge you to reject this proposition.

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

Briefly, it is has been very interesting listening to some of the history that has come out during this debate. I think some Members are probably guilty of rewriting history. It is certainly true to say that the committee system... if we could go back to it, we probably would. But we cannot go back to it and some Members have got rose-tinted glasses when they think that the committee system was perfect. In fact many committees had presidents who acted in a presidential style. It is a pity, and I remarked on it at the time, that the first Ministerial system took those presidents and turned them into Ministers, and there was not a lot of difference to some extent in the way some of the larger departments were run when we moved into Ministerial government. It is also a pity that the first Chief Minister took, as far as he could, I think, the talents that he had recognised and possibly groomed under the committee system into the first Council of Ministers and did not leave some of those people to take on Scrutiny roles, because that inevitably produced a very confrontational system in the first phase of Scrutiny. It is true also that Scrutiny has suffered major setbacks which have knocked the heart out of many Scrutiny members. In my case it was serving on an Environment Scrutiny Panel and despite the arguments that we adduced and which people now realise - certainly out there, I do not know if they do in the House - were largely true, our opposition to the incinerator project was not listened to by the Council of the Ministers. Indeed it probably would not have been listened to had we been in a committee system because many similar arguments we made on committee were not listened to by then Policy and Resources Committee. This year we have had other ways in which Scrutiny had been ignored and it does make Scrutiny members feel that their time is simply not being used wisely. I cannot help thinking it is too soon

to be reading the last rites over the new system of government that was introduced not that long ago with a great deal of time in this Chamber, laws were changed, an enormous amount of officer time was expended, a whole new support system of Scrutiny and Scrutiny clerks and Scrutiny officers were trained and recruited. It does seem we are only two-thirds of the way through the second phase of this new system of government and we are reading the last rites over the Scrutiny system, we are reading the last rites over Ministerial government. That seems to me to be very soon because Jersey - if we have a longer historic view - normally evolves over long periods, it does not change its system of government every 5 years. I am concerned that Members are rushing to say that the systems we have in Scrutiny and Ministerial government are failing because of specific individual defeats that they have suffered. We all suffer defeats in politics and I do not think leopards change their spots. I think that Ministerial behaviour, if Members do not like it, is not going to be changed except on the floor of this Assembly. We still, as Members, all have that unique, I expect, opportunity to bring private Members propositions to this Assembly and to seek to change the way things are done. That will persist. I do not think any Members, however the House changes, will ever let go of that. It does seem to me that because we have that ability ... we will of course be ignored when we bring a Private Member's Bill - I have done it - which makes a lot of sense and the Ministers disagree with it and their allies on Scrutiny disagree with it. So it is, that is politics. But does it really mean that we have to now, 5 years into a new system of government, move into a whole new area. I have listened with great interest to some of those people who think we ought to but, as I say, I am not convinced. I think we need to give Scrutiny a bit longer. We need to see if we can get Ministers to be a bit more open. There are a lot of opportunities for Ministerial government under the new Ministers to become more open and transparent; to listen to warnings from Scrutiny and from individual Members; to listen to the public. Let us not forget that the history of Scrutiny and Ministerial government has been beset by problems quite outside this Chamber: Haut de la Garenne and the impact on this House and on the Island of that. Other new things that are happening in the Island: concern about the economy, the effect of G.S.T. (Goods and Services Tax) on many people. There are lots of things going on which have contributed to that sense many Back-Benchers have, I think, that they are not being listened to. But I would encourage Back-Benchers - and I am one of them - to keep going and to keep bringing propositions to the House, and I would encourage Ministers to listen to what Back-Benchers are saying, to listen to what the public are saying. I am interested that so many Ministers and Assistant Ministers seem to want to see this proposition go through, because perhaps that will send out the message - I did not say message, that was a Freudian slip. I have not even got on to spin-doctoring and the effect that has on trust between Ministers and Scrutiny but I am not going to get into that now because time is late. But, as I say, I have not been convinced by the arguments that we need to go down this road. I think we need to make the existing system work, otherwise what we are going to do when we have got this new system in in a couple of years' time, we are going to say: "Well, they are still not listening to us, let us change it again." So I would urge Members, let us make Scrutiny work. Let us not send out the message to all those Scrutiny officers that we do not appreciate their research and let us work with the system we have got.

[17:15]

The Deputy Bailiff:

Does any other Member wish to speak? Then I will call on Senator Breckon to reply.

1.1.37 Senator A. Breckon:

Thank you. Although this might be difficult, where I would like to start in summing-up is to ask Members to set aside personalities and to look at a system that will take us forward from where we are. We are talking about Ministers not monsters; we are talking about Ministers not monsters. What I am looking for is a system that is inclusive. Where there are Assistant Ministers, their tack will be changed, there will be Ministerial boards and there is some detail in there. The difficulty is even for an individual Member having said that, with a very, very focused and powerful group

around me while I was doing this, if you put detail then somebody says: "Oh, that bit on page 17 will never work; oh no, you need to change that paragraph (c) or (d); or you have referred to that." If you do not put it in how can we vote for this because we do not know what it is? So what exactly do you do? Now, not every 'I' has been dotted there but it gives Members, I hope, the structure of just about where it will be. It is not perfect but I would say we are not in a perfect place at the moment. Is this where we want to be? Many Members have said no. For my sins I brought a proposition to the House many years ago on Sunday Trading and everybody said: "This situation is ludicrous. The law is not policed, it does not work, it must be changed." But when I suggested changes: "Oh, but do not do that. No, you must not do that, that will never work." But nobody yet has come forward with a proposal to change it, so we still have in place a law that is not policed, it is not appropriate and, to be honest, it is a bit of a joke. But there we are. So if somebody is looking for something to do there is perhaps a project for somebody. What will happen with this, the Ministers will still be elected by the States, they will nominate a number of people who they think would be appropriate, with relevant experience, to be on their boards. As is now, any Member from this House could be proposed by another Member. It is good and healthy that there would be an election in the usual manner to bring those onboard. That is, I believe, a check and a balance that is not there at the moment. It is not there at the moment. Again, on pages 13 and 14 there is some detail about the Ministerial boards and how they will operate. "The role of Ministerial boards: Ministerial boards should provide advice and make recommendations to the Minister." Also on page 14 it says how this will be recorded. "Ministers will therefore be responsible for determining policy and monitoring its implementation. A Ministerial decision template will record the advice given to Ministers by their boards, and draft legislation lodged for debate by the States would also include a statement in the accompanying report giving the views of the board on the draft." So there is a way that the board, agreement or dissent, gets into the public arena. Hopefully that allays the fears of some Members but also - and again because of the hour, I do not want to go into a great deal of detail - on pages 13 and 14: "The Ministerial board would review the policies and priorities of the department, provide advice to the Minister, make recommendations on policy issues, oversee the delivery of planned results." There are other things on the next page: "Consult on major or contentious issues, keep the board advised" this is a channel of communication and hopefully, in my view, that would work. It is about inclusivity. Other Members have mentioned that and I would just like to share this with Members. I was involved with a Dairy Review; Senator Ferguson was involved, the Deputy of Trinity, Deputy Le Hérisier. Also I did Telephone Masts with the Deputy of St. Peter, the Constable of St. Brelade, Senator Shenton, and I have been involved with other things as well. I remember when I was first elected to this House, there was a Senator at the time phoned me up and I will share this with Members, he was a former chairman of the Institute of Directors, and at the time I was the Branch Chairman of the Gas Company Union - you might remember this, Sir, in a former life, I think you were on the board of directors - we had had a number of industrial disputes. So I was young and maybe a bit fiery then, and this Senator phoned me up and said would I care to join his group. I said: "Are you sure about this?" He said: "Yes, I do not have a problem" - and I will not mention who it is - but we got on great together. Politically we had very little in common but that was not the issue. I met him again and I said: "Are you sure about this?" and he said: "Yes" and we did get on well. I can say that with magnets, opposite poles attract, so you can definitely get some chemistry there and results. Not just for us, but for the people. That is what it is about, we need to move on. We need to do these things. The other thing I have suggested in the proposition is - I will come back to Scrutiny in a minute - involving the public. Not just on that but they could be involved in perhaps a bit more detail than they are at the moment. When we go forward, which we need to do, the question is how do we do it so that it best serves the people. I think this is a way forward. I think it will make us as politicians more effective by the inclusivity, and I think we will be more accountable and I believe it will give greater transparency. The other thing I think Members should remember is where is your mandate to do anything? Collectively I think we can convince people more than it is somebody's responsibility, although it still will be. I think we need to get in behind

some Ministers and help and support and make things happen, because that is what these proposals are about. What I am not going to do is touch on every Member's contribution but I do thank those that have done so and I appreciate everybody's contribution. I would like to come back to- "what is in a word" - to the word "significant". In the report at page 6 it says this in reference to boards. "The working party agreed that it might be more appropriate to create a Ministerial board structure so that each Minister would work with a Ministerial board between 3 and 5 members. The role of the boards would be to provide a political sounding board for the Minister who would be expected to discuss significant issues relating to the Ministerial Department with the members of the board. Although the Minister and his or her board would retain flexibility to discuss any issue relating to the work of the department, there would nevertheless be a formal requirement for certain matters to be referred to the board as a matter of course. These would include all draft legislation in the name of the Minister, major new policy matters and the annual estimates of expenditure, including the department's submission to the annual business plan, to ensure that board members were engaged in the most significant matters affecting the department." So there within lies the word "significant" not once but twice. Just to give Members a feel of what my view on that is, significant would be what happened in the past with prescription charges being reduced. I would say that is significant and it should have gone before a board and the same as the former Minister for Housing said this morning, when he considered (j) cats perhaps it might have been better if he had had some advice and discussed it, and he did have a change of heart on some of that. It was Deputy Duhamel that raised that but I would also remind the Deputy - and we were elected at the same time nearly 17 years ago - that any Member can bring a report and proposition to this House within boundaries so none of this has been outside anybody's remit at all. Anybody could have done this and borne in mind the views and opinions of Members. Also Deputy Duhamel suggested that we might end up discussing everything in this House. That is not the intention of this at all. I think that is a bit of red herring. Senator Le Gresley made an excellent speech and he did ask me about the role of Planning. Again, there is an Applications Sub-Panel but I think that could be worked around the board because if there was a policy board then that is not quite the Applications Sub-Panel, so that is something where I think the devil would be in the detail. I think Deputy Southern made probably one of the best speeches I have heard him make, and he recounted his days as a member of the Home Affairs Committee. But in making a similar case I think some of the issues he was concerned about would be allayed if he got more involved with the detail as it went along. It is probably easier to influence decisions as they are being made rather than scrutinise them after they have been made. It might be an opportunity of getting Members involved to do that. That is something perhaps I would ask him to consider. I can understand some of the concerns he had but, again, I think all of us can work together. He did express some concerns about the Policy Review Committee, as did a number of other Members. But I would see this in this way. If somebody wanted to look at youth employment or unemployment or elderly care, whatever it would be, then that is a reasonable request they could make to the Chairman of the Policy Review Committee who could say: "Okay, are you interested in getting involved with this? Do you know if anybody else would?" and I am sure if the issues were of substance then Members will get involved. It happened with the dairy; it happened with telephone masts; it has happened with other issues where perhaps there has been more volunteers than there has been places. So I do not see this as being an obstacle at all. Of the other Members that made contributions, many referred to the Clothier recommendations and this is not part of the Clothier recommendations but what it perhaps is, is it is something that gets us from where we are to perhaps a better place. But, again, it is not cast in stone and I think that there could be another version 3, 4, 5 years in the future. But it must be a living and working thing. It is not cast in stone. The Deputy of St. John, I think, made an excellent speech and he talked about closer working relationships rather than going around in circles, and what he said was we all need to work together. I think that is where I am coming from and the Deputy of St. John, of course, has experience right across the system and he does get a great deal of constituency work as well. The Constable of St. Brelade had some reservations but I know he was involved and he was making a valuable contribution to Scrutiny but

he said that the Executive and the Scrutiny bit has not really worked together. I think that perhaps there is an issue there and this would bring that together, but there is a bridge in the middle, as it were. Deputy Power talked about navel-gazing but that is not really what this is. He mentioned on one hand that he does not know what a board will do and then he did also mention that there are things we need to look at as well. Perhaps I could suggest to him if he wanted to look at housing maintenance then that is something that he could be delegated to. The Deputy of St. Mary made a convincing case for supporting this. He asked a number of questions but he also raised things. He said something has happened and we did not have a grip on that, something else has happened, something else has happened; he named about half a dozen things but I would say to him that perhaps if responsibility was a bit more diversified then somebody would have had a handle on those particular issues.

[17:30]

We cannot turn the clock back and do that. The other thing we must remember is some Ministers have some very, very big portfolios and they cannot be watching everything everyday and that is something of the intent of this proposition, to support that so that there can be Ministerial support through the boards. He also said the report does not contain a statement from me of what is wrong. I am not sure how I could do that. Again, that would be my opinion and what I have tried to do is not go there but look at something that will take us forward. He also asked about the comments on the dismissing of a Minister. I think I addressed that yesterday when I mentioned the fact that it if was a frivolous thing from the Chief Minister then that particular Minister would literally get their day in court because they could stand again and make the case here. That is the check and balance with that and the Deputy of St. Mary also asks, would legislation be dealt with in a better way? My answer to that is, yes, it would. Somebody has already said - perhaps Deputy Higgins - that perhaps Scrutiny has not looked enough at legislation. When he quoted the latest thing with, I think, 409 Articles and a schedule or 2, then that is probably why. But if there was a board then this would be brought in drafting stages to the board, so somebody would be looking at that and saying: "Well, what is it?" and if question were raised it could be done and, if necessary, outside advice - Law Officers and others, industry advice, whatever it may be - could be obtained. So I think there is ... a lot of questions were raised and I think I can share some of the Deputy's concerns but I hope I am suggesting something that would perhaps deal with them in a better way in the future. He also asked if I could give an assurance about the working-up. This was something a few other Members mentioned, why did I not just put this proposition on paper and we meet? The problem with that is if I said to Members: "Get your diaries out now" then we would probably spend the next 3 hours, somebody cannot do it next Thursday, next Tuesday, whatever it is, and this came at a time ... the working party worked through summer, backwards and forwards, to get this here where we are, and were we to do that it would not have happened or this House would have not got the opportunity to debate this to implement any changes in time for the next House to work with. That is one of the reasons but, having said that, from my part, the draft form and the former P.70 went out as early as it could. I think I sent it around to Members virtually as it was being lodged, or the Greffier did, or just before. Deputy Martin as well made an excellent contribution and she talked about the boards would certainly not be nodding dogs and questions will be raised. This is evident in other places, and certainly with this working group it happened, where you get a group of people together then you will discuss it in an adult way and say: "Okay, we need more time, we need more information" whatever it is, and I think this is where this would be. Senator Perchard mentioned about holding the Civil Service to account. That is another thing really because if we do have delegated powers, I do not have a problem with that, but - and Deputy Martin touched on it - sometimes you need to ask questions and if you are not getting the answers then go again and ask a few more. Senator Perchard mentioned about left and right. It is not about left and right, it is about working together co-operatively. Yes, we will have challenges, we will have disagreements but I think it is a chance to work together which is exactly what Senator Shenton said. Some Members have mentioned the role of Scrutiny, and I should say that I work

with Scrutiny and we have an excellent team at Scrutiny, we produce some excellent reports, but at the moment there seems to be a bit of a drift there. That is not the fault of the officers at all, it is where we are. There have been some issues, there have been some challenges, some discussion about information, when, where and from whom, but I think we can move on. If we get topic-based Scrutiny, which is where I am coming from, then I think if the subject matter is interesting and challenging enough - it could be alcohol and drugs, mental health services, elderly services - whatever it may be, I am certain that Members will get interested. If somebody is a member of Health and a member of something else they would not necessarily be conflicted about looking at something or other. So Members will still have the time and sometimes the best people to do things for you are busy people. I am near the end. I am conscious of the time. I would like to thank the contribution from the Constable of St. Mary as Chairman of the P.P.C., and also for the work they have done. Here I would like to mention also that where the nucleus of this proposal ... and somebody mentioned: "Well, set up a review group" and I cannot really see members of the community falling over themselves to volunteer for a review group because who are they going to report to, what on and who is going to take any notice? So that is really why I started to get involved. But the P.P.C. have done a lot of work. If you look at the group together, we had a Minister, which was the Chief Minister, we had myself as a Senator, we had a Constable and we had 2 Deputies. We had 3 men and 2 women, dare I say, slightly different age groups. So that is a cross-section of this House in fairly short order and something to work with to produce something. How Members vote is not the issue but I think that is an example of how a Ministerial board could work. I think that is it in action, if you like. Deputy Higgins, I am afraid, was negative and I do not see this. I would say this to other Members, to go forward then we need to have faith in each other. It is good and healthy to have differences, to come at this from different angles but in the end we can agree to disagree but we need to move on. We have some very real problems out there that we need to face on behalf of the people as grown-up adults. The other thing I will share with Members, I have been contacted by politicians from Guernsey and from the Isle of Man. Guernsey are concerned about being pushed towards to our Ministerial system and they said that most of the information that is before you they have had and they have some comments on. The Isle of Man are concerned because perhaps their Scrutiny needs moving up a couple of gears. So that is really where they are. Also I did meet with the Chairmen's Committee and I would say that was a full and frank exchange of views and opinions. So it was challenging but that is good and healthy. The other thing, what we have had is we have people who have joined this House and gone into a certain role, Assistant Ministers, Ministers and into Scrutiny. I would say to them that the experience of Deputy Martin, the Deputy of St. John and others, it is more rounded than that and that is why we must be perhaps more tolerant and we must share things together and face the difficulties that we have got because if we can appreciate others' problems in dealing with issues then we can deal with the problems that concern the public in a very real way, these are real issues on a daily basis. The other thing I think could happen from this is that when a Minister stands up and says: "I am going to do this, that and the other" he will have tested that with somebody else because, as Senator Shenton pointed out, sometimes it can be very lonely for the Minister. Where does he go ... does he take that on face value, does he go somewhere else, would he look weak if he was looking around for advice from other places? I think what I am suggesting is a system that can cope with that and make us a better government for this Island. In conclusion, what I would say is I just ask Members put the personalities aside, put people first. We can work together. Yes, we will disagree; yes, we will challenge; yes, we question each other but from that I think we will be more effective, focused and even, if I dare say, dynamic. But in view of that I maintain the proposition as amended and I ask for the appel.

Deputy G.P. Southern:

If I may, without wishing to drag the thing out much longer, could I ask the Solicitor General, who gave a very instant response this morning, whether he has heard anything to change his mind or

whether with mature reflection he has changed his mind on the issues of major or contentious or significant and the legal issues thereof?

The Deputy Bailiff:

Deputy, it would not be appropriate to ask the Solicitor General for more advice at this stage after the proposer has summed-up.

Senator P.F.C. Ozouf:

I asked the Senator to say in his summing-up whether or not it is his interpretation that his proposition was a move to committee government or not and he did not answer my question. I would just ask him if he did because I think that is a clinching issue.

Senator A. Breckon:

I did refer on pages 13 and 14 to Ministerial boards and that is where it is.

The Deputy Bailiff:

Senator Breckon, how do you wish to proceed to a vote? Do you wish to take the whole of paragraphs (a) and (b) as one vote? The vote is on the whole of the proposition, that is the whole of paragraphs (a) and (b) taken together and the appel has been called for. I invite Members who are not in the Chamber to return to their seats and I will ask the Greffier to open the voting.

POUR: 21		CONTRE: 28		ABSTAIN: 1
Senator T.A. Le Sueur		Senator T.J. Le Main		Senator P.F.C. Ozouf
Senator P.F. Routier		Senator A.J.H. Maclean		
Senator B.E. Shenton		Senator B.I. Le Marquand		
Senator J.L. Perchard		Senator F.du H. Le Gresley		
Senator A. Breckon		Connétable of St. Helier		
Senator S.C. Ferguson		Connétable of Trinity		
Connétable of St. Ouen		Connétable of St. Brelade		
Connétable of Grouville		Connétable of St. John		
Connétable of St. Martin		Connétable of St. Clement		
Connétable of St. Saviour		Deputy R.C. Duhamel (S)		
Connétable of St. Peter		Deputy of St. Martin		
Connétable of St. Lawrence		Deputy R.G. Le Hérisier (S)		
Connétable of St. Mary		Deputy G.P. Southern (H)		
Deputy J.B. Fox (H)		Deputy of St. Ouen		
Deputy J.A. Martin (H)		Deputy J.A. Hilton (H)		
Deputy of Grouville		Deputy of Trinity		
Deputy of St. Peter		Deputy S.S.P.A. Power (B)		
Deputy P.V.F. Le Claire (H)		Deputy K.C. Lewis (S)		
Deputy J.A.N. Le Fondré (L)		Deputy I.J. Gorst (C)		
Deputy of St. John		Deputy M. Tadier (B)		
Deputy T.A. Vallois (S)		Deputy A.E. Jeune (B)		
		Deputy of St. Mary		
		Deputy T.M. Pitman (H)		
		Deputy A.T. Dupré (C)		
		Deputy E.J. Noel (L)		
		Deputy M.R. Higgins (H)		
		Deputy A.K.F. Green (H)		
		Deputy J.M. Maçon (S)		

The Deputy Bailiff:

Very well. I take this opportunity of announcing that the Social Security Fund: A new method of funding - proposition P.154 - has been lodged by Deputy Southern. It is now past 5.30 p.m.

Deputy R.G. Le Hérissier:

I move for the adjournment.

The Deputy Bailiff:

The adjournment is proposed. The States stands adjourned ...

Deputy I.J. Gorst of St. Clement:

Sir, could I make a counter proposal that the business could be put off until the following sitting?
Remaining business.

The Deputy Bailiff:

The States will stand adjourned until 9.30 a.m. tomorrow.

ADJOURNMENT