

STATES OF JERSEY

OFFICIAL REPORT

TUESDAY, 9th SEPTEMBER 2008

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ADJOURNMENT.....Error! Bookmark not defined.Error! Bookmark not defined.

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

PUBLIC BUSINESS – resumption

1. Committee of Inquiry: Toxic Incinerator Ash Dumping in the St. Helier Waterfront Land Reclamation Schemes (P.96/2008) (continued)

The Bailiff:

I draw the attention of Members first of all to the making of an Order, Proceeds of Crime (Supervisory Bodies) (Designation of Supervisory Bodies) (Jersey) Order 200- made by the Minister for Economic Development which is tabled today. The debate continues on the proposition of Senator Syvret. Senator Shenton.

1.1 Senator B.E. Shenton:

I cannot support this proposition although it is well intentioned, and the reason being that the last major Committee of Inquiry that we had was into the tender process of the buses, the Connex contract, and here we spent a considerable amount of money and people spent a considerable amount of time producing a very good document that was highly critical of the actions of certain politicians and certain civil servants and yet the end result was nothing happened on the back of it. I fear if we go down and spend this sort of money we may well come up with a report that highlights weaknesses in certain areas, many of which will have already been addressed, but nothing will happen to make sure that those that were responsible were brought to account. I was particularly interested in the fact that Constable Crowcroft, the Constable of St. Helier, was so supportive of a Committee of Inquiry, bearing in mind how he dealt with the Connex Committee of Inquiry and the high regard that he was held in respect of that inquiry. If I may just quote from the document: “Regrettably, although most of the witnesses were perfectly able to assist in the process Constable Crowcroft of St. Helier was not. His first appearance before us was cut short because of his unwillingness to answer our introductory questions and despite having had a further 6 weeks to refresh his memory of the events in which we were interested, at his second appearance he indicated an inability to recall matters falling squarely within our terms of reference. These were significant events that occurred during periods where he was either Vice President or President of the Public Services Committee and we found his assertion that he could not recall these matters to be simply not capable of belief. He appeared to treat the Committee of Inquiry with arrogant disdain, an attitude that would appear to be summed up in the following exchange [and then it gives an exchange]. We consider this to have been a highly irresponsible approach and had it been adopted by other witnesses our task would rapidly have become impossible.” So it is okay to have a Committee of Inquiry, but you need to have the co-operation of those that you are inquiring about, but also you need, as an Assembly and as a politician, to have the teeth to bring anyone that has been found guilty of negligence or any other acts to account. Quite frankly, presently I do not think that we do and I think there must be other ways to achieve what Senator Syvret wants to achieve without going to the expense of a Committee of Inquiry.

1.2 Senator J.L. Perchard:

I do not believe or accept that there was once, as claimed by Senator Syvret in his speech, a group of senior officers and politicians who conspired to ensure and enable the random dumping of incinerator ash at La Collette. I say this because at the time it was simply considered acceptable ...

Senator S. Syvret:

On a point of order, it is a point of order, the Senator is misrepresenting my remarks. I did say that there was a conspiracy among senior civil servants to hide the truth of this matter. I did not apply that accusation to the politicians of the day who I stated were acting in good faith.

Senator J.L. Perchard:

I accept that and withdraw the words “politicians” and apologise to the Senator for misquoting him. As I say, the Senator clearly claims that there was a conspiracy among senior officers from

different departments to ensure that the random dumping of incinerator ash could take place. This is a nonsense and I say this because simply at the time it was considered acceptable to tip ash in a mix along with inert waste on our reclamation sites. Of course times have changed and we now operate to different and improved environmental standards and we no longer practice what is probably a very unsafe method of disposal. As has been said already by the Minister for Transport and Technical Services, we now currently dispose of incinerator ash in sealed pits above sea level. However, it is quite likely that some time in the future this, today's method of ash disposal, will be questioned and deemed as an unacceptable practice and outlawed, outlawed because incinerator ash could be recycled and perhaps used in road construction or concrete mix. But today, and for the time being, sealed pits are thought to be acceptable as a method of disposal. Members will know that I come from a farming background where, not that many years ago, it was considered satisfactory to bury dead animals on the farm. If the old farm horse died you dug a hole and buried it. It was acceptable to dump unwanted potatoes and vegetables in heaps on wasteland so they would decay quietly. It was acceptable to use noxious chemicals such as D.D.T. (Dichloro-Diphenyl-Trichloroethane) on salad crops and perhaps have the Public Service Department apply free of charge raw sewage sludge spread on land next to water courses on land that we were about to grow vegetables on - all practices that are considered unthinkable today, but were common not that long ago. Perhaps Senator Syvret thinks that we should also start a witch hunt to hold someone responsible for the contents of the old landfill sites at Mont Mado and La Mielle where, at that time, batteries, fridges, rubble and glass were disposed of. In fact, the dumping of everything from cars to carcasses took place in a completely unmonitored fashion on those sites. Throughout Europe, until comparatively recently, industry would legally discharge its toxic waste into rivers. Ships and super tankers could legally flush their tanks and discharge their contents at sea. Governments would permit the scuttling of ships in deep water as a means of disposal. Thankfully times have moved on - we now know better and such practices are outlawed. Campaigners like Senator Syvret and his colleagues at Greenpeace should be applauded for highlighting such environmentally damaging practices. Pressure groups such as Greenpeace have often forced governments to change policy. I suggest to Members that Senator Syvret's dogged opposition to past methods of ash disposal resulted in change of policy by the then Public Services Department, but that is all, I am afraid. There is no high level conspiracy here, just a slow recognition of what was environmentally acceptable. This, I suggest, is a generational thing. I say to Senator Syvret, times have changed, times have moved on. Standards have changed. What was thought to be environmentally acceptable a decade ago is often deemed completely unacceptable now. I urge Members not to support this proposition today if for no other reason than the likely cost of a public inquiry estimated to be in the region of £250,000, a huge expenditure, wasted on a useless witch hunt as the main findings of any public inquiry here are entirely predictable. Times have changed; so have environmental practices.

Deputy C.J. Scott Warren of St. Saviour:

Could I ask for a point of clarification from either the Assistant Minister or the Minister for Health and Social Services regarding (b) and (c), as they are obviously the people, on the need or not to instigate any further action or research because I think that is very important?

The Bailiff:

Deputy, is that a clarification from the speaker?

Deputy C.J. Scott Warren:

Yes, please, Sir, regarding whether there is a need, even if it is without the acceptance of this Committee of Inquiry, for this extra work to be undertaken.

Senator J.L. Perchard:

I will attempt to answer the question which really has nothing to do with my speech. All the ash is known as to its whereabouts and any removal of material from the site to facilitate underground parking is going to be monitored very carefully as part of any development agreement with a developer and there will be no unsafe practices as the monitoring will be at a level that will ensure that there is none and works will cease if practices are unsafe.

1.3 Deputy P.N. Troy of St. Brelade:

Before the summer break, which seems so long ago now, we had the incinerator debate and I said then that perhaps Public Health should be investigating the issues about the disposal of ash and I even suggested that Transport and Technical Services should have been prosecuted in the past. If the Constable of St. Helier is correct that we have trucks driving through St. Helier with toxic ash flying out of the back then that is another case for the Health Department to investigate and prosecute. Is it a fact that Transport and Technical Services have no regard for public safety? Is it or is it not? We still have Bellozanne gushing out lots of toxins from the top. I have not researched this, but I am positive that there is cleaning equipment that could have been purchased to bolt on to the top of Bellozanne which would clean the emissions coming out. That might cost £1 million, £2 million or £3 million. Has anybody done that? No, they have not. Does Transport and Technical Services really care about the safety of the public? Does the Minister; does his staff? Are they really taking all of the actions that they could be taking? I think that they are not and I am absolutely, totally going to support this because out of this inquiry will come some good because practices at the moment are woefully inadequate. I know we are going to get a new shiny toy for Transport and Technical Services in the future and that will be fine when it arrives and when it is built, but meantime we will still throw out tonnes of toxic emissions into the public domain. We will do that with the Health Department fully aware of it; Transport and Technical Services fully aware of it; and this Government fully aware of it. What is anybody really doing about it? I am extremely annoyed that the Minister for Health and Social Services and his department are doing nothing. How are people handling this when the trucks get down to these pits, how are the staff ...

The Bailiff:

Deputy, I am sorry to interrupt you, but can I bring you back to the proposition?

Deputy P.N. Troy:

It is relevant. It is absolutely relevant to the proposition because out of this inquiry will come changes to what is happening at the present time. **[Laughter]** How are truck drivers being protected at the moment? How are the staff who are overseeing the stuff being tipped into the pits, how are they protected? What protective gear are they wearing? Does the Minister for Health and Social Services know? I bet you he has not got a clue. I think this is where there is a failing. We could be doing more, but we are not and this inquiry will tell us what has gone wrong in the past and what we should be doing in the future to get it right. I am absolutely, totally 100 per cent behind this public inquiry.

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

I have a problem with this because the proposition is in several parts. Part (a) I think is 20 years too late. It is no use having a witch hunt. The people involved are probably no longer working there. I do not think we are going to achieve much. Part (b); yes, I think I can support that. Part(c) I can support. Part (d); if what we were doing is accepted practice at the time then there really is not much point with that either. Part (e); are we going to find something? Possibly we will; it might be worth looking at. My worry is that Transport and Technical Services' record is not perfect. They admit that things have gone wrong. As I say, I do not think there is any point in going back and pointing figures. I do not think we will achieve anything, but I want to be sure that in 20 years' time the States are not in the position we are in now and having to say: "Oh, what a pity we were not a bit more careful." We are going to spend something like £100 million on the

coming plant. I think for the sake of another £250,000 I would want to be sure that what we are doing is good practice. The down-wind track of the chimney is most of St. Helier, certainly St. Saviour, St. Martin, Grouville and St. Clement - that is for the prevailing winds. I think it is too big an area of the Island for us to take any risks at all. It may be money that is wasted; I would rather we wasted quarter of a million pounds out of £100 million than that we were in this position in 20 years' time.

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

I must say I was quite pleasantly surprised by the Constable of St. Saviour, who I am always pleasantly surprised by. I thought he did a good analysis. What worries me about part (a), as the Constable of St. Helier said yesterday, is that it does have a very strong presumption of guilt and it lays the guilt at the feet of the civil service. While that may indeed be the case I do not think it is for us to reach a verdict of guilt at this time, even by people who have been - as was Senator Syvret for example - heavily involved. I think if outsiders are to look at a situation you have to be prepared to allow them, if it is to be the case, to assign the guilt, not for us to presume it in the terms of reference. I thought the Constable of St. Helier skated over that far too lightly. It really frightens me when I see such a presumption built right into the beginning of the report. I would appreciate Senator Syvret's views on that. I think there is a second related issue that was raised rightly by Senator Shenton and indirectly by Deputy Troy - it is the accountability of politicians. I do not know if they acted in good faith. We would all say to ourselves about everything we do that we act in good faith, but the point is we do make mistakes, we do things wrong at times and things are not picked up. The public have an absolutely appalling view of our absence of accountability. At the end of the day, no matter how technical the area we are looking at, the buck is meant to stop with the politicians. It is easy to say: "They lied to me. They are a load of duplicitous, corrupt people or my fellow politicians are, therefore I totally exonerate myself from blame." I am afraid the system as we have it structured is that the accountability lies with us and there have been instances. Although, to be fair, the convention of political accountability has worked more in the omission than the commission in the British system, where Ministers have had to take the rap - as for example Carrington did over the Falklands War but he was one of the few it has to be said - where the fact that they did nothing or they allowed a thing to slip past them albeit for no malevolent reasons whatsoever. The point was they were in charge and they were expected to have asked the awkward questions even if they did not, for example, have the scientific background to do it. We are all ultimately operating in areas where we do not have the scientific or specialist knowledge, for example, in allocating hospital resources and so forth, where we ultimately are meant to take the rap - or under the current system the Ministers have to take the rap. I think it would give an unbelievably poor message to the public if this went forth: "Oh, it is those civil servants, those scheming, duplicitous, malevolent civil servants lying again, and poor, innocent me who has your interests at heart, I just floated on top of this cesspit of iniquity" and so forth and so on. That is not good enough. We are paid and if we cannot make the system work then either we start bringing more votes of no confidence forward which we are very poor at, at the moment, quite frankly we have allowed things to slip and slip and slip or we take the rap and try and improve the system. That is why I am very annoyed about this presumption that the fault, apparently according to part (a) *ipso facto*, lies with the civil service. It may or may not be the case - I simply do not know enough about the situation, but it is very wrong in my view to make that the plank. On the issue of the Connex inquiry, I did attend several of the sessions and I attended the session when the Constable, in a sense, turned out to be a hostile witness although he was to reappear later. I think part of the problem with that inquiry was there was incredibly good forensic work done and the people were chosen because of their forensic skills, but its terms of reference were drawn far too narrowly and it ended up looking at certain occurrences within certain dates whereas I think if you look at part (e) of Senator Syvret's proposition it does indeed allow one to look at the broader picture. That is where, given that it is not being encompassed by part (a) because of its focus on the presumption of guilt of the civil service only, I would expect the issue of political accountability,

for example, to be raised because it is not looked at elsewhere. That was the problem, I think, where we made a mistake with Connex. The other thing that was bubbling under the surface of Connex, there were all sorts of personality clashes and so forth and so on which were totally vitiating the attempt to find the truth about that. Certain people's political face had to be saved basically to save that deal and, sadly, because of the narrowness under which the terms were written, the inquiry could not go there, not that they would have wished to if they had any common sense. The other thing I would say is - I would hope - if this does go forward I am looking forward to an explanation for part (a) which really frightens me in its presumptions, that the composition of this board would be outsiders. I would not want to see politicians because it impugns the integrity of the civil service and indeed, in my view, it should in an inquiry sense. Also, as I said, look at the role of politicians and I do not want to see this as another snow job by politicians where we protect ourselves. The little exchange we had yesterday between Deputies Le Claire and Scott Warren about who was or was not responsible for emails to me sadly said it all. As soon as we are put on the spot we wriggle. The last thing I would like to ask is that I want the views of the Environment Ministry. There have been points raised by people like Deputy Le Claire about the fact we are not getting a robust enough view from that Ministry and I would really like to hear their views on this because I think it is very germane to their mandate.

Deputy C.J. Scott Warren:

I did not want to interrupt the previous speaker's speech, but I am quite happy to answer anything anyone wants to know about emails that happened last year.

1.6 Senator M.E. Vibert:

It gives me pleasure to follow Deputy Le Hérisier who was not going to speak in the first place, but did very well, because on this occasion I find myself agreeing with most of what he said wholeheartedly. I do think it is a point and why this proposition is fatally flawed is it states in the proposition the outcome of any Committee of Inquiry that would be set up and as Deputy Le Hérisier said it seeks and says where all the blame should lie: on the civil service. I worry, like Deputy Le Hérisier, because I think it is a very short step for politicians to get out of things and to get out of accountability. It is not far from: "I was only following orders, I was only taking advice." Our role is to question that advice and to make sure that we are accountable, not pass the buck, pass the blame. I would be interested to hear from Senator Syvret in his summing up as to why this proposition is being brought now and why it was not brought during the 8 years in which he was in charge of Health with its environmental responsibilities, when he could have brought it from the position of responsibility? I have no idea. I also thought that such a matter as what is happening today could be the subject of scrutiny - we have a panel just for that. If the States and the panel thought it was an issue that should be looked at in detail, why set up a separate Committee of Inquiry unless it is just a witch hunt, unless it is just so that Senator Syvret can say at a later date: "I told you so." I am uneasy about spending upwards of a £250,000 of public money so Senator Syvret can say: "I told you so." I pay tribute to the fact that he has been a tireless campaigner on these issues and has led to changes, changes for the better as we know more. As Senator Perchard was saying, a lot of practices 20 or 30 years ago are quite different today because we did not know that then. There was a time when asbestos was regarded as the best thing you could put in your house for its wonderful insulation and other properties, and fire retardant properties. Now we spend millions getting rid of it. Times change. It does not mean anything was done wrongly then or with bad faith or duplicity. It is just that knowledge has moved on. What I worry, as with Deputy Le Hérisier, about this proposition is it is calling for a Committee of Inquiry, but telling the Committee of Inquiry what its finding should be and that cannot be right. It is saying we want to prove this conspiracy theory right. One, I do not think there was a conspiracy theory and as it happened all those years ago I just do not see what will be the good to the public today. I see the point of making sure that we have the best possible outcomes today and that we are doing everything right, but like I said I believe we have a set up in the States that that can be looked

at. I was very surprised by Deputy Troy's speech. Perhaps I should not have been, as he has been, such a vociferous opponent for the incinerator, but to hear Deputy Troy expressing concern and querying what has been done about drivers and others carrying this ash about, if it is carried in that way and so on, when as far as I know when I last looked he is Assistant Minister for Social Security where I believe health and safety at work comes under. **[Approbation]** So if he wishes to pursue this he is the person who should be doing it in that area, and if he does not know that I find it very worrying indeed. We can do things. If we are concerned let us do them. We do not need a Committee of Inquiry to make sure things are being done right today. We are the body to do it. We have Scrutiny; we have the Ministerial system and so on. I am afraid the whole proposition is flawed by not just part (a), but by its preamble so it cannot be approved. I think the things that we should be doing is to consider what additional monitoring and precautions should be introduced, what additional measures should be taken. These are things we should be doing anyway and we should be doing it through our current system, not spending a £250,000 on mainly trying to look back and prove somebody was right 30 years ago. I am not convinced we need a Committee of Inquiry. I believe I have never seen such a flawed proposition for a Committee of Inquiry because a Committee of Inquiry should be given free range to inquire into things, not told what their conclusion is before the start. I think it will be foolhardy and a dangerous precedent for States to agree to such an inquiry under such terms.

1.7 Deputy A.D. Lewis of St. John:

What I think is important here is what the public think and I think credit where credit is due. Senator Syvret has tirelessly campaigned on these sorts of issues for many, many years and kept them in the public eye, which I think is very important. The issues are top of mind with the public because of the activities of Senator Syvret. The public do need to know and we do need to look into it to find out what they need to know. What I do not like is this whole blame culture: "Let us find somebody to blame for it." I think Senator Perchard very well and eloquently illustrated other issues that yes, one could blame somebody for if you look back in history. That is really not going to help the process and fix the problem. What the public want to know is what happened and how it can be fixed. They do not need to know to the depth that a Committee of Inquiry would bring to the process. A Committee of Inquiry historically has been very expensive, very time consuming. We can achieve very similar down another route and that is what I think this Assembly should be looking at. Do we bring in a consultant to look at it? Do we look at scientists? There are other ways of doing this to give the public the information they need to know to reassure them that the practices at that site are now compliant and I would like to think they are. At the moment, as other Members have said, there is a lot of presumption of guilt here and it all seems to be about whom can we blame for what has gone on in the past rather than making sure such activities do not happen in the future. I think that is the important thing here; that is what the public want to know. That is the question they should be asking and I believe they are asking. I would like to know - I go out in that area fishing, swimming and so on, and the public want to know. I want to know what is in that water from time to time. The public have a right to know and the public have a right to be assured that this sort of activity that the Senator is suggesting in his projet will not occur in the future and will be contained in a much better manner. That brings me to a difficulty in supporting this projet because I think in principle the Senator is absolutely correct. We need to ensure this sort of thing does not happen in the future, that best practices are adopted, but I do not believe this is the best way of doing it. We have set up a different style of government in recent years which includes scrutiny. There should not be the need for a Committee of Inquiry of this nature any more with that independent scrutiny and the ability of Scrutiny Panels to bring in consultants and experts where necessary. That, I would have thought, was more than adequate and is already funded and can be put into action very quickly. I am surprised that the Environment Scrutiny Panel have not looked at this already or been more audible about this whole issue. I would like to see Scrutiny pick this up and run with it and give the public the kind of assurance that they want, which is best practices are being adopted. Perhaps they are not, but they certainly should be in the future if a proper review of

practices is undertaken by an independent body that has scientific knowledge. I believe that could be achieved by Scrutiny rather than the possible huge expense of a public inquiry. I do not think we should lose sight of the fact that Senator Syvret's objectives here are honourable. He has kept it high in the public profile and I think that is important and the public do need to know.

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

Oh, dear, here we go again. A series of Ministers standing up and saying that what is being proposed, an investigation into a serious matter, should be ignored - ignored for all sorts of reasons, but not reasons connected to the essence of what the issue is. So what are the issues? Do we have a potentially toxic site sitting on the waterfront? The evidence seems clear and everyone in this room knows that we have. It is certainly potentially toxic. Do we know the extent of that toxicity and the dangers it might pose both to humans and to the marine environment? We do not. Should we do something about it and investigate it and if so, how? Perhaps everyone in the room might say yes. "But not in this way" say the Ministers and: "Not at this time" say the Ministers: "And not spending this amount of money" say the Ministers. "Let us do it some other way. Go away. Do not bother us." But let us look at the proposition: "To consider what if any additional monitoring and precautions should be introduced to safeguard human health from the toxins within the reclamation sites." They are there. We know they are there. How toxic are they? What can we do to protect the population? Perfectly straightforward; that should be happening. Part (c): "To consider what if any additional measures should be taken to protect the marine environment from the toxins within the reclamation site." Marine environment - ditto. Absolutely sure, certain, we should be doing this. To consider whether we have breached the obligations under OSPAR. Certainly, let us take responsibility for that, examine where we are and try and put it right. The arguments keep coming back to this first paragraph and indeed the preamble. The preamble says: "Examine all matters relating to the handling and dumping of toxic ash." Paragraph (a), second half, I draw your attention to it: "What improvements and safeguards could be introduced in order to ensure that public administration is subject to effective checks and balances?" Before that, to examine why a breakdown in administration was allowed to occur. The Minister for Health and Social Services, the Assistant Minister for Health, the Assistant Minister for Home Affairs have all stood up and said this is about the blame culture, this is witch hunting. Where in that first paragraph does it say who was responsible? There is no witch hunt here. There is a focus on public administration. It does not say who. It says why. This is not about witch hunting ...

The Deputy of St. John:

A point of order there, if the Deputy may give way.

Deputy G.P. Southern:

No, I am not giving way.

The Deputy of St. John:

It clearly says in the first sentence ...

Deputy G.P. Southern:

It says: "A breakdown in public administration."

The Bailiff:

Members must understand the difference between a point of order and another interruption. A point of order requires a ruling from the chair otherwise it is an interruption and Members can only interrupt if the speaker is willing to give way. Deputy Southern is not giving way.

Deputy G.P. Southern:

And I am allowed not to give way, thank you. **[Laughter]** Yes, it does say: "Breakdown in public administration." That does not mean who; that means why because it clearly says: "Why?" So

examine what happened. Were there serious concerns expressed all the way through the 1980s about this dumping? Yes, there were. Were they ignored? Yes, they were. Why were they ignored? That is the question. How did that occur? How were they avoided? Why were particular departments putting out platitudes and comforting statements when they must have, and they ought to have been aware, that there were serious health considerations that they should have been addressing to make sure that public health was not put at risk? That is the focus of this inquiry. But here we go - it is witch hunting; it is the blame culture; it is expensive, we cannot spend £250,000 on this, protecting our population when we could better waste it elsewhere. Absolutely not true. To do nothing is simply not good enough. To put it off, to do it another time, is simply not good enough. It is not about timing. It is not about the position of the person who brings it. Senator Vibert said why did Senator Syvret bring it now? Why not when he was Minister for Health and Social Services? That is not an issue. It is being brought now. Let us decide now to get on with it and look back and say: "You should have brought it earlier" or: "You should be bringing it some other time" or: "You should be the Minister for Health and Social Services and then you will be listened to because Ministers get listened to and backbenchers do not so it is inappropriate for you to bring it now, you should have brought it when you were Minister for Health and Social Services because then you have some clout." Nonsense. To do nothing is simply not good enough. Are we using the right tool? Can Scrutiny do it? Should it be doing it? Scrutiny is working its socks off doing the maximum it can at present. Let us take on and let us load up, Scrutiny is the answer to everything. No, it is not. Scrutiny is a certain number of Members with a certain limited resource of officers, it has a certain amount of time to dedicate to issues. To say time and time again: "Well, we have a system, it is Scrutiny" and dump it on Scrutiny is to ignore the fact Scrutiny has a limited resource in terms of officer time and a limited amount of things that it can do. So that is not an answer. A Committee of Inquiry is a tried and tested way. We know it can be made to work. It has the powers to require witnesses to be on oath, which Scrutiny effectively does not; it is a convention that people will come and say the truth, but it is not on oath, so it has significant powers over and above a Scrutiny Panel. It is not simply good enough to do as the Minister for Health and Social Services stated, to say: "Well, I have looked at Committees of Inquiry in the past and they have not really worked and they have not delivered the goods, and where they have delivered damning indictments of particular actions, nothing has happened." Well, hang on, nothing has happened because of Members in this House, who have failed to ensure that something happened. So that particular argument is possibly one of the lamest I have heard probably in the last 6 months or year, and to have that come from the Minister for Health and Social Services, when he would be responsible not only as a Member of this House to make sure that the result of the Committee of Inquiry were followed up and were hammered home, but also, good grief, he is the Minister for Health and Social Services. He is in charge of protecting the health of the residents of this Island, so he has a duty, 2 duties, to make sure that any conclusions come to by the Committee of Inquiry are put through with maximum authority. So I would urge Members to pay little attention to the specious nature of the arguments that are being put up against getting on with action now, and support this proposition.

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

I, along with 3 other Deputies in 3 and 4 District of St. Helier, which covers the Bellozanne area of First Tower and all the way across the top to La Pouquelaye, Hauté Vallée are fully aware of the residents' years and years of suffering, through the exposure to an inadequate incinerator that is 12 years beyond its sell-by date, and has been throwing out toxins and ash, et cetera. The residents for years have also been complaining about the amount of traffic that goes between Bellozanne and the land reclamation site for the disposal and dispersal of the ash from the incinerator. Senator Syvret for years, including the time when he was Minister for Health and Social Services and President of Health and Social Services, has been working tirelessly on telling us, rightly, that things needed to be improved and things can be better. Many things have changed and there have been additional safeguards inbuilt. I do not argue about this proposition for (b) and (c), because I think you can

always review and monitor and see if there are additional measures, especially at this time when we are looking to close down one incinerator and move it to an area where the ash will be secreted once it has been burnt, without it going across St. Helier and without the old incinerator continuing to spew out ash halfway across the Island. The new incinerator is designed for purpose, it is an Energy from Waste plant, so it has a useful by-product, and it will also have the inbuilt safeguards within it so that it will not provide the toxins, et cetera that we are currently suffering. I personally do not believe that it is necessary for us to go through an historic re-examination of much of what we already know, and I think that we should be utilising the elements of this proposition to move us forward into ensuring that the best possible protection are given to our current generation and our future generations, and that should be done now, without any further delays. The danger of looking at historic events is that they get long and protracted and things that need doing now will get delayed yet again. We can ill afford any further delays because of the current situation with the incinerator, and we also need to be able to ensure that our future land reclamation policies allow us to dispose of our waste safely, and to find alternative ways where we can, with recycling, reuse, et cetera, and to make sure that these things happen as soon as practicable; now, preferably, but appreciating that it takes time. I do not intend to repeat a lot of what has been said by others in the past day, but I go along with the fact we have to look to improving what we have and not go down a retrospective course, which I do not think is going to now serve us a useful purpose.

1.10 Deputy J.A. Hilton of St. Helier:

I suppose really I am going to come from the viewpoint of the expenditure that this inquiry is likely to cost. I do not think I have heard anything this morning that makes me believe that we should be spending to the tune of £200,000 to £300,000 on an inquiry when a lot of the information that is being requested - I understand from the reports submitted by the Council of Ministers - is already in the public domain. The report quite clearly states that between 1986 and 1995 the deposit of ash mix with inert waste at the waterfront site was undertaken in a manner that would not reach today's strict requirements. I also understand that Senator Stuart Syvret did raise all these issues around the time of 2000, and a lot of those questions that he submitted were answered. In my experience of dealing with health protection and environmental health over the past few years to do the remediation of the town park site - and it is certainly for the different agencies involved to agree a remediation standard - took a very, very long time indeed. I have no reason to believe that the officers involved in those areas of administration do anything but a very thorough, professional job, and I find it difficult to understand why we should question whether they are able to monitor what is going down on the Waterfront at the current time and the methods being used, why we should indeed question their professionalism in being able to carry out those checks and balances. We debated only about 8 weeks ago, I think it was, a proposition in this House to increase spending to the tune of about £600,000, if I recall, additional spending to help people with special needs to give them greater opportunities. We have the issue, we have amendments coming forward for that additional money for special needs and also for nursery education, and certainly as far as I am concerned I have been put here to make decisions on behalf of the public of Jersey, and I am not convinced that agreeing to a public inquiry at a cost of £200,000 to £300,000 is good use of public money when there is greater need, in my opinion. Previous speakers mentioned that they believe that the Scrutiny Panel, the Environment Scrutiny Panel are well situated to look at things that have happened in the past. Indeed, the Assistant Minister for Social Security on my left, Deputy Troy, made a very impassioned speech this morning to the House about what he felt about it, but he could make it part of his election campaign; he is going to look into the health and safety issues of workers, which indeed he is partially politically responsible for. So maybe he would like to consider that. So just to finish, I would rather use that money to greater effect elsewhere than pay for the Committee of Inquiry.

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

Yes, Sir, I will be brief. It is interesting; I would have liked to have spoken before the Assistant Minister for Housing, because the Minister for Housing has not spoken, so I hope he can clarify - he is not listening to me, Sir, the Minister for Housing ...

The Bailiff:

He is listening.

Deputy J.A. Martin:

Well, he is listening, yes, listening to somebody. I think I now have his attention. I have one question directed to the Minister for Housing, and it is about the housing that is already on the reclaimed land. Now, if my memory serves me rightly, before it was taken over by the trust and then some of it was sold on to individual people, there was such a scare at the bank about the land that there is some sort of condition with the Housing Department and the trust and the owners that if anything does come up in the next 25 or 30 years, whatever the mortgage length is, extra illnesses, these people cannot sell, that Housing have an agreement to buy it back. Now, that worries me that banks are not sure. Now, I am asking the question and I hope for clarification in the Minister for Housing's speech. There is some agreement. Now, that is worrying. I have just heard from the Assistant Minister for Housing that she does not think we need to do this, because of the expenditure. Well, I am very worried that, yes, we know some of it is historic, but we are now digging up all that historic ash, toxic waste that is in the ground, and I want to make sure that people now who are ever going to visit it, live there, work there, that it is going to be safe. Deputy Troy was lamenting; he said, well, if he knows these things are going on about lorries. Why is he not doing anything? The practices are in place, but there is no police in the Department of Health or public health, or not many than there were 20 years ago when these practices were taking place, with their knowledge. They might have not been as knowledgeable of what the practices were doing, but I had phone calls from the people living on the Waterfront when they started to dig the big hole last year again. I was told from Public Health that their practices are being monitored by an outside company. I had somebody sitting up there with binoculars, who says on some shifts, they are all masked up and gloved and everything; on other shifts, they are walking around, there is nothing. So it is depending on who is monitoring it. Now, the person has said they could take photos if they want, but I believe this person, because this is human nature, if you do not have someone on your back all the time saying: "Put your mask on, you are not protecting yourself." So the practices are there, and the practices are in place, but they are not being policed. So can we afford the expenditure now for a Committee of Inquiry to look in? People have a problem with part (a), and I do not know if we are going to vote this all together. I mean, that is a matter for the Senator. If you do have a problem with part (a), part (e) covers it, because really, it is as wide as it can be, and we now put this in Scrutiny to examine it; any other thing that may come up in relevant inquiries, because once you start digging - I do not mean that literally - but once you start digging, you do find other places that you need to go. We have had experts in the past; in the first year or 2, Scrutiny tied their hands. But as for can we afford the expenditure now, can we afford people in 10, 20 years' time that are down at the Waterfront who have worked, who have claims against this Government which could be in the millions and millions of pounds - and do not say it does not happen, it has happened all over the world - to sit and do nothing when you know there is a problem, and as I say, that it is not just being left. If it was down there, we had grassed over - and I think that was Senator Syvret's argument even before I was in the House - and let us see what happens, or leave it for a few years. Well, we have not. We have dumped it, we are now digging it and we are having people living there. I think we cannot afford to use this expenditure now, get in extra experts. I am not interested too much in the past. I am interested in now, and I want this inquiry done. So as I say, Sir, I do not know how we are going to vote on it. I would vote for all of it, but I think if the Senator really wants some support, if he let us vote on (a), (b), (c) and (d) separately, he would at least get some sort of inquiry, and (e), as I say, covers everything that I would be interested as well into looking into.

The Bailiff:

I wonder if I might just say from the Chair I was not presiding at the beginning of this debate, so I do not know how the proposer put it to the Assembly, but it does seem to me that this is a single proposition. It is not capable of being broken down.

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

It never ceases to amaze me the way the debates kind of ebb and flow and the way that some Members refuse to read the words that are in front of them, or exaggerate. I will give you one example, or the House one example, and we have had a number of Members suggest that one reason for not looking at this potential inquiry into some serious issues is on grounds of cost, and we have had it mentioned that the cost could be £250,000, £300,000. Where does that figure come from? Let us have a look on page 17. On page 17, Senator Syvret, in addressing the financial and manpower statements, made an estimate as to what he thought the cost of an inquiry would be, and in a couple of paragraphs up from the bottom, he says: "Given the serious and complex nature of the issues, it is more realistic to imagine the cost of this inquiry being akin to the more serious inquiries such as the bus tender process and the building costs inquiry. Essentially, this would place the estimated cost between £50,000 and £100,000." He does not say it is going to be £250,000; he does not say it is going to be £300,000, and yet some Members have taken it upon themselves to inform the House that this is the price that would be being expected to be paid. Now, the mention of the £300,000 is the somewhat tongue in cheek remark that the Senator made as that this sum has to be contrasted, the £50,000 to £100,000 estimate, with the around £300,000 per annum spent by the Chief Minister of the department on spin doctors. Now, that is probably why some Members have taken the bit between their teeth and they are giving tit for tat, and those remarks perhaps should not have been made in the report, to the effect that monies have been frittered away on spin doctors, whether they have or have not. But I think maybe that is the route that those Members who have suggested that the cost of an inquiry would be of the order of £300,000. It will not. It will be £50,000 to £100,000. In fact, it may well be less, dependent upon which of the specific items require substantial looking into. This is the second point I would like to make. Deputy Southern was absolutely right to remind the House that what we are voting for is essentially 2 things, wrapped up in part in the preamble to the proposition, which says - again, it is worth rereading it, because we are forgetting it time and time again in Members' speeches - it is: "To establish a Committee of Inquiry in accordance with Standing Orders in order to examine all matters relating to the handling and dumping of toxic ash from the Island's municipal waste incinerator [whether it is the one we have now, or the one in future] into the marine land reclamation site and other areas." Now, despite some Members' speeches suggesting perhaps that ash is not going to be an issue into the future, it is going to be an issue. If indeed the Island does go ahead and build the incinerator that has been spoken about, and it functions in the way that is being suggested or threatened or even promised, in the amount of materials that are going to be taken to this machine, there is going to be of the order of 20,000 to 25,000 tons of toxic ash. Now, we decided in this House a couple of weeks ago that we were not going to apply pressure on the Minister for Transport and Technical Services to take out as part of his waste strategy a number of the items that were causing the ash to be toxic in the first place. So we have heard from the Minister's lips that he fully intends to continue to burn rubber tyres with the metal treads and inserts; his policy or the policy of the House is still only to recycle up to 10 per cent of the waste electricals. In a question that I put to the Minister a number of weeks ago, I said: "What is going to happen to the rest, and does that really mean that it is going to be committed to the incinerator?" It will be, and these are the very items that are going to render, as I said, any ash that is produced as toxic. So we are cleaning up after the event, instead of putting our sensible money upfront and taking all these materials out of the waste stream first and not burning them, because we do not need to burn them, and it is not the best way of dealing with them. But the States, in their infinite wisdom, have decided we wish to do things the other way round, because we are flush with funds and it is better to be dirty and then show the world how clean we can be in spending silly monies in

cleaning up after the act. It is a nonsense policy, and I think if anything that this inquiry can show, it must be that there is an opportunity to have a second say as to how we are going to handle any of the ash materials that are going to be produced by the incinerator running for the next 3 years while the new one is built, and indeed, by any ash that is produced by any further machine that is built and operated. I think that is the best reason that I can think for supporting this particular proposition. I do have reservations about going back into the past and turning over stones and finding civil servants or ex-civil servants hiding and trying to point fingers. I think it is generally agreed that is the wrong way forward, but that is only down there as a specific point, and it is an interpreted point, and not necessarily the way that inquiry would wish to order its business. I think the focus of the specific items that are called for by the proposition are really the items, the material items, which is (b), (c) and perhaps (d), which is to consider any additional monitoring and precautions with dealing with these particular materials, if we are going to continue to burn the wrong things and continue to waste public monies to clean them up or to put them in specially lined pits so that they do not cause the environmental problems that we know can be caused if we do not handle these materials in a sensible fashion. Putting them in a marine environment just does not make sense, and perhaps there are some sensible messages that could come out of the inquiry as to how the Department of Transport and Technical Services intend to deal with the quantities of ash that will be produced over the lifetime of the new project, and that is 20, 25 years, in 3 years' time. I think I will probably leave it there. I think there is a reason for going ahead with this inquiry. Perhaps one other final point: I find it somewhat ironic that when backbenchers or this side of the House, or the non-Executive Members of the House wish to scrutinise something, then the call from the other side of the Chamber, the Executive set, they do not wish Scrutiny to take place, because it is seen as a delaying tactic or is going to take too long. When the boot is on the other foot, we have had at least 2 Members, a Minister and an Assistant Minister suggesting that when a Committee of Inquiry is called, then perhaps the better way forward is to ask Scrutiny to do it. So we do seem to be playing a cat and mouse game here, Sir, and really, what we should be looking at in terms of making the right decision is looking to see what it is that we want to look into. There are environmental issues that need to be looked at in a specific way. There are repercussions coming out of the handling of the ash that will be produced over the lifetime of the T.T.S. (Transport and Technical Services) project, and those are the real issues that we should really be getting to grips with, and not just playing politicians, even before election time.

Deputy G.W.J. de Faye of St. Helier:

I must apologise to the House, because it appears that I have may have misled Members, and it certainly appears I have misled Deputy Duhamel on the issue of waste electricals. It is in fact no longer the practice at Transport and Technical Services to put waste electrical items into the incinerator. Wherever possible, they are separated out. The only issue we have is that we do not have the money to export them out of the Island to a proper processing plant. I may have given the wrong impression, because I did say when recently questioned on the issue that we could not give a 100 per cent guarantee on this, because it is always possible for people to put electrical items into black bags that come in as domestic waste, which go through different routes, but it is no longer the general practice to put waste electrical items in the incinerator.

1.13 Deputy A.E. Pryke of Trinity:

Over the last 10, 20 years, we have all been much more aware of environmental issues and how much it has changed, and more legislation has been put in place over this time, and also with the importance of Planning and Environment, those 2 areas working together, and also, our health and safety issues at work and good practice and procedures have been put in place. Environmental legislation is toughening up and will continue as necessary, and one example of that is happening this afternoon with the Water Resources Law. It is within our gift in this Assembly to put in place any legislation that is required that the Minister will bring forward. The development at the Esplanade, we at Planning and Environment are very aware of the environmental issues, and that is

where having one department is so vital. We will look into all the environmental issues at that time, the land quality, the decontamination issues that is all necessary. The planning process and redevelopment is the correct vehicle through which to investigate environmental land quality, where it requires decontamination and safe working practices. As I said, that is part of the environment reports that we provide, the environmental report assessment. I have been very concerned about what I have heard this morning, and the different issues that have been raised. I am recommending that if necessary, and I will take this forward, is to look if we have any legislation that needs tightening up that we can put in place that we should not have put in place, and if necessary, report back to the House with any holes necessary to tighten up and also to follow up the action required. It is not useful looking back, I think, because environmental issues have changed so, so much that I do not think that with part (a) of the proposition we will perhaps get anything from it, but looking forward to make sure - and especially what is happening with the Esplanade development - that we have everything in place. If we have not, then I am sure the Minister, and I can say it from my behalf, we will bring forward any legislation that is required. But we also up in Environment and in Planning expect the developers to make sure that they do their bit too and have tight conditions in place regarding the decontamination of that site. So what I am saying, Sir, is that I am happy to say that we will look at the issues raised this morning and report back to this House on what has been said and make sure that our legislation is in place.

Deputy I.J. Gorst of St. Clement:

Could I ask the Assistant Minister a point of clarification? I think that most Members remain concerned about points (b) and (c) of this proposition. I wonder if the Assistant Minister could give an undertaking, as I understand there will be a public inquiry prior to any approval on the Waterfront, and would she be able to give an undertaking to include those particular points in that public inquiry?

The Deputy of Trinity:

The Deputy is quite right that there will be a public inquiry put in place, and it will be an independent inspector from the U.K (United Kingdom), and knowing the site and knowing all the issues raised, I am sure environmental issues and decontamination of any site and making sure that everything is in place, not only for what is going to be on the site, but also for the people working on that site and the future use of that site, these issues will be raised and addressed.

Deputy R.G. Le Hérisier:

Just a point of clarification, Sir. Would the department's role include examining departments who have responsibility like health and safety and health promotion or protection, would it involve in looking at whether their policing of the current situation is satisfactory or not satisfactory?

The Deputy of Trinity:

If we find that it is not satisfactory, then we will take that next step that is necessary, whether it be putting legislation in place that environment needs to put in place, or recommend to another Ministry whatever. But that is up for negotiation, but I am saying that we will report back to this House with the recommendations.

1.14 Deputy S.C. Ferguson of St. Brelade:

Yes, I agree with the previous speakers. I do not think the sort of raking over of past history is going to be terribly effective. If the Senator had brought a proposition requiring T.T.S. and Health to bring forward the information - I mean, a plan even - explaining how the known and future problems will be dealt with, I could probably have supported it. In other words, paragraphs (b) and (c). I am heartened by the comments of the Assistant Minister for Planning and Environment, because I think we have a problem. We have to deal with it, and the probably future impact, but raking over old coals really is not frightfully constructive. You know, we have to think back, in the 1970s when these sort of practices were in place, they were only just beginning to be questioned. It

is only recently that sort of questions have become mainstream. I mean, we have the E.U. (European Union) taking action on landfill. You know, when I was living in New York, we used to dread the days when the winds were from the west, because the fragrant odour of the landfills in New Jersey used to waft across the Hudson River. That has been stopped now by the E.P.A. (Environmental Protection Agency). They have taken measures. We may need reassurance from T.T.S. that best practice will be used. We know what went wrong. We ended up with toxic ash coming out of the incinerator and being put into the landfill, but we need to make sure it does not happen again, that the Committee of Inquiry, under paragraph (a), is examining why it went wrong. I do not think that particularly matters, because it went wrong because of ignorance, because we did not know the effects; we did not think of them. But now we do know, and now we need to be reassured that it will not happen in the future, and what is being done with the ash which will be dug up? So I would rather see a proper report come to us from the public inquiry with the planning application, with proper information from T.T.S. and so on and health, rather than sit there and rake over old coals. So I will not be supporting the proposition.

1.15 Deputy J.J. Huet of St. Helier:

Well, I am sure there is not much I can say that has not already been said in this Chamber but my mind keeps saying: "Why has this come up now, if it is so, so important? Why now?" Now, I listened to Deputy Duhamel, and I must be honest, the word "incinerator" came into my mind, and then I thought: "No, no, it cannot be that he wants to stop the incinerator" and I thought: "So there has to be another reason for it." But obviously it is very important, and Senator Syvret has put an excellent report up, giving all the details. But why again, I have to say - maybe this is typical women - has it come up now, because what is the reason? Because Scrutiny now has been running for 3 years, and on Scrutiny we have Deputy Duhamel, the Connétable of St. Helier, Deputy Le Claire, Deputy Scott Warren, and obviously, Senator Syvret. Now, looking back, Senator Syvret and Deputy Scott Warren were in charge of our health, and the Connétable of St. Helier was in charge of Public Services, and Deputy Duhamel, I believe Scott Warren and Deputy Le Claire were also on environmental or public services. If this is so, so important, those are the people that are saying to us: "We must have it now." Why now? Why was it not done when all those people were in the right positions to do it, because Senator Syvret, he has lots of brains, why would he leave it for this length of time? Why is it being brought up now? I have to say, if it is that important over the last 3 years, why has it not been done? I can only think this is a delaying tactic, because there is no reason for it now. Well, there is no point in repeating - my husband tells me I am like a parrot sometimes - so I am going to leave it there, but I have to say, Sir, the reason is why now and not before, when it could have been done in-house with the right people, with the right knowledge, with the right power?

1.16 Senator S. Syvret:

How to win friends and influence people and diplomacy were never strong points of mine, so why bother changing the habits of a lifetime now? The debate we have had on this proposition has to be one of the most intellectually feeble, weak and hopeless debates I can recollect this Assembly having. It really is truly remarkable. Just consider a key point which I made in my opening speech. The comments of the Council of Ministers themselves accept that it all went wrong, that it should not have been dealt with in that manner. The Council of Ministers' comments accept that health and safety at work laws were broken. There are other aspects too which have not so far been mentioned. We have heard some Members say: "Well, we pledge to look at the laws as they stand today and make sure that they are improved, we have better laws in future to stop this kind of thing happening." What is simply alluded, I think pretty much everyone who has spoken, is the fact that back in the 1980s and the 1990s the extant laws did prohibit this kind of action. This conduct with hazardous wastes was illegal. There is the health and safety at work laws. In the particular context of dumping the incinerator ash into the land reclamation sites, there was the Sewage (Miscellaneous Provisions) Law, which forbade absolutely the dumping of toxic metals into the marine

environment. All of this activity which took place, disposing of the incinerator ash in the land reclamation sites from 1979 onwards, was at the time criminal. It was against the law, and several States departments colluded in that law breaking, so do not let Members sit here today and say: "Oh, well, standards were different back then and we will pledge to improve the laws in the future." Having 101 new laws marvellously structured and worked out will be of zero benefit whatsoever if those laws are not adhered to and they are not enforced and they are simply regarded as little more than window dressing, which was certainly the case with the laws back over all of those years. It has been said by some Members that my report and proposition adduces a lot of the facts, and that it is now accepted these days - and it is, because it is in the Council of Ministers' own comments - that, yes, finally it was inappropriate and wrong to handle and dispose of the incinerator ash in that manner. But Members need to reflect upon what the purpose of this inquiry is, hence the wording part (a). It is not to go over lessons that are already learnt, or facts that are simply undeniable and consider whether the ash might have been toxic. It is to consider how, for so long, public administration in Jersey was able to engage in such a manifestly unacceptable potentially hazardous and certainly illegal activity, and not one part of public administration stood up and opposed it. On the contrary, Members of this Assembly in the past stood in this Chamber and repeated - in good faith, as I have said - what they were told by the department that there was nothing wrong with the ash, that it was not toxic, that there was no problem. Does it not concern Members that here we have a period for the best part of 2 decades, 1979 until the mid to late 1990s, when the Island's Parliament, the legislature that represents the interests of these people, was routinely misled, brazenly? Is that really of so little concern to Members? That is the kind of issue that is at the heart of the Committee of Inquiry proposition. Getting from where we were back in those days of the late 1980s and throughout the early 1990s to the kind of position we have today was like pulling teeth. It was a desperate struggle. I could not recollect the number of times I was attacked and denigrated by civil servants and politicians for daring to suggest that there was anything problematic at all with the ash, and yet these days, it is accepted. It took from 1979 until my Health and Social Services Committee, with the then Medical Officer of Health and today's Health Protection team, who are good today, finally to get the first ever official acceptance, the first ever official recognition by any States department that the material we were dealing with was toxic waste and it should not have been handled or disposed of in that manner. Over 2 decades, from 1979 to that point, of getting that admission. Now, if that is what takes place, then something has and is going badly wrong with public administration. It was said yesterday by Deputy de Faye, and I think one or 2 others, that: "Well, is there any point in undertaking a Committee of Inquiry now, because if civil servants were culpable, if they proactively misled politicians, well, it is all water under the bridge now. They have all retired, so is there any point in conducting what other Members have described as a "witch hunt"?" But the point is precisely that there is no witch-hunt and there is nothing the States or any Committee of Inquiry could remotely do in connection with those former employees because they are no longer employees, so there can be no witch-hunt against them. The purpose of the exercise is to get at the truth, to discover the tensions, the conflicts of interest, the personal pressures, the inter-colleague tensions that made them fail to do their job properly. I know certainly from one former civil servant on that occasion that another civil servant - as it happens, the Chief Officer of Public Services - used to routinely phone him up and shout bullying, obnoxious abuse down the phone at him, virtually threatening him if he ever said anything about the ash disposal being toxic. That is the kind of performance that takes place behind the scenes, among a lot of the civil servants. Deputy Huet said: "Why now?" Why not when I was at Health? Well, the Deputy has not obviously been paying a great deal of attention, because as is explained in the report and proposition, my Health and Social Services Committee were the first ever formal States body, the first ever department of the States to adduce an open recognition and acceptance that we had a problem, that the ash was toxic and it should not have been disposed of in that manner. The Deputy, in saying: "Why now?" well, I mean, in case it has escaped the Deputy's attention, I have had rather a busy time with other matters in the course of the past year or so. But why now? I would have to put on record my thanks to former States Member

Don Filleul. I happened to be watching - we all make mistakes sometimes - Channel Television one evening, and he appeared and was asked a question about the ash contamination in the site, and he made a remark to the effect: "Oh, that is just untrue. All that is just a load of scaremongering raised by Stuart Syvret" and I thought: "Oh, that reminds me, that reminds me, I have this report and proposition and all this work nearly completed waiting to go, but I have had other priorities. Thank you, Don, I will bring it forward now." So that is why now. Senator Shenton said that nothing would be done or could be done to those who were culpable. Well, that may well be the case, but the fact is we need to learn how it went wrong, and certainly, we cannot rely on the way civil service disciplinary matters work today to properly hold civil servants to account. I will not bother going into the details now, but a current civil servant who was suspended for a period of time recently was allowed to return to work with no action against him, notwithstanding unambiguous evidence of serious misconduct. So still to this day, there is no effective, meaningful discipline affecting the civil service. Why a Committee of Inquiry? Why not just hand it over to the Scrutiny Panel? Well, we have heard from the Chairman of the Scrutiny Panel that he supports this proposition, and how often have we been told in this Assembly over the years by scrutineers that the panels want to be the masters of their destiny? They want to decide what they want to scrutinise. I am not sure it would be healthy - perhaps necessary on some occasions - but I am not sure it would be a happy state of affairs if this Assembly were to routinely get into the habit of determining what it is X or Y scrutiny panel will do. The Scrutiny Panels I believe need that degree of freedom, and as was also remarked, it is the case that a Committee of Inquiry will be that degree more formal, will be able to subpoena witnesses, compel attendance, seize evidence et cetera in the event of non co-operation. Now, moving on to the remarks made by Senator Perchard, he made remarks which were similar to those made by some other Members by saying that the dumping of the ash was acceptable back in those days, that the standards of the day said it was okay, and by looking at the question today, as I am asking the Assembly to do, we are kind of going back in time and trying to impose the advanced standards of today on past practice. Again, I have to say that just shows how little he has understood the issues, because the dumping of the ash was against the law, and it was against the law because it was not environmentally acceptable to do it back in those days. Before even the municipal incinerator came on stream in 1979, it was widely accepted that the ash that came out of such installations was a hazardous waste, and looking at the individual components, the toxic components of the ash, many, many of these have been recognised as being significant human health hazards for many, many decades, a century; more perhaps, in some cases. Mercury, cadmium, arsenic, you know, that is the kind of contaminants that are in the ash. Are we really saying that: "Well, back in 1979, throughout the 1980s and 1990s, we can be excused for not knowing that things like lead and cadmium, mercury and arsenic are potential human health hazards?" No. There can be no excuse, and what Members have to remember is that the taxpayers of Jersey spend an awful lot of money - an awful lot of money - employing very, very expensive supposed experts. Now, we have to start, because it has not been the habit of the States hitherto, fulfilling our public duty, as was alluded to by Deputy Le Hérisssier, by ensuring that there is some measure of accountability, discipline and professional requirements upon very expensive supposed expert civil servants. Deputy Le Hérisssier and Senator Vibert both spoke against the proposition and said that politicians should essentially always carry the can. Well, it has to be noted both are of course former public sector employees, teachers, and if anyone objects to me being thick and ignorant, you can blame Senator Vibert for it, because he was one of my teachers. But the fact of the matter is that it is quite right, absolutely right to say that politicians must be accountable for their errors. What we do not do, what we have failed to do, and what would be much, much more advantageous for the public good of this community than 101 debates about the machinery of government and all of that tedious old nonsense, it would be much, much more beneficial to the public good if we set about applying our minds and thinking about the appropriate division, the appropriate application of responsibility. A politician makes political mistakes; rightly, they are accountable for it, but when that politician has acted in good faith because they have been acting according to what they have been told by a £160,000 per annum senior civil

servant supposed expert who has told them a load of rubbish, then how does it serve the public good for that politician in question to be hung out to dry as a scapegoat, as a diversion? Somebody to give the public a bit of catharsis while the real villain of the piece, the very, very expensive, yet incompetent and unethical senior civil servant remains untouched, in office in customary States of Jersey civil service fashion, Teflon coated, bullet proof, utterly invulnerable to any kind of accountability whatsoever, because that is what happens now, and if we are serious about addressing the public good, that is what we have to begin to combat. Deputy Le Hérissier said the public are alarmed at the lack of accountability on the part of politicians. Well, yes, I probably would not argue with that assessment. There is indeed public concern about the lack of accountability on politicians, but there is, frankly, if anything, an even greater level of concern about the frankly non-existent level of accountability to very senior civil servants. It is widely remarked in our community that they are unsackable, that they are never held to account. There simply is no balance. A balance has to be struck which we are just nowhere near at present. Of course, it would be quite wrong to generate a situation whereby politicians could make errors and then just foist the blame on to the civil servants; absolutely wrong, we have to avoid that kind of thing, but the plain fact of the matter is at present, we are to the opposite extreme of that scale. Very expensive supposed experts can get things catastrophically wrong, they are never accountable for it, and it is the layperson, fall guy politician who carries the can. That just is not acceptable. We have to get back to that centre ground, back to some balance in these issues, and examining this particular whole saga is a very, very good fundamental point at which to begin that examination.

Senator Vibert: I was quite fascinated by his speech. He suggested that he did not want to support the proposition because part (a) he felt was judgmental and already kind of said the conclusions. Well, part (a) of the proposition - let me read it - says: "To examine the breakdown in public administration, which enabled the irresponsible and unsafe dumping of the toxic ash and to examine why this was able to occur, and to consider what improvements and safeguards should be introduced in order to ensure that public administration is subject to effective checks and balances." Now, I am forced to conclude that Senator Vibert did not ever read the comments of the Council of Ministers, because the comments of the Council of Ministers, at risk of repetition, concede that the ash is a hazardous waste and should never have been disposed of in the manner that it was, therefore the premise of paragraph (a) is accepted by the Council of Ministers' own comments. How can it be otherwise, when it is accepted in those comments that it was against health and safety at work legislation to expose workers to the ash? How can that be accepted, and then on the next breath say: "But there was no breakdown in public administration"? Sorry, it just does not stack up. It is totally illogical; it is irrational. Moreover, if Senator Vibert wanted to, and I could make the same observations about other speakers who have criticised the wording of part (a), if they wanted to dispute the premise of part (a) of the proposition, they would have to argue against the science, as cited, as quoted in my report. If there were no breakdown in public administration, and consequently because the ash was not toxic, then Members would have had to have said: "Well, the tables and the information you have in your report is wrong, that the toxicological facts you cite are erroneous and we good old Jersey States Members know better than the world of science and epidemiology." There is a lengthy table in my report, which I will not read it all out, which cites a variety of the toxic components in the ash, because it is important to remember that we are not dealing merely with one toxin, the ash is a cocktail of toxic substances, also replete with dioxins, furans and P.C.B.s (Polychlorinated Biphenyls). Now, these are proven and accepted human health risks. Not one Member in the course of this debate has - wisely - attempted to argue with that fact, because they could not. I will just read a little bit of the table I quote from the book I refer to. The table is called: "Toxic Effects of Common Hazardous Compounds." This table is from page 476 of *Hazardous Wastes: Sources, Pathways and Receptors* by Richard J. Watts, and I have even got the ISBN number there if anyone was particularly interested in getting a copy. P.C.B. minimal acute toxicity but chronic effects: chloracne, increased liver enzymes, possible reproductive effects, acts as a cancer promoter. Dioxins and furans: acute effect, chloracne, headaches, peripheral neuropathic. Chronic effect: induction of microsomal enzymes, altered liver

metabolism, altered T-cell subsets, immunotoxicity, strongly implicated in carcinogenicity, maybe a promoter. The inorganic compounds: arsenic. The acute effects: loss of blood, intestinal injuries, acute respiratory failure. Chronic effects: it is in reality, if there were a health risk, it would be the chronic effects, due to the long-term low dose exposure that we would be considering. The chronic effects: myelogenous leukaemia, cancer of skin, lungs, lymph glands, bladder, kidney, prostate and liver. Cadmium: vomiting, cramping, weakness and diarrhoea, all ingestion results in renal mycosis and dysfunction, induces lung, prostate, kidney and stomach cancer in animals, no documented human cancer but nevertheless still a serious hazardous waste. Hexavalent chromium, of which there is a very significant amount in the ash, readily absorbed by the skin where it acts as an irritant and an immune sensitizer, all absorption results in acute renal failure, and the chronic effect, which is the effect we are most likely to be considering in connection with the ash, is lung cancer. I will just mention the chronic risks, mercury: central nervous system dysfunction, memory deficits, decrease in cyclist motor skills and tremors; nickel: immune system effects resulting in allergic contact dermatitis, et cetera, et cetera. Those are the scientific facts concerning the toxic make up of the incinerator ash. There is nothing particularly remarkably new about that knowledge. Perhaps one might argue that in the last 20 years an understanding of the toxicity of dioxins, furans, P.C.B.s may have increased significantly. But all the rest of it, all of those toxic heavy metals which I have just referred to, the toxicity of those, the hazardous nature of those, has been well known for a very long time. Which is indeed, I imagine, why the States Assembly back in those years approved things like the health and safety at work legislation and the Sewage (Miscellaneous Provisions) Law which forbade the dumping of such materials into the marine environment. But there has been no argument against the science. The Deputy of Trinity said, as I have already addressed, that environmental standards are different today and they are much better than the old standards and therefore we need not be too concerned, we cannot be really justified in being too concerned about what happened 20 years ago. Well, sorry, yes we can. As already explained the activities of the States departments, back from 1979 onwards by the legislation of the day, by the standards of the day, by the degree of scientific knowledge of the day, all were completely unacceptable. So even if the Deputy of Trinity does produce a raft of new environmental legislation in the coming years, what guarantee do we have that the civil service will adhere to it? That it will be enforced. That it will be observed. Unless we learn the lessons of how these failures were able to happen, we will not get close to being able to reliably deal with questions of the public good. In summary, the issue we are dealing with here is manifestly a complete breakdown in public administration; the irresponsible and cavalier disposing of the toxic waste, in a manner that was frankly openly and obviously illegal, a criminal act; a variety of States departments, each of which had a stake in that whole process, none of whom spoke out about it or acted professionally back in those days, on the contrary they joined together in the proverbial wall of denial. That in turn led to this Assembly being unwittingly misled by politicians who came here and in good faith asserted that there was no problem with the ash, because that is what they were told by the civil servants. A speaker before - I think it might have been Deputy Le Hérissier - said that he did not necessarily accept that the politicians had acted in good faith. Well, certainly as far as the Public Service Committee of 1990 onwards is concerned, of which I was a member for about 2½ years, I was there, I was present, I took part in the arguments and the discussions, and I can tell the Deputy as I can tell this Assembly that the majority of the committee who did not agree with my views, did not agree with my views because they were told lies by the senior civil servants. Month after month, straightforward rubbish, flat denials of the facts, flat denials of the evidence. So when the rest of the politicians on that committee in good faith denied the concerns being raised by me, denied the concerns being raised by former Senator Nigel Quérée, they were not being duplicitous, they were acting in good faith, they were simply repeating the supposed expert professional opinion they had been told by these very, very expensive civil servants. As I said, we are nowhere near close to achieving an appropriate balance of responsibility. Politicians must be accountable for their errors but at present the civil service appears not to be. Indeed it is not. That is an overbalance completely against the public good. We have to get back to the centre, to look at

these issues, look at what went wrong, how it went wrong and devise mechanisms of making sure appropriate degrees of accountability and responsibility fall where they ought to fall: on politicians for political errors, but on the civil servants for expert professional errors. Until we start learning those lessons and instilling that kind of discipline, we are never going to improve the inefficiencies and the defects of public administration. As was pointed out by Deputy Duhamel, I thought I was being very fair, open and reasonable and fairly comprehensive in the examination I applied to the question of the costs. But of course it has been seized upon and grossly exaggerated, and as Deputy Duhamel pointed out, the estimate I would put on the cost is between £50,000 and £100,000. I make no apologies for making the contrast I do in the report with the bill for the Council of Ministers spin doctors' department. If we can spend £300,000 a year, a recurring sum of money on spin doctors, is this Assembly seriously, in all credibility, going to say that we cannot make a one-off £50,000-£100,000 expenditure addressing what is clearly, as is even accepted in the Council of Ministers comments, clearly a big problem, an area, a time, where a lot of things clearly went very, very badly wrong. If Members reject this proposition today, well so be it. But history will be the judge. The land reclamation sites are essentially toxic waste dumps, there are lessons to be learnt, not only about how that came to be even though the standards of the day forbade such things but there are also lessons we need learn about what, if any, remediation needs to be done to the site. If we reject the proposition today, we are basically washing our hands of all of those past mistakes and saying that we are not prepared to address in any meaningful sense. I do not believe that that is what the public would expect of us and if the £50,000-£100,000 cost bothers some Members, well let us, just for one year, take that sum of money away from the spin doctors' department. But history will be the judge. We have had this debate, my report and proposition is comprehensive, it is fact based, it is evidence based and indeed so much so that the Council of Ministers comments were unable to argue with its fundamental premise. So we know what the issues are. Big problem, things gone very, very badly wrong, how did it happen, why was there no accountability, why were there no effective checks and balances, why did each of the relevant States departments completely fail to hold each other to account, as they should have? We need to learn those lessons because we have certainly not learnt them on any other grounds to date. I put the proposition and ask for the appel.

The Bailiff:

I ask the Greffier to open the voting which is for or against the proposition of Senator Syvret. If all Members who wish to vote have done so, I would ask the Greffier to close the poll and I can announce that the proposition has been lost: 13 votes were cast in favour; 37 votes against.

POUR: 13	CONTRE: 37	ABSTAIN: 0
Senator S. Syvret	Senator L. Norman	
Connétable of St. Mary	Senator T.A. Le Sueur	
Connétable of St. Helier	Senator P.F. Routier	
Connétable of St. Saviour	Senator M.E. Vibert	
Deputy R.C. Duhamel (S)	Senator P.F.C. Ozouf	
Deputy A. Breckon (S)	Senator T.J. Le Main	
Deputy of St. Martin	Senator B.E. Shenton	
Deputy P.N. Troy (B)	Senator F.E. Cohen	
Deputy J.A. Martin (H)	Senator J.L. Perchard	
Deputy G.P. Southern (H)	Connétable of St. Ouen	
Deputy P.V.F. Le Claire (H)	Connétable of St. Peter	
Deputy S. Pitman (H)	Connétable of St. Clement	
Deputy K.C. Lewis (S)	Connétable of Trinity	
	Connétable of St. Lawrence	
	Connétable of Grouville	
	Connétable of St. Brelade	
	Connétable of St. Martin	

	Connétable of St. John	
	Deputy J.J. Huet (H)	
	Deputy G.C.L. Baudains (C)	
	Deputy C.J. Scott Warren (S)	
	Deputy R.G. Le Hérisssier (S)	
	Deputy J.B. Fox (H)	
	Deputy S.C. Ferguson (B)	
	Deputy of St. Ouen	
	Deputy of Grouville	
	Deputy of St. Peter	
	Deputy J.A. Hilton (H)	
	Deputy G.W.J. de Faye (H)	
	Deputy J.A.N. Le Fondré (L)	
	Deputy D.W. Mezbourian (L)	
	Deputy of Trinity	
	Deputy S.S.P.A. Power (B)	
	Deputy A.J.D. Maclean (H)	
	Deputy of St. John	
	Deputy I.J. Gorst (C)	
	Deputy of St. Mary	

ARRANGEMENT OF PUBLIC BUSINESS FOR THE PRESENT MEETING

The Bailiff:

Now, we come to projet 103, Goods and Services Tax: exemption or zero-rating for foodstuffs and domestic energy in the name of the Deputy of Grouville.

Deputy S. Pitman of St. Helier:

Before we go ahead with this proposition may I ask Members if the lodging period for my amendment to this proposition is reduced and that we debate it today?

The Bailiff:

Deputy, the position so far as your second amendment is concerned, as I understand it, is that it has not been lodged for a week. It will have been lodged for a week tomorrow and there are 2 remedies for you: the first is to persuade the Deputy of Grouville to seek to defer the debate on her proposition until a later stage in the week. You ask whether the lodging period could be reduced but Standing Order 26(7) provides that the States may reduce the minimum lodging period if they are of the opinion the proposition relates to a matter of such urgency and importance that it would be prejudicial to Jersey to delay its debate. That may be pushing it a little bit in relation to your amendment, I think. **[Laughter]** So I think it really is a matter for ... presumably you have requested it, Deputy? I do not know, have you?

Deputy S. Pitman:

Yes, Sir.

Deputy C.A. Labey of Grouville:

Well, I felt because there is quite a few amendments that other people are bringing forward to my proposition that it would not be fair on them and believe that Deputy Le Fondré may be asking for his proposition to be brought directly after mine because it relates to this matter in some ways. So I would prefer to go ahead and debate it but I would be quite happy to waive Standing Orders so we could take Deputy Pitman's proposition.

Deputy S. Pitman:

I understand the Deputy's stance on this but may I ask that I can ask States Members to debate this today.

The Bailiff:

You want to propose that the States may reduce the minimum lodging period?

Deputy S. Pitman:

Yes, Sir.

The Bailiff:

Is that proposition seconded? **[Seconded]** The proposition is that the States should reduce the minimum lodging period of Deputy Pitman's amendment because it is a matter of such urgency and importance that it would be prejudicial to Jersey to delay its debate.

Senator M.E. Vibert:

Can I say, I cannot support that because I think it would make a mockery of Standing Orders to do so. But I am very much appreciative of the position that the Deputy finds herself in. I think, as we have got such a large agenda and we are down to be here at least tomorrow and the morning of the next day, I cannot see why - and I would ask the Deputy of Grouville to consider this - we could not get on with some other business and then come back afresh to do G.S.T. (Goods and Services Tax) and the Deputy's amendment. I think it would be a shame if it was split up and I have got sympathy with the Deputy as a backbencher, she has brought this forward - I will not be supporting it - and I believe it should be taken at the same time. **[Seconded]**

The Bailiff:

Deputy Pitman, would you like to withdraw your proposition so as to enable Senator Vibert to propose that the matter be debated tomorrow rather than today?

Deputy S. Pitman:

No, Sir.

The Bailiff:

I do not think you understand me. I am asking you to withdraw your proposition that the States agree to waive Standing Orders so as to enable Senator Vibert to bring his proposition that the G.S.T. proposition starts tomorrow and not today.

Deputy S. Pitman:

Yes, Sir.

Senator M.E. Vibert:

I am quite happy to bring that proposition. I was hoping it could be done by agreement to make for the smooth running the States but if it cannot be done by agreement I am prepared to make that as a proposition.

The Deputy of Grouville:

Implicit in that is that I am not agreeing. All I said was there are other amendments and other people to consider, not least Senator Norman and maybe Deputy Le Fondré. That is what I am saying. I have not disagreed. I would be quite happy if it were to come forward as the first item tomorrow morning, I do not have a problem with that. Something else I would just like to put forward, chances are we could still be debating this by tomorrow, in which case we could continue with Deputy Pitman's amendment. But I am quite happy to start this proposition, start this debate first thing tomorrow morning.

The Bailiff:

Do Members agree to leave the G.S.T. proposition over until the first matter tomorrow morning?

Senator L. Norman:

I am very happy with that, Sir, but then I assume that Deputy Pitman's standalone proposition will also be delayed until after the Deputy of Grouville's proposition.

The Bailiff:

I think that must follow, yes.

Senator P.F.C. Ozouf:

Can we also agree that Deputy Le Fondré's proposition will immediately follow the G.S.T. proposition?

The Bailiff:

If the G.S.T. proposition fails, yes.

Deputy I.J. Gorst:

Sorry to raise this matter but it seems to me, is it not that we could simply make the decision today to raise Standing Orders to allow the amendment to the proposition. I appreciate we cannot decrease the lodging period because it is not of that magnitude but if we simply raise Standing Orders we could take the amendment when it is in due course that we should debate it, Sir, and that would solve the problem.

The Bailiff:

It might or it might not. It depends whether the debate finishes today.

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

I would be prepared to bring my proposition earlier if Members would like that, Sir.

The Bailiff:

Thank you, Deputy. There are a number of other matters down for debate. Just to recapitulate, the Assembly is proposing therefore to leave over the G.S.T. debates until first thing tomorrow morning and to proceed then as set down on the order paper with P.105 and succeeding matters until tomorrow, is that right?

2. Draft Water Resources (Jersey) Law 2007 (Appointed Day Act) Act 200- (P.105/2008)

The Bailiff:

Very well, we move then to P.105 Draft Water Resources (Jersey) Law 2007 (Appointed Day Act) 200- and I ask the Greffier to read the long title.

The Deputy Greffier of the States:

The Draft Water Resources (Jersey) Law 2007 (Appointed Day Act) Act 200-: The States in pursuance of Article 54(2) of the Water Resources (Jersey) Law 2007 have made the following Act.

2.1 Senator F.E. Cohen (The Minister for Planning and Environment)

Members will recall the long road leading to the approval of the Water Resources (Jersey) Law, this long road benefited from the receipt of valid and worthwhile recommendations from the Environment Scrutiny Panel and the more recent investigation into the origin of deep groundwater beneath our Island. The Law was finally adopted by the States on 5th June last year. Today I am bringing forward the Appointed Day Act, this will allow the implementation of the Law and it will mark the start of the benefits and safeguards that this Law will bring to our Island. The benefits of the Water Resources (Jersey) Law are many fold. The main benefit is that the Law will provide for

the protection, management and regulation of the Island's water resources. Further the Law promotes the conservation of animals and plants and their habitats that rely on these water resources. The Law will also allow for the proper allocation of water resources for the benefit of the Island's population and the environment, ensuring that sufficient water will be available for everybody's needs. These needs include drinking water and water for household use, industry, agriculture and recreation. A very important benefit of the Law is that the current and future public and private abstraction rights will be protected. In other words, those people who register and licence their borehole or well under the Law will be protected from new abstractions sucking out and drying up the water they depend on. Members may recall that the revised Law exempted all domestic households from licensing and hence costs. Also we incorporated a change in the licence threshold from 3 to 15 metres cubed of water per day. During the debate in June 2007 when the Law was adopted by the States, some Members eloquently and passionately expressed their concerns about the need for Water Resources legislation. Today's proposition is not about the requirement for the Law but rather about the timescale for bringing the important provisions of the Law into force. Recently a few Members have expressed their concerns to me regarding the need to implement this Law now, particularly with respect to the relatively high rainfall that has fallen on our Island during the last 2 summers, and the fact that no shortages of water exist at this moment in time. However, one of the main purposes of the Water Resources (Jersey) Law is to enable the collection and assessment of vital information regarding the quantities and locations of water abstractions. The collection and assessment of this information represents the primary method by which these pressures on the Island's finite water resources can be better understood and accurately managed. I consider this is vitally important that this process commences as soon as possible so that we are well prepared to effectively and equitably manage water resources to satisfy the Island's ongoing and increasing demand for water during less favourable conditions when lower rainfall or droughts occur. History has shown us that droughts do occur in Jersey and we must prepare ourselves to meet the demands placed on our finite water resources by our ever expanding population. Furthermore, one of the areas that this Law will fund is providing funds for further investigation to enable us to understand more about our water resources. A new advisory group, the Jersey Water Resources Forum will be formed with a wide brief and all those presently on the old deep groundwater advisory group will be invited to join the new group and to play a full part in the projects designed to further our knowledge of our water resources. Delaying the adoption of the law will mean that scientific and technical research at the Island's water resources would be delayed. Members should note that water abstraction licences and registrations will only come into force one year after the Appointed Day Act. The lead time is necessary for the application, assessment and approval and the issue of licences and registrations. I would therefore respectfully ask that Members appreciate the importance of the implementation of the Water Resources legislation as soon as possible for the future good and well-being of our Island and I commend this Appointed Day Act to the Assembly.

The Greffier of the States (in the Chair):

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

2.1.1 Deputy G.C.L. Baudains of St. Clement:

I will be brief. I think I explained most of my concerns when we debated the Law itself, Sir, and I am afraid as far as I am concerned nothing much has changed. The Law is still as unnecessary as it was when we debated it because it does achieve nothing, apart from the employment of civil servants to implement it. The claimed benefits, Sir, I have to say are an illusion based on erroneous supposition. It will not protect the Island's water resources or promote the conservation of animals and plants who rely on it. It will not allow the equitable allocation of water resources for the benefit of the Island's community and environment. It is basically, in 2 words, unnecessary bureaucracy. As I have said before drought law is all that is required to deal with those very rare

occasions when the Island finds itself short of mains water as opposed to groundwater of which there never is a shortage. Sir, I will therefore obviously not be supporting the Appointed Day Act.

The Greffier of the States (in the Chair):

Does any other Member wish to speak? I call on the Minister to reply.

2.1.2 Senator F.E. Cohen:

I do understand Deputy Baudains' deeply held views in relation to water resources in the Island and I respect them. However, we have approved the Law in June 2007 and this is merely the Appointed Day Act. While I accept that he feels nothing has changed, on balance I favour the adoption and implementation of this Law immediately and I think that in the long term, it will be in the best interests of the Island. I call for the appel.

The Greffier of the States (in the Chair):

The appel has been called for. The vote is for or against the Appointed Day Act and the Greffier will open the voting. If all Members who wish to do so have cast their votes, the Greffier will close the voting. Very well, the Act has been carried: 33 votes were cast in favour, 2 votes against.

POUR: 33	CONTRE: 2	ABSTAIN: 0
Senator L. Norman	Deputy of St. Martin	
Senator W. Kinnard	Deputy G.C.L. Baudains (C)	
Senator P.F. Routier		
Senator M.E. Vibert		
Senator P.F.C. Ozouf		
Senator T.J. Le Main		
Senator B.E. Shenton		
Senator F.E. Cohen		
Senator J.L. Perchard		
Connétable of St. Ouen		
Connétable of St. Mary		
Connétable of St. Peter		
Connétable of St. Clement		
Connétable of Trinity		
Connétable of St. Lawrence		
Connétable of St. Martin		
Connétable of St. Saviour		
Deputy R.C. Duhamel (S)		
Deputy A. Breckon (S)		
Deputy J.J. Huet (H)		
Deputy C.J. Scott Warren (S)		
Deputy R.G. Le Hérisier (S)		
Deputy J.B. Fox (H)		
Deputy G.P. Southern (H)		
Deputy S.C. Ferguson (B)		
Deputy of St. Ouen		
Deputy of St. Peter		
Deputy J.A. Hilton (H)		
Deputy of Trinity		
Deputy S.S.P.A. Power (B)		
Deputy S. Pitman (H)		
Deputy K.C. Lewis (S)		
Deputy I.J. Gorst (C)		

3. Rent Control Tribunal: Appointment of Chairman and Members (P.106/2008)

The Greffier of the States (in the Chair):

We come now to the Rent Control Tribunal: Appointment of Chairman and Members, and I will ask the Greffier to read the proposition.

The Deputy Greffier of the States:

The States are asked to decide whether they are of opinion in pursuance of paragraph (1) of Article 3 of the Dwelling Houses (Rent Control) (Jersey) Law 1946 as amended to appoint the following persons to act as Chairman and Members of the Rent Control Tribunal for a period ending on 12th April 2009, namely Mr. Eric Henry Le Ruez, Chairman; Mr. Edward George Trevor M.B.E.; Mr. Jeremy James Robin Johnson; Mrs. Mary Margaret Gaiger.

3.1 Deputy J.A. Hilton (Assistant Minister for Housing - rapporteur):

Article 3 of the Dwelling Houses (Rent Control) (Jersey) Law 1946, as amended, provides for the States to appoint a Rent Control Tribunal consisting of a chairman and not less than 3 or more than 4 other members. The law also provides that the chairman and 2 other members constitute a quorum for any sitting of the tribunal. Regulation 2 of the Dwelling Houses (Rent Control) (Jersey) Regulations 1946 states that the chairman and members of the tribunal shall hold office for a period of 12 months ending on 12th April and be eligible for reappointment. In July 2006 the States approved 2 new members, Mr. Jeremy Johnson and Mr. David Crespel to join existing tribunal members, Mr. Ronald Welling and Mrs. Mary Gaiger. Special thanks must go to Mr. Ronald Welling who has served on the tribunal for a number of years, who has decided to stand down from his position as a member and latterly as chairman of the tribunal. His contribution has been immensely valued and appreciated and he will be a sad loss to the tribunal. David Crespel has also decided to retire for personal reasons, and although is a comparatively new member and was never required formally to meet to adjudicate on any specific referral, his willingness to stand as a member has nevertheless been sincerely appreciated. The remaining 2 members however have agreed to allow their names to put forward for nomination for a further 12 month term. Following a further public advertisement and interview process the Minister has pleasure in nominating Mr. Eric Le Ruez and Mr. Edward Trevor M.B.E. to serve as additional members of the tribunal. Mr. Le Ruez, former Chief Executive Officer of the Housing Department and Director of Property Holdings Department before his retirement in September 2007 has vast experience in property matters, knowledge of legal procedures and the background to be able to determine in a just manner the issues coming before the tribunal. Mr. Trevor M.B.E. is a qualified chartered surveyor and has chaired local government committees in the U.K. at local, regional and national level over a 40 year period, covering a comprehensive range of issues including health, housing and planning. I make the proposition, Sir.

The Greffier of the States (in the Chair):

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

3.1.1 Deputy R.G. Le Hérissier:

Just 2 questions, one off the point but I will nevertheless ask it. In terms of Mr. Le Ruez, who is a consummate gentleman, does the Assistant Minister feel, despite his excellent credentials, in a sense that it is right for the former Chief Officer of Housing to be on a body looking impartially at housing issues, irrespective of the excellent work he has done I should add. Secondly, Sir, I asked this previously in the wrong place, but is the Rent Control Tribunal really busy and has it really got the teeth which it apparently lacked for a long time?

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

Very much the same vein. It says here: "Following the further public advertisement and the interview process" the 2 gentlemen are being nominated. Can I ask the Assistant Minister how many applications there were and what sort of processes did one go through before selecting the 2 nominees.

3.1.3 Deputy S.C. Ferguson:

I would just ask if the Appointments Commission were also involved in the selection process?

3.1.4 Deputy I.J. Gorst:

This proposition does raise a point of concern in my mind and that is one that whether it is suitable for either senior civil servants or civil servants together with politicians to leave either employment or office and then, not in this case almost immediately but immediately or in a short time to then sit on what might be a quango or a States appointed body. I believe that this is something which it is probably too late now for this particular Assembly to look at but it is something that should be looked at. I appreciate that those particular people might be considered to have some sort of experience and expertise in these areas but I think it is only right and fair that a reasonable period of time should expire and should be seen to expire in line with best practice, to ensure that there is nothing that we would not want to happen taking place or nothing untoward, not that I am suggesting that there is. But I just think it is a matter of best practice, of reasonable governance and this is something that we, as an Assembly, I believe, in the future must look at and we must allow reasonable periods of time to expire before appointing to such bodies. Because of that as those best practices are not in place at this point, I will not on this occasion be able to support this proposition.

3.1.5 Senator T.A. Le Main:

Just to respond to a couple of points. The advert for people to serve on tribunals and issues such as this does not bring forward many candidates, and in this case I think there was only 2 candidates have replied to the advert.

Deputy J.A. Hilton:

No, that is incorrect, Sir.

Senator T.A. Le Main:

Sorry, well I knew ... well I stand corrected but I have got to say to Members that they do not come easily, people that want to serve on tribunals or otherwise, and, as I say, the issue is that one goes through the proper procedures in assimilating and evaluating the contribution they are going to make and we are very grateful for people to put their name down and to come forward to serve the community.

3.1.6 Deputy C.J. Scott Warren:

These issues are raised today and I am prepared to support this proposition but following on from what has already been said by previous Members I feel that we do need to ask the future Privileges and Procedures Committee to look at this issue. I know there is a time gap in the U.K. I thought it was 5 years, a colleague has told me it is 2, but whatever, I think this needs to be addressed.

The Greffier of the States (in the Chair):

I call on the Assistant Minister to reply.

3.1.7 Deputy J.A. Hilton:

Whether the question of whether enough time has elapsed or what the length of time should be between either a States Member or senior civil servant looking for an appointment on to an honorary body, as previous Members have just said, maybe that could be something that P.P.C. (Privileges and Procedures Committee) should look at. As far as this appointment is concerned, we followed the procedure laid down by the Appointments Commission, so that is in answer to Deputy Ferguson's question. There were 3 applicants for the role [**Approbation**] all of whom I interviewed with an officer present. The process is that the vacancies were advertised in the *Jersey Evening Post* requesting any interested parties to come forward for consideration. Deputy Le Hérissier mentioned did I feel that Mr. Le Ruez was the right candidate to put forward. I think he is eminently suited to the role that is required for somebody on the Rent Control Tribunal. He has an

immense amount of experience and personally I do not have a problem with appointing retired senior civil servants to a post if that is indeed ... if they have got the qualification to carry out that role. I think that answers the questions that were put to me.

The Greffier of the States (in the Chair):

The appel is called for. I ask Members to be in their designated seats. The vote is for or against the proposition of the Minister for Housing on the Rent Control Tribunal. I can announce the proposition has been adopted: 37 votes were cast in favour, 2 votes against.

POUR: 37	CONTRE: 2	ABSTAIN: 0
Senator L. Norman	Deputy G.C.L. Baudains (C)	
Senator W. Kinnard	Deputy I.J. Gorst (C)	
Senator P.F. Routier		
Senator M.E. Vibert		
Senator P.F.C. Ozouf		
Senator T.J. Le Main		
Senator B.E. Shenton		
Senator J.L. Perchard		
Connétable of St. Ouen		
Connétable of St. Mary		
Connétable of St. Peter		
Connétable of St. Clement		
Connétable of Trinity		
Connétable of St. Lawrence		
Connétable of Grouville		
Connétable of St. Brelade		
Connétable of St. Martin		
Connétable of St. John		
Connétable of St. Saviour		
Deputy R.C. Duhamel (S)		
Deputy A. Breckon (S)		
Deputy of St. Martin		
Deputy C.J. Scott Warren (S)		
Deputy R.G. Le Hérisssier (S)		
Deputy J.B. Fox (H)		
Deputy J.A. Martin (H)		
Deputy S.C. Ferguson (B)		
Deputy of St. Ouen		
Deputy of St. Peter		
Deputy J.A. Hilton (H)		
Deputy J.A.N. Le Fondré (L)		
Deputy D.W. Mezbourian (L)		
Deputy of Trinity		
Deputy S.S.P.A. Power (B)		
Deputy S. Pitman (H)		
Deputy K.C. Lewis (S)		
Deputy of St. Mary		

4. Bailiff of Jersey: Cessation of Dual Rôle (P.112/2008)

The Greffier of the States (in the Chair):

The Assembly comes to the next proposition which is Bailiff of Jersey: Cessation of the Dual Rôle in the name of Deputy Pitman. I will ask the Greffier to read that proposition.

The Deputy Greffier of the States:

The States are asked to decide whether they are of opinion (a) to agree in principle that the dual rôle of the Bailiff as both President of the States and President of the Royal Court should cease and that the Bailiff and Deputy Bailiff should be replaced as Presiding Officers of the States by an elected Speaker and Deputy Speaker; (b) to charge the Privileges and Procedures Committee to bring forward for approval the necessary legislation and to report on the financial implications of giving effect to the decision so that the Speaker can be elected no later than after the elections in 2011.

4.1 Deputy S. Pitman:

Firstly in making this proposition, a proposition based on the issue of genuinely much needed constitutional reform and nothing more, however contentious, I would like make a number of brief observations as to the decision to bring this forward. Unlike my proposition of no confidence in the present Bailiff, something I stand by 100 per cent as entirely justified, I am very pleased to note some constructive comments from the Council of Ministers and P.P.C. This is surely what democratic politics is about and is a move I, for one, am quite happy with, whether I agree with all of the observations or not. However I have to ask if both the Council of Ministers and P.P.C. have even looked at the *Clothier Report* of 2000 where extensive research was carried out on this role. This report concludes that: "Neither the underlying principles nor the volume of evidence can, in our opinion, be ignored any longer. For these reasons we recommend that the Bailiff should cease to act as the President of the States or to take any political part in the Island's Government and that the States should elect their own Speaker. It follows that he should cease to be the principal link with the Home Office. He should be liberated to do what all Bailiffs of recent times have been especially qualified and trained to do, namely be the Island's Chief Justice. It is the inevitable consequence of our recommendation that the Chief Minister, rather than the Bailiff, would henceforth be the direct link to the Home Office." I also ask the Council of Ministers and P.P.C. if they have looked at the former Senator Ted Vibert's proposition P.124/2004 which shows his extensive research. Further whether or not or why they have not looked at the document called *Jersey Law Review* volume 2, issue 3 in October 1999, *The cry for constitutional reform: a perspective from the office of the Bailiff*, written by the Bailiff himself. He concludes: "In the author's view a more likely and sensible scenario would be the creation of a cabinet based no doubt upon the existing Policy and Resources Committee. An elected President with executive responsibilities, particularly in the sphere of official correspondence, might not feel the same constraints as binds the Bailiff under the convention that he should not involve himself in political decision making. Damaging tensions between the elected President of the States and the President of Policy and Resources Committee would be highly likely. These tensions could be avoided if the derivative function of acting as the channel of communication for official correspondence and spokesman for the insular authorities were assigned to the President of Policy and Resources Committee. The elected President of the States would then be merely a Speaker and, presumably, the civic head of the Island, but the responsibilities for official correspondence could not be vested in a committee. An individual, as in the Isle of Man, would need to be vested with the authority to speak on the Island's behalf by signing official letters to the Lieutenant Governor. This needs not sound the death knoll for the committee system, nonetheless executive power comparable to that of the Chief Minister in systems of cabinet government would have to be vested in the President of the Policy and Resources Committee." I ask how much more research does P.P.C. and Council of Ministers want? I also want to remind Members that this is an in principle position for P.P.C. to go away, look at the issues and to bring back the necessary legislation. Nevertheless in bringing this proposition to end the Bailiff's dual roles I had indeed considered the possibility of widening its nature to raise for a long overdue debate, the potential benefits in removing other Crown Officers from the States. Unfortunately, however, when one considers that the former Senator Ted Vibert had striven to have issues genuinely considered, even before I become his researcher in 2004, if I am not mistaken, and with the vast majority of the public believing, whatever their political persuasion, that this House, not to mention P.P.C., is wholly incapable of facing up to bringing any

meaningful political reform, I felt that this dual role issue at least needed to be confronted sooner rather than later. Why? Because the issue of one individual holding 2 key and undeniably overlapping and thus potentially conflicting roles at head of both judiciary and the legislature is a problem now. It is also an anomaly that cannot be made to sit squarely with any government that would claim itself to be transparent. Thus while I repeat that I am quite happy to accept the comments of P.P.C. as to the wider Crown Officer issue and the undoubted constitutional obstacles that may need to be addressed upon their removal, I say to Members what is of greater importance in the eyes of the general public, indeed in the eyes of those who have already had cause to experience first hand the unsatisfactory system that allows one individual to hold these 2 hugely influential roles? I do not believe for one minute from the members of the public who have contacted me that it is the concern of the some repositioning of traditional political practice that most will not even be aware of. Constitutional obstacles, I would suggest, can be overcome. Justice, and transparent justice at that, cannot be put aside. P.P.C. nevertheless clings to the myth that there is little evidence of a public wish to see any change in the traditional and well respected role of the Bailiff. With due respect, this is quite worrying in its total detachment from reality. Perhaps they should consider reading the paper, internet, or listening to the local radio now and again. From my own contacts I believe that those who feel the dual role needs to be consigned to history, as is the case with most modern democracies, are by far in the majority. But majority or not, that this is an issue great many feel long overdue for serious investigation is inarguable. The undoubted respect for the tradition of the Bailiff really does not enter into the equation. As I made clear within the accompanying report, I do not intend to regale Members with lengthy historical arguments on how our Island Government came to accept a system with one individual occupying 2 such key and clearly overlapping roles as head of both the judiciary and the legislature. Quite frankly, the whys and wherefores of this are wholly irrelevant. As I have stressed, the key issue here is about transparency and the need for the possibility of a conflict of interest, whether unintentional or otherwise, to be eradicated by ensuring a system is put in place where this simply cannot happen. Yet this issue has been around for so many years now even dating back to the late 1940s. Indeed, long before even the longest serving Member was even in this House. As we approach the end of the first 3 years of Ministerial government we really must finally find the resolve to grasp this issue and deal with it. The public expects no less. The Bailiff is Chief Judge, the contention that he or she potentially is not under the present system also a political figure and may not exert influence upon the Assembly, holds little credence once under the spotlight. Firstly, the present Bailiff has made political speeches both on taxation at the Liechtenstein Dialogue and on the historical abuse scandal, to identify but 2. The fact that the Chief Minister at least is apparently blindly oblivious to this, even when directly questioned in the States by myself, is frankly neither here nor there, it is fact. Secondly, it is also a fact that in the not so distant past the present Bailiff played a key role in the removal and suspension from this House of an elected Member. The only recourse of action that this Member had was to appeal to the Royal Court. An institution of which the very same Bailiff was, by nature of his ancient dual role, also the head. Regardless of the details of this incident, the fact that the Bailiff could quite clearly not sit in judgment upon the issue as head of judiciary is irrelevant. For to deny the potential for influence, whether intentional or otherwise, is wholly absurd. It is also patently obvious that, perhaps more than any other, this example demonstrates why the present overlapping of roles is simply not acceptable and must be improved upon. Thirdly, there is also little substance in refuting that the Bailiff, or any Bailiff, within the aspect of his present role of President of the House wields a significant degree of general political influence within control of debate and the questions that can or cannot be answered. The former Senator Ted Vibert pointed this out some years ago within his proposition. In the 21st century I put it to Members that this simply cannot be desirable for an individual who is also Chief Judge. The dual role is fundamentally flawed yet still some cling to it as sacrosanct, pretending that those very real flaws are unimportant. The question this House should surely be asking itself today is why. Sir, that there will undoubtedly be the need for considerable exploration of how the finer details of the roles currently undertaken would need to

evolve and be reinterpreted is, I would suggest, no excuse to not finally recognise the need to finally act. Nevertheless, as I set out in my report, I believe the resultant impact for a far enhanced role in relation to dealing with the U.K. for the Chief Minister, to name but one result, can only be a positive one. Is this not the kind of role and status the Chief Minister of a government should have? With the 3 year time scale of the proposal I am equally sure many other apparent difficulties can be turned in positives also by the said Privileges and Procedures Committee. Indeed, Sir, even without 3 years to research and explore every fine detail, it is quite apparent to me that there are highly viable alternatives for the present dual role of the Bailiff that have none of the potential for such conflicts of interest. It has been observed that the role of the Bailiff as President of the States is effectively to be that of a neutral umpire or referee there to ensure the rules of debate - I nearly said combat - are appropriately observed. This, I believe, is exactly what the role should be. More importantly it also demonstrates why it is not necessary or desirable for the Bailiff to hold that role, and why that role can be better fulfilled by either of 2 alternatives. The role of the Speaker has, on many occasions, been performed by the States Greffier, his Deputy or even, on occasion, by a senior Member of the House. Electing a Speaker and Deputy Speaker from within the democratically elected Members of this Assembly will remove the concern over an unelected individual or one not directly employed specifically for that purpose, and with the full knowledge of the public potentially misapplying political influence in the manner outlined. Though adopting this alternative would undoubtedly demand an individual ensuring they were fully up to speed with the Standing Orders. A further positive would be that there would be no financial outlay or cost to the taxpayer. An acknowledged downside, and quite likely the only downside would be the subsequent facts that the Member Speaker and Deputy Speaker, on occasions, would lose his or her right to vote. Something which I accept could be wholly unacceptable to many individuals' constituencies who have given he or she their vote? I believe a second alternative, however, ticks each and every box without any of the drawbacks inherent within the existent dual role of the Bailiff. This is to recruit an independent Speaker from the public and transfer the occasional role of Deputy Speaker to that of the Greffier or Deputy Greffier as is currently practiced when necessary. Clearly there must be many such highly capable men and women within the Island, whether they be former or retired States Members, former Greffiers, legal professions, academics or even suitably skilled laymen or women who could and would be interested to fulfil this role admirably and without any of the unintended potential conflict or interest existent within the current system. A further highly positive bonus would also be the fact that if all 53 elected Members were to be able to vote on the suitability and appointment of such a Speaker this would surely remove any potential for claims of political bias as witnessed presently on occasions. Finally, not only would there likely be little or no increased financial costs due to the realignment of the current role of the Bailiff, adopting this alternative would also leave the voting rights and democratic balance of a 53 strong Assembly wholly in tact. I believe the appointment of an independent Speaker from the public office is a further positive step down the road to a truly transparent democracy which tentatively begun with a change to Ministerial government. I also believe we can no longer afford to fudge the issue of the clearly needed reforms by always clinging to tradition, no matter how outdated or identifiably flawed they have become. We must also move on from viewing any call for change as an attack on the system or, indeed, on the person or persons holding a particular role or roles. We must move on from the absurdities of those who would meet any call for reform with attempts to rubbish this or even childishly refuse to enter into meaningful debate at all, as we have sadly seen only recently. If supported this proposition clearly would bring about a dramatic change to the current role of Bailiff. I, nevertheless, believe it is also still clearly apparent that the resultant redefined role of Chief Judge alone would still be one that demanded the utmost respect. In closing I put it to Members that the suitability for the task in compliance with democratic standards expected in the 21st century are more important than long established tradition or the initial constitutional obstacles to be worked around in moving forward. How can it be that we, led by the Bailiff himself, can openly consider a move to independence yet the greatly lesser possibility of altering the Bailiff's role itself can be twisted by a few as insurmountable. It

holds no credence. As such, and being only too aware that we have only a few short sessions remaining of this present Assembly, I ask Members to enter into debate with these realities in mind and move that they support the proposition. I do so, of course, embracing myself nevertheless for the likely usual establishment party rubbishing of anything that challenges their definition of the desirable status quo. I hope that I am proven wrong for democratic progress makes it quite clear that however long it takes this particular reform will have to come. I make the proposition.

The Greffier of the States (in the Chair):

Is the proposition seconded? [**Seconded**] Senator Shenton.

4.1.1 Senator B.E. Shenton:

I agree with the proposition which is why I will be voting against it. Simply because this is far too important an issue to be dealt with in this manner by a dying Assembly when we have got a new Assembly about to take off at the beginning of next year. For those of you that believe that we can continue having the Bailiff as our Speaker, may I quote from the interim report of the Constitutional Review Group, this was a body where the Bailiff himself, Sir Philip Bailhache, was the Chairman of the group and other members were William Bailhache, Bill Ogle, Martin De Forrest-Brown, Colin Powell and Mike Entwistle. What the Review Group said was: "A basic task of any constitution is to make provision regarding each of the 3 branches of government: executive, legislature and judiciary. Provision must be made as to the persons who shall all be entitled collectively or individually to exercise the plenitude of legislative, executive or judicial powers, their qualifications for legislative, executive or judicial office, the methods of selecting them, their tenure of office, the procedure to be followed where powers are conferred upon a class of person acting collectively and a majority is required for the exercise of those powers." Unfortunately the wording does not exactly come off the tongue, but then that tends to be the way lawyers write. It goes on to say: "The pure doctrine of separation of powers posits that the branches should be independent of each other with no overlap between any 2 of them in terms of either function or personnel." It also goes on to say, and this is very important: "Safeguarding judicial independence from legislature and, in particular, from the executive has increasingly been recognised as an imperative of a constitutional democracy." Now, these are words of a panel chaired by the Bailiff himself saying that it is imperative for constitutional democracy that there is judicial independence from the legislature and in particular from the executive. What this is saying is that the system we have at the moment needs to change. In my opinion it will be upon Members of the new House to make sure that the change happens in a proper manner, where we look at all the ramifications and make sure that we do something that is right. I believe that this is an issue that needs to be addressed, it needs to be addressed by the new House and although the Bailiff is not here today, I believe that the document that he issued was his own death warrant as Speaker of this Assembly. So I will not be supporting the proposition today but I do believe that this is an important matter that should come back to the new House at the earliest possible opportunity.

4.1.2 Senator P.F.C. Ozouf:

There is a right time and a right place for matters generally in life. This proposition comes on the back of a vote of no confidence that Deputy Pitman brought. I was interested in hearing, when she was making her proposition, she used the word "our". I do not know, and perhaps she would confirm, who "our" was. Was she saying "our" the J.D.A. (Jersey Democratic Alliance), was she talking about a group of people who are the people that are behind this proposition, if there is an "our" I would be interested to know. I would also be interested to know, and for her to confirm, whether or not she would distance herself from some of the deeply personal attacks that have been made on individuals, namely the postholder that we are dealing with, on certain websites, whether or not she would emphatically say she distanced herself from personal attacks and she is just dealing with the principles rather than the personalities. I support the right of backbenchers to bring debates, I agree that there should be a debate about the separation of Speaker and Chief Justice but

you do not have a debate, you do not make a decision, on the back of a 3 page proposition and a debate in the dying days of an Assembly. This not the right time to have this debate, it is not the right place to have it, today in this time. This is the kind of proposition that warrants, I think, a proposition to move on to the next item so that we can agree that there is a discussion to be had but it is not today and I so move.

The Greffier of the States (in the Chair):

Standing Orders provide that any Member may propose the States move to the next item of business. Standing Orders further provide that the Presiding Officer shall not allow the proposal if it appears to him that it is an abuse of the procedure of the States or an infringement of the rights of a minority. I do consider it would be an infringement of the rights of Deputy Pitman and I will not allow the proposition. Have you finished your speech? I need to ask Senator Ozouf whether he had concluded his remarks.

Senator P.F.C. Ozouf:

I am surprised at your proposition, Sir, I do not know why that Standing Order is allowed, but never mind, I have finished my speech.

4.1.3 Senator F.H. Walker:

Senator Ozouf has said, and in some ways Senator Shenton, exactly pretty much what I was going to say anyway. The fact is that the role of the Bailiff is one of Jersey's most historic positions and carries with it huge gravitas, huge status, huge responsibility and any change will have very considerable consequences. As Senator Ozouf has said, there is no way we should be contemplating changing an office which Jersey has benefited from for centuries on the back of a 3 page report and proposition. It is just frivolous to ask the States to do so and, in fact, I think shows a great lack of respect not necessarily just for the current Bailiff himself but for the historic position of Bailiff. Deputy Pitman said that this is only in principle. Yes, well, if you look at the proposition it says very clearly: "To agree that the Bailiff's role as President of the States and President of the Royal Court should cease and that they should be replaced, or he should be replaced, as presiding officer of the States by an elected Speaker and Deputy Speaker." So there is no "in principle" really about it at all. It is saying that the Bailiff should cease to be President of the States and should be replaced by an elected Speaker. There is nothing in principle, it is there in black and white in this very threadbare proposition. I am in favour of change and I believe, as Senator Shenton has said, the Bailiff himself is in favour of change as well, but we do not meddle with, we do not change ...

The Greffier of the States (in the Chair):

I think, with respect, Senator, we should be careful not to interpret the views of the Bailiff who is not here to express his views, Senator Shenton did quote from a report about independence but it would be wrong to interpret that as being the Bailiff's view.

Senator F.H. Walker:

I will say then, Sir, it is my understanding that the Bailiff himself is in favour of change. But you do not make such a massive change with such enormous consequences lightly. Change, as Senator Shenton said, should only be made after all the aspects, all the considerations and all the consequences have been thought through fully, clearly and calmly with a great deal of consideration given to every part of it. I too, therefore, Sir, am in favour of the new House ... and it will be up to the new House of course, but I very much hope that the new House will commission a thorough full and independent review of the role so that the Assembly will then be in a position to take the sort of considered approach having been furnished with all the evidence, all the facts, that any change to this historic office justifies, deserves and, in my view, has to have.

4.1.4 Deputy G.W.J. de Faye:

It would appear that I have bad news for the Bailiff because I do not agree with change. My view is extremely straightforward. It is a well-known saying: "If the clock isn't broke, don't fix it." This clock has been ticking for a very, very long time as the Chief Minister alluded to. The role of the Bailiff is a very significant part of Jersey's history and, indeed underlines why we have the levels of independence which we are graciously accorded by the Crown of England over nearly 850 or so years. I am against this for a number, I think, of very obvious reasons. It is important in the context of our position within the British Isles that Jersey and its constitution is different, otherwise we just might as well be part of the rest. Are we really that impressed with the other institutions? Of course, if you are a U.K. Government with 400 Members of Parliament to choose from, you can spare the odd M.P. - I am talking in terms of having a majority, for example, but, as Deputy Gorst so rightly points out, they have over 600 M.P.s - to sit in the Chair as the Speaker, it really will not make much difference. But here in this Island we are talking of trimming down. We have looked now on several occasions at having a diet in the States and slimming ourselves to the tune of a few Members - the diet has not kicked in yet. But even with the current number I am sure that because we are all, with very minor exceptions, here as representatives on an individual basis, it could be extremely annoying to be elected as the Speaker of the House which would outrageously tie your hands, in terms of any particular propositions you had been hoping to put forward. Is it really a good idea to put a politician in the presiding Chair when we are all here apparently - and I am amazed that some of us feel intimidated by the Bailiff's alleged political interventions. I have not been happy with some of the Bailiff's rulings applied to myself. I have certainly never seen them as political interventions; the Bailiff has been simply carrying out his job entirely correctly as the Chairman of the Assembly. Worst of all, imagine that we had a political party in the majority in this Chamber. I know there are some deluded people among us who seem to think that there is an "establishment party" and outside these walls I understand there is a G.S.T. 28 party. We can put names to those but I have never seen them all vote the same way week in week out, so it is a pretty useless party. The fact of the matter is imagine if there was a political party in the majority; well who would they elect? Would they elect someone from the backbenches to be their Speaker? No, the situation clearly would be even worse than electing an individual because there would be clear opportunities for bias. Currently we have a system that I think most of us realise works extremely well. It is, frankly, a pleasure to watch, over time, the progression of a Solicitor General to an Attorney General, both understanding the legal aspects of the workings of the States and its administration, sitting in on the House, offering advice and then seeing these worthy holders of office move to the roles of Deputy Bailiff and Bailiff and splitting their talents between administering our justice and also presiding here in the House. Do we need a change? Absolutely not and one simply has to ask the question, what on earth for when things are working so well now? Do we want to waste time on reviews? No, I do not think we do. As I say again if the clock is not broken there is no need to fix it.

4.1.5 Deputy C.J. Scott Warren:

Firstly, as now a backbencher I would like to confirm that I do not consider myself to be in any "establishment party" but I will not, however, be supporting this proposition today. I am speaking purely because everybody else who has spoken has been, I believe I am right in saying, on the Council of Ministers. There are numerous important constitutional questions that would need to be addressed prior to any such similar debate by States Members in future. It is my understanding that this is not simply a matter of a change to elect a Speaker for this Assembly. I would contend that this debate is being brought here today at the wrong time and without proper due consideration having been given first to the ramifications for Jersey before our coming to consider taking such a decision.

4.1.6 Deputy J.A. Martin:

We are going to hear all the speeches that, yes, maybe we do need change. Deputy de Faye tells us that he totally disagrees, we do not need change. Well, I have read both the comments from P.P.C.

(Privileges and Procedures Committee) and the comments from the Council of Ministers, the comments from the Council of Ministers which come very, very late on such a very, I would say., important decision that has to be made. We all know that things have to change. The Bailiff wrote the report that Deputy Pitman read out in 1999 before we had *Clothier* and *Clothier* came out with exactly the same and put in the Council of Ministers, and we have a Chief Minister. These problems are not insurmountable. Senator Ozouf stood up and directly asked Deputy Pitman to distance herself, basically saying that this was sour grapes, she had lost her proposition in ousting the Bailiff and now she has brought this proposition for dual roles. Well, that is obviously what he would say and then he did go on to try and overturn this by moving it on to the next item of business. I will support this and I will tell you another reason why I will support this. In *Clothier* it said that even 10 years ago there were only 2 jurisdictions in the world that they could find in a democratically elected government, it was Jersey and Guernsey who had this dual role. Somebody who sits in this House who presides over us making laws then sits next door and interprets that law. Now, even *Clothier* goes on to say people who reported to them said they had they utmost respect for the bailiff, I have the utmost respect for the position and the person but it cannot continue. Myself and a couple of other States Members were recently on a C.P.A. (Commonwealth Parliamentary Association) in Kuala Lumpur and we were talking to different speakers of different Houses, different Parliaments, and when we explained our position they said that cannot carry on. I have to agree. Now we have heard it is the wrong time, of course, it is always going to be the wrong time, we are 3 years down the line and we are nearly at the end of this sitting. Now if this had been brought by anybody 3 years ago it would have been too early. Ten years ago it was a proposition by *Clothier* and now what have we got? We have got a nice Ministerial government, we have got Scrutiny, where is the dual role of the Bailiff? Where is the report? It has not been done. There is nothing in the comments from P.P.C., I will read it, the last paragraph: "It is possible that such a review may be considered appropriate after the constitution of a new Assembly in December 2008, but P.P.C. believes it would be quite premature to make that decision at this stage on the basis of this proposition alone." This is not the basis of this proposition. We and P.P.C. - all of P.P.C.'s and all of the States decisions since 2000, since 1947 when this was first debated about the dual role of the Bailiff, the world has moved on. I see no promises here and if we do not vote for this today obviously people will stand up and say we need change but it cannot be Deputy Pitman's change. The Chief Minister has already said it is not in principle because he added extra bits of wording. It is in principle. Take it away, find something to do but if we do nothing again today are we going to wait until somebody leans on this Government because this is not going to go away. It cannot carry on. It is going to be seen outside. Deputy de Faye he sometimes beggars belief: "If it is not broken do not fix it." Well, he looks at something that to me the clock is ticking but it is going backwards and we are sitting with a law, with a tradition, which is all great but in the real world people who really look at this from outside ... and, as I say, even 10 years ago *Clothier* said: "This cannot continue." As for the Bailiff, he can jump in and jump out as a judge and they go on and say it is not possible for this to happen. So, as I say, it may not be the right time, it will not happen in this House. I was hoping the Chief Minister - but then again, he will not be in the House, we do not know who will be in the House next year. Deputy Pitman may not even be in the House, I may not be in the House, but I have not heard anyone who will be in the House - and we have 6 Senators - stand up and tell me that they will make it a priority to have this review looked at. If we do not vote for it today it will not happen. I am listening and if anyone who will be in the House would like to stand up and tell me that this will be done, all well and good. But I doubt if I will hear it so the only option I have to have this looked into is to support this proposition and that is why I am going to.

4.1.7 Senator M.E. Vibert:

Just before the adjournment, I would like to say something. I have been reading the wording of the proposition again and in (b) it says: "To charge the Privileges and Procedures Committee to bring forward for approval the necessary legislation and to report on the financial implications of giving

effect to the decision so that the Speaker can be elected no later than after the elections in 2011.” That does not seem to be correct to me because it could be any time after that. Does it mean no later than before the elections in 2011? I am not sure. I thought perhaps you could give some thought to that and a ruling after the lunchtime adjournment.

LUNCHEON ADJOURNMENT PROPOSED

The Greffier of the States (in the Chair):

The Assembly stands adjourned until 2.15pm.

LUNCHEON ADJOURNMENT

PUBLIC BUSINESS (continued)

The Greffier of the States (in the Chair):

Very well just before I call the next speaker there are 2 matters to address in the context of this debate. The Bailiff has asked me to notify Members that he is concerned that his views were referred to during the debate this morning and the Bailiff has asked me to make it clear that he expressed a view in the context of the work of the constitutional review group that if the Island was to be come independent it would be necessary to review the whole of the role of the Bailiff. He has, however, [Approbation] asked me to notify Members that he has never expressed that view in the context of Jersey remaining a dependency of the Crown. The other matter was that Senator Vibert did ask a matter of clarification on my reading of the proposition, part (b), just before the adjournment. I think, Senator, my reading of the words is that the Speaker would have to be appointed no later than the 2011 elections and the reference to after the elections is presumably in the event that if the States were to agree to nominate a Speaker, as happens in many parliaments immediately after elections, then that would happen immediately after those elections. I think that is the cut-off date for it happening.

Senator M.E. Vibert:

Thank you, Sir. I was not sure. I thought it meant that but I just wanted it clarified. So there would be a Speaker in place for the States which will come into being at the end of 2011, not 2012, is that correct?

The Greffier of the States (in the Chair):

That would be the latest time. It could be before that because it says “no later” than that time. That is the cut-off date, yes.

4.1.8 Deputy S.C. Ferguson:

There are lots of little quirks to living in Jersey. We have got an honorary police system which is the envy of the world; the only other similar organisation is the Swiss Guard in the Vatican. It is different to the rest of the world. Why should we not be different? I think there are more important parts of *Clothier* to be implemented anyway. I think it is much more important, in fact, probably the most important part, to initiate a general election, but I think this is something the new Assembly must address. Just because other jurisdictions do something is that really a reason for change? Is it something that Jersey people, those whose heritage goes back several hundred years, really want? I cannot speak for Deputy Pitman, I do not know whether she is of English or Jersey extraction. I speak as someone who has been welcomed into the Island 40 years ago. I feel that those of us who are immigrants of recent standing, say the last 100 years, integrate into the community before we attempt to force our off-Island ways on a people with a very proud heritage. [Approbation] We often say that perhaps Guernsey has got it right. We do not hear the same cries in Guernsey for the removal of the Bailiff as the Speaker of the House. Why not? Possibly because the Harwood Panel was chaired by a local man who understood the culture of the Island and not by a civil servant who wanted us to have something akin to the Regional Assemblies in the U.K. Deputy Pitman concedes that it should not be a Member of the Assembly because of the loss of representation if the Member was an elected representative. Frankly, I am not sure that I can see

the value in a Speaker elected from among the ranks of the great and good. Whoever was selected would face criticism from one or other sectors of the community. It would have to be, I think, the Archangel Gabriel in order not to attract criticism from one interest group or another. There is another problem with both of the options, to speak or ask questions in the Assembly we must first catch the President's eye. Just think how tempting this would be to ignore some Members. Even if it was not the case there would be always those who cried foul. Many people, I think, to be fair, who are in that position would probably rise above the temptation but there are those, as is rumoured to be the case in the UK, who may not. On their current record I have no problems with the current system; after all, the Deputy has been able to bring propositions which are, in fact, critical of the regime. There is a culture of patience, forbearance and discretion in the officers of this House and I think it would be tragic to destroy the system because it is not the same as somewhere else. I think perhaps also, that the general public, and I hope they are listening, do not understand that the Bailiff does not, in fact, have a casting vote in this House and, therefore, he is purely chairing the committee, ensuring we stick to the rules and occasionally chastising us. But I see no value in this particular proposition and I shall be voting against it.

4.1.9 Deputy S. Power of St. Brelade:

I think at my last count there were 14 of us in this Chamber who were not born on this Island and even in spite of that I am sure the other 13 would agree that we have all come to love this Island, appreciate this Island and defend this Island, its traditions, its customs, its values, its history as much as the places we came from. Deputy Pitman has had her own motivation, her own hopes and her own aspirations for her Island, which is also my Island now, and I think we approach this from different directions. On an Island of almost 100,000 people there are ways of governing that are unique and that are appropriate to a small democracy, a small jurisdiction and I, for one, am very nervous about peeling away layers of this Island's history, culture and custom. Deputy de Faye used a phrase that I have used myself in the past and I do believe this to be the case - if it is not broken do not fix it. In my view, now is not the time to do this, as others have said, coming to the end of the life of this Assembly. There will be new Members in this Assembly fairly soon and those Members will have a view and I think that that huge decision to split the judiciary from the legislature is not one for us to take in the autumn of this Assembly's life. Having said all that, I also have to remind myself as to who put me in this Chamber and I have to have regard for those that vote for me out west in St. Brelade. I have to say now that there has never been a view expressed to me in all of the Assemblies I have attended in the Parish of St. Brelade, all of the Branchage dinners I have attended and all of the other things I have attended in the last 3 years, that this is needed right now. I do not know where the clamour for change is coming from. I know that Deputy Pitman genuinely believes that this has to happen but I do not think, from my perspective and my short history of being a States Member that there is a clamour for change to this extent in this Assembly. So I have to say to Deputy Pitman the proposer, I have no mandate from those that elected me and put me in this Chamber to move towards this huge change in the way we do business in this Chamber. Not only that but I feel today that I do not have a mandate to make a decision of this consequence with this proposition today and, while I am respectful of Deputy Pitman's motives in bringing the proposition to the Assembly, it is not for this Assembly; it should not be treated the way it is being treated today and I will be opposing the proposition.

Deputy G.P. Southern:

Could I ask a point of clarification of the speaker, please, before he sits?

The Greffier of the States (in the Chair):

Briefly.

Deputy G.P. Southern:

He says he has no mandate. Has he expressed any opinion on the *Clothier Report* itself for or against *Clothier* reforms

Deputy S. Power:

All I will say by responding to the Deputy's request is that, yes, the *Clothier Report* has been discussed by me and my parishioners informally at different times in the last 3 years but this aspect of it has never been suggested to me.

4.1.10 Deputy G.C.L. Baudains:

There are times I get concerned when propositions come before this House which possibly get more recognition than they deserve and I believe this is one of them. **[Approbation]** In my view it assumes and largely assumes that the Bailiff is conflicted but ignores the fact, as others have said, that in reality takes no part in this Assembly other than to keep order. I have struggled to identify any conflict in his 2 positions. As you will probably realise, the Greffier is probably more involved in States business than the Bailiff, perhaps the Greffier is more conflicted than the Bailiff **[Laughter]**, but who attacks him? I think that is because we need to look behind the motive because I do not believe this has anything to do with conflict, it seems to me to be more about destroying hundreds of years of Jersey's heritage with possibly the intention of eventually making us part of the U.K.; I really do not know what it is all about. I think we have all disagreed with the Bailiff at some time or another especially when he rejects our questions that we have put forward or perhaps we want to speak or he does not see my light or things like that but, let us face it, he is only keeping order. He is only enforcing rules that we have made and I cannot see how that becomes "conflict" in any sense of the word. He is our civic head and as far as I am concerned, whoever occupies that position long may it continue to be. Apart from that who would want the job of Speaker?

4.1.11 Senator S. Syvret:

In writing my ever more notorious blog I have described the kind of thinking that we sometimes come across in the ruling elite in Jersey as "smug", "insular" and "ignorant" and "arrogant" and we have seen that characteristic sadly displayed *plus forte* today. Are we supposed to believe, as Deputy de Faye said: "If it ain't broke don't fix it" and that somehow Jersey has got it right; that we alone march in step and it is the rest of the democratic respectable world that has got it all wrong? Insular, ignorance and arrogance, they are the only possible motives for such comments that could be even faintly considered plausible. It has been accepted in virtually every respectable jurisdiction in the world for over 200 years now. When one goes back to the American Revolution, the French Revolutions, and even Britain embraced the same concept a long time ago, that there needed to be checks and balances; that there had to be a separation of powers. The reason for that is quite clear; it is because sometimes governments do get things wrong. They abuse their powers. They do things that are unconstitutional; public administration acts illegally sometimes, as we discussed in some detail this morning. Sometimes the rights of minorities will be trampled under foot by the government of the day and the check and balance against that power is an independent, impartial judiciary. Not only does a judiciary have to be impartial and objective, it also has to meet the appearance of being impartial and objective and as much as some Members want to mutter and smugly sneer at me from around the Chamber, that is no radical strange invention of mine, it is well established jurisprudence. In the administration of justice there cannot be even the merest suspicion of a conflict of interest - established fact; a rock-solid foundation stone of British jurisprudence. Can the Jersey judicial apparatus, when it is involved in the political sphere as it is, meet that test of appearing to be objective and impartial? Clearly, no, it cannot. The legal test is what the proverbial ordinary man on the Clapham omnibus might regard as a conflict or a suspicion of a conflict of interests. Just consider, we have the head of our judiciary, the Bailiff, who also sits in this Assembly, presiding, and also regards himself as the civic head of the Island and as such he repeatedly, and has over the years, sought to promote and defend what he considers to be the image

of the Island or, more appropriately, or more accurately, the image of the Island's ruling establishment. Consider his speech on Liberation Day in which he said: "Child abuse, wherever it may occur, is scandalous but it is the unjustified and remorseless denigration of Jersey and her people that is the real scandal." A more ill-judged and, frankly, ludicrous comment would have been hard to invent, as I have remarked on my blog, if I had had the opportunity to write his speech for him. But here you have the head of the Island's judiciary; a judiciary which, by any accepted standards across the respectable democratic world, should be completely indifferent to political considerations; a judiciary that should not care in the slightest if the proper application of the law, legal consequences, decisions of the courts, make things appear to be profoundly embarrassing for the Government, for the administration, for the jurisdiction of the day. That is established fact. Can our judiciary, when it is led by a man who thinks the bad publicity is the real scandal, be regarded as being impartial and objective? The idea is palpably absurd. It is often remarked by people that the States Chamber is that place down by the Royal Square surrounded by common sense and we are seeing another example of that in the kind of comments we have heard today. Jersey alone is supposed to be walking in step and the rest of the civilised democratic world with separations of powers, independent with impartial judiciary, moreover, judicial processes that meet the test of appearing to be impartial, are not. Here we have the judiciary which is being led by a person who has overtly and in the most extreme degree cast aside that appearance of objectivity. This situation will either have to be changed by us or it will be changed by external forces. We have to embrace a separation of powers and to pretend somehow that the current Jersey system is superior to that which has been well established in the rest of civilisation for a very long time now is just, frankly, ridiculous.

4.1.12 Connétable T.J. du Feu of St. Peter:

It is quite interesting to hear the comments from Members on this particular projet. I think it is a great shame that we are, in fact, debating this particular subject at all because I would contend that predominantly there is no basis, there is no substance, no clamour from the so-called crowds and the hordes of people outside for this to even take place and it is merely a view that is held by a certain number of people who clearly have every right to hold their own views but it is, well, out of order, in my opinion, that this should be placed before the House. I would say to a lot of the critics of the Bailiff's role that it is about time that some of the people who are quick to criticise were to show our Bailiff a little more respect and the role that is fulfilled within the Island. That role is a very important and a vital one and, yes, it has been going for a long, long time. Perhaps that is what the deep problem is; that people do not like tradition. People do not like certain aspects of something that is seen to be good and, quite frankly, we have references from people outside coming in and changing it if we do not change it. I think we have had enough of all this nonsense of threats being placed in front of us and I think the quicker that this is dismissed the better for all and, indeed, the Island. [Approbation]

4.1.13 Deputy G.P. Southern:

Where do we start? Well, first, may I take a moment to congratulate Deputy Pitman, my colleague, for being brave enough to bring this proposition today because this is an issue that has been rumbling on. The separation of powers issue has been rumbling on for over 200 years. Yet in this Chamber, in one form or another, separation of powers has been established for over 200 years as a basic principle of constitutional democracy. The Chief Minister may shake his head but this is a fundamental fact and has been well known in constitutional and legal terms for a long, long time, I am suggesting 2 centuries at least. The principle is well established. So I thank her for being brave enough to bring it and also to bring it in a way that clearly distinguishes the issue around the individual, the person, the Bailiff, and his station, the position of the Bailiff. This is about the position of the Bailiff and has clearly been shown to be about that. Before I go on to examine some of the arguments elsewhere, the implication made by Senator Ozouf that there was something other than that involved, please distance yourself from criticisms on websites that may or may not have

been made of the Bailiff himself, there was never a question of that. It has clearly been presented as an issue around the Bailiff's position and not around the Bailiff person in any shape or form. So congratulations for doing that and congratulations for bringing this issue to the House because, as was clearly demonstrated, we may have debated *Clothier* in various aspects until the cows come home. We have spent a lot of time on *Clothier*. We have given it a great deal of respect but on this particular aspect, which was clearly demonstrated by Deputy Pitman, which is contained as part and parcel of the *Clothier* reforms, and remember his words: "Please do not cherry pick. Take it as a whole and please do not cherry pick it." But lo and behold, here we are, how many years on, and we have yet to debate this particular, very specific but long-standing thorn in the side of our constitution, which is this dual role and the potential for a conflict of interest between the head of this Chamber and the head of the judiciary. So *Clothier* was about 2 things. It was about electoral change and it was about constitutional change. Lo and behold, we have leapt on the concept of electoral change and debated it endlessly, round and round in circles and got nowhere apart from a day for the election of all Constables except 3 who decided to opt out. We have instituted a completely new way of governing the Island; we have Ministerial government and we have Scrutiny. That apart, we have not managed to do any further electoral change. We have ignored it and why - because it is a very complicated thing. We are told by Deputy Ferguson that what we should be concentrating on is the important things like a single election day which would involve changing these 3 types of Member into one type of Member and playing with the term of office to make sure that everything could come together and then some. So we have not done that. In the meantime, this relatively straightforward change - straightforward in the sense that it is one single standing issue that can be done on its own without implications and complications elsewhere, could have been addressed and yet this Chamber has not. Nobody is saying it is a simple matter to resolve. Yes, there may well be all sorts of constitutional issues that make it difficult and may, indeed, make it impossible. But what this proposition before us says is please ask the relevant committee, P.P.C., to take its time, to take 3 years examining these issues and to come forward with some proposals so that we can resolve this 200 year-old conflict issue. For Senator Walker to say that this is a frivolous proposition is an absolute nonsense. It does not say: "Do it and do it now" it is saying: "Please ask P.P.C. to come back and spend 3 years researching this, come up with some sort of ..."

Senator F.H. Walker:

Will the Deputy allow me a point order? The proposition very clearly says to remove the Bailiff from the dual role and to appoint a publicly elected Speaker. There is no doubt about that; that is what the proposition says.

The Greffier of the States (in the Chair):

The point of order requires a ruling from the Chair. The proposition does indeed say that. It does include the words "in principle" because there are a lot of matters to be resolved and how it would work in practice, that is why, I think, those words are there.

Deputy G.P. Southern:

As usual, a spurious and specious point of order.

The Greffier of the States (in the Chair):

That is a matter for the Chair and not for you.

Deputy G.P. Southern:

In my opinion, Sir, and I am getting quite used to them, I do, I think, recognise them now. I am going to make use of the words "spurious" and "specious" once more because this morning in another debate I said of the Minister for Health and Social Services, that he had come up with the most specious argument I had heard so far in 6 months or a year in this Chamber. This morning when he very passionately nailed his colours: "I am in total support of this proposition and that is

why I will vote against it” he has taken the biscuit - he has taken the whole barrel of biscuits, Peek Freans and all, chocolate ones and all - sorry, Roy, there are none left - because that is a real gem. Yet he has been picked up by others. Why is it that although he is in total support of this proposition he cannot vote for it? Because it is not our job to do so; apparently we have got to wait for the next lot to do it. It is their job to do it and we should not be doing it here in the dying days of this particular term. Well, that is fortunate for him because he happens to know that he is going to be back in this Chamber and he can have a second bite at it and vote for it and speak passionately for it and get on with it. How many others of us, despite having been elected for our terms, duly and properly, wish to duck out of this particular issue at the last minute because it is not our job, it is for somebody else to do. How many of us, thereby, are denying our democratic mandate? We were put in here to debate and to make decisions and not to pick flimsy excuses in order not to make a decision but pass it on to somebody else. Somebody mentioned in an earlier debate about every time Scrutiny intervenes with something it is all delay and fuss and more delay and more delay. What would be the decision today to say: “Not our job to decide that”; that the issue has been around 200 years: “Not our job to do that but somebody else’s.” That would be complete derogation of duty, surely. So, *Clothier* made this very emblematic but very significant recommendation. As I say, it is 200 years old and we have not addressed it until now. It seems that in principle, notwithstanding the reservations that we heard at the beginning of the session around his opinion on the constitutional reform group, but back in 1999 the Bailiff concurs with this position. I return to the words quoted by Deputy Pitman because I believe it is absolutely germane. This is the current Bailiff: “In the author’s view a more likely and sensible scenario would be the creation of a cabinet based, no doubt, upon the existing Policy and Resources Committee [for Policy and Resources Committee read Chief Minister and his office]. An elected President with executive responsibilities, particularly in the sphere of official correspondence, might not feel the same constraints as bind the Bailiff under the convention that he should not involve himself in political decision making.” How clear do Members wish to have put to them the situation and the potential conflict and the difficulties of having 2 hats? That, to my mind, is absolutely crystal clear; the Bailiff says there is an issue. It goes on further: “Damaging tensions between the elected President of the States and the Presidents of the Policy Resources Committee [the Chief Minister] would be highly likely. These tensions could be avoided if the derivative function of acting as the channel of communication for official correspondence and spokesman for the insular authorities were assigned to the President [he says the “President” but read the “Chief Minister”]. The elected President of the States would then merely be a Speaker and, presumably, the civic head of the Island.” There is it, crystal clear from a man, as Deputy de Faye has said, that we have seen grow up through Solicitor General, through the progression, Attorney General, Deputy Bailiff and Bailiff, who knows the problems and issues attached to this dual role inside out. Crystal clear, this is the way we could and should go forward. To just briefly touch on the contribution of the Constable of St. Peter, who seemed to suggest that this opinion held by a few people is backed up by threats and nonsense. Those few people are the legal and constitutional experts who time and time again point to the way in which we are structured - no matter what reasons historically because we are a small Island, the way we are structured with a dual role as a head of this Assembly and the head of the judiciary - and say: “This is a conflict of interest and must be resolved.” That is the handful of people who think that and they have been saying it, as I say (perhaps this time it will not get a smile and a shake of the head), for the past 200 years. That is the issue we can address today. That is the issue we should address today and even if all we are doing is giving a clear instruction to the P.P.C., the future P.P.C., a future P.P.C. with a different membership albeit with some backbone to say: “In the 3 years whatever else you do, please do this.” That is not a problem for anybody, surely. Even if in the words of Deputy Ferguson, they would come back and say: “We cannot solve it, it will take the Archangel Gabriel to do it” and if they come back that as a recommendation, so be it, Archangel Gabriel or not. We should or ought, I believe we must, pass and support this proposition.

4.1.14 Senator T.A. Le Sueur:

Whatever one's views about the dual role of the Bailiff, what concerns me about this particular proposition is that it is rather prescriptive. It says not merely that the dual role should cease but it gives the solution to what should take its place. It tries to say that there are various ways in which if there is a conflict it could be resolved. We are being channelled down one particular route which happens to be the one suggested by Deputy Pitman. I think that if one is going to review an office which has been in existence for 100s of years the review should be as broad as possible and give as many different potential solutions or at least look at as many different potential solutions as possible in order that we can come up with the best one. I am not at this stage convinced that the replacement by an elected Speaker and an elected deputy Speaker is necessarily the best one; it is certainly not the only one. For those reasons alone I could not support this proposition.

4.1.15 Deputy J. Gallichan of St. Mary:

I wonder if for my own clarification before I start, could you just remind me, would this proposition require an absolute majority, Sir?

The Greffier of the States (in the Chair):

No, because it does not refer, I believe, to the elected composition of the States ... Sorry Deputy I was incorrect, it will require an absolute majority, because it is a proposition to "alter in any way the membership of the States". The Bailiff is a member of the States and so it would, yes.

The Deputy of St. Mary:

Thank you. That was really for my own clarification. But I just feel that I need to rise just to say a few things. A lot has been said about P.P.C.'s lack of ability to tackle difficult issues and there is also been a supposition made by one of the immediately previous speakers that we have ignored the issue of electoral reform. Well, I would just like to remind the House and Deputy Southern, and Deputy Pitman in particular, that P.P.C. has brought several propositions forward concerning electoral reform. Some of them have been extremely far-reaching, one particularly would have had a complete revolutionary aspect on the way the States is made up but Deputy Pitman did not support reform and that is entirely her right as an elected Member, but it is not right that she then says that nothing has been done. An awful lot of research has been done. When those propositions were brought they were brought on the back of public opinion polls, of in-depth research but what I am being asked to consider today is a very, very far-reaching proposition without any of that background research having really been done by the proposer. As it happens, I would be very happy for this matter to be looked at at the proper time and with the fullest and most detailed background. But what I am being given today just lacks, totally, of any real research. I feel very let down by this report. It is flimsy, I think. I stand by all the comments that Privileges and Procedures made and I do say that what Privileges and Procedures would have to do, were this to be passed, would be to do everything possible to bring legislation forward to end the dual role. There are no possibilities, as I see it, of even the Archangel Gabriel saying it cannot be done but we are being told that this is what must be done if we agree this. It seems to me that there is very little substance. The proposer made several representations about: "The people are watching." Well, I dare say there are a good number of people who want this to be aired and discussed. As I say, I would myself, but there is no hard evidence, there is just reference in the proposing speech to websites and blogs and *Evening Post* letters. Well, those are all very valid ways to express your opinion but they must be seen in the context that they are largely self-selecting and they do not necessarily represent the views of the whole population. I think it is very dangerous for Members to take on hearsay without real substantiation. I am not denying there is an element in it but what I am saying is that I am not able to quantify that element and I would say that Deputy Pitman probably is not, on the strength of this proposition, either able to quantify it. I would just like to explore what the Deputy has in mind if this was to be adopted. There is one particular sentence on the last page, on page 6, that I am confused by, maybe I just really do not understand, but it says:

“Guidance or assistance where needed from the “Bailiff” [by which I take it she means the Bailiff in his new role as Chief Judge] would remain there to be utilised at the Chief Minister’s discretion when he or she felt it to be appropriate.” Is the Deputy saying that the political head would go immediately to the Chief Judge, the head of the judiciary, in that capacity only? I do not understand the political intervention ... surely that is a greater conflict than anything we have at present and I really do not understand it. I would be grateful if Deputy Pitman could please give me some clear guidance as to what that means when she stands up. I just feel that there is no substance behind this; the meat has not been put on the bones. I do not say the concept should not be explored, I just say this is not worthy of the exploration.

4.1.16 Deputy A. Breckon of St. Saviour:

I can well understand the views just expressed by the Deputy of St. Mary but, of course, the difficulty for an individual Member is if you present a 100-page report somebody says: “That bit on page 59 will never work”, somebody will pull it to bits so whichever way you do it if you are light on detail someone will say: “Where is it?” or: “I do not agree with that” and if you produce lots of it then Members will say: “Well, I am sorry, but ...” they will go into the minutiae and say it does not work. What I would like to do is look at the proposition and while it is commendable that we should discuss the issue I think there are problems afoot in the actual wording of it because if we were to consider electing a Speaker and a Deputy Speaker - I will give you some examples, suppose we elected the Constable of Grouville as the Speaker and the Deputy of Grouville as the Deputy Speaker, what happens to the people of Grouville if we wanted to do something in that particular Parish. If we look at St. Mary and do the same, the Constable becomes the Speaker and the Deputy becomes the Deputy Speaker and we want to put the kart track there and we want to go back composting, where is their voice in this Assembly? So I can see some problems there. The other thing is if any of those people or anybody faces the electorate and said: “Would you like to be the Speaker?” and you said: “Yes”, you could well not get elected because why would anybody vote for you in a popular franchise, with respect, if you are disenfranchised by sitting in the Chair? If you then look at the U.K. political system it takes care of that because even in elections the person who is the Speaker their seat is rarely contested except, perhaps, by the Monster Raving Loony Party, and they just do that for some publicity. But in the main, the main political parties steer clear of the Speaker’s seat. I think some of this detail needs to be explored. If somebody is going to take it, and Members have done it, Members have taken the Chair - I was trying to think, certainly Senator Le Maistre did, Senator Horsfall and there are probably others, I cannot remember, but on occasions a Member of this House has taken the Chair so it is not a case of it could never happen, or could not happen, we do have that proviso. But I think, for me, the matter should be investigated. There should be terms of reference and some of this should be explored if it is to be an elected Member of this House because somebody, whoever it is, was elected here by somebody else. Now, if it is a Senator, then what do you do? Do you then take that person out of the system completely and have a by-election because they have taken that? What is their term of office and what are their political manifesto that were presented or things that we have said to people, all of that goes out of the window. With respect, I do not think that has been thought about in this proposition, it has to be a priority. I will give an example, St. Ouen is the same way, you have 2 political representatives, if they become Chair and Deputy Chair or Speaker and Deputy Speaker, where is the voice here? I could see real problems in that. What you could do is, thinking about it, tactically you could take somebody out by whatever the ceremony is, dragging somebody up there, and sit them in the Chair. So you can ... if there is some opposition or ... The other thing, how would it apply in Ministerial government. If the Chief Minister is presenting something, and I am Minister for Fun and Games and I am sitting in the Chair, then how does that work? Does it have to be Executive, Non Executive? I know the Deputy of St. Mary mentioned the detail but I think this is some of the detail that somebody needs to explore how we do that. It says, “Elected Speaker”, but it does not say they are Members of the States. It does not say that. Could we appoint the President of the Chamber of Commerce or the Institute of Directors or somebody else

from the community to be the speaker? It does not say that. Again for me, although I think the issue should be explored, I think the way this proposition is crafted is very, very light in detail and it also puts a timescale in ... which if we agree to then, it is ticking and I think problems that I have touched on I think would arise and then it would be very difficult to go back on it. I would be in favour of this being openly investigated with contributions from whoever, including Members of this House but also engage the public. If anybody from outside wants to put their tuppence in then let them do so. Then it all should be weighed up. I think what that does - and it is right to do that - is to take the individual out of that because it is a role we are talking about and it is difficult not to think of people who are in office. I think we have to remove it and look at the role and how it would function. Finally, I would just conclude by saying at present I think we are fairly well-served so, whatever we do we must proceed with caution. I hope Members will bear that in mind. It is something I think for the future, I am not saying it should not be developed, supported but I will vote against it. I think I will vote against it for the reasons that I have said.

4.1.17 Deputy P.N. Troy:

If we are to have change it needs to be managed change. This is not managed change. Senator Le Sueur quite rightly said that there are several possible outcomes. This solution put forward by Deputy Pitman is not necessarily the only solution to the problem. I think he was quite right to point that out. It does, I feel, need full consultation with members of the judiciary, States Members, and the whole impact of the change and outcomes of change need to be looked at and carefully considered. We need managed change if it is to occur. We have to, in my opinion, reject this proposition but in doing so commit to carry out a full review and to take this forward in the coming months. But this is the wrong way to go about it at the present time.

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

Some Members who have spoken have said that anyone who supports this proposition are anti traditions of Jersey, anti Jersey itself and indeed anti the current post holder of the role of Bailiff. I think all of those views are quite frankly wrong. Members have known this debate has been on the agenda for some time. Indeed I know Senator Syvret lodged a similar proposition some years ago. It should be no surprise to Members and if Members wanted to do their homework there are enormous resources out there about the role of the speaker in parliaments, particularly on the C.P.A. website. Some of the mechanics that have bothered people; we have spoken about whether it should be an elected Member, what happens to their ward or their district while they are in the Chair and so on? These issues have all been dealt with *ad infinitum* and the work has been done. That possibly does not excuse the bringer of this projet from not having put some of that research into the report, it would have been useful if Members had had access to that information, certainly I have found this debate very useful in that it has prepared the ground for another debate on this subject. Whether that comes, as Deputy Martin said, from one of the 9 Members who are not facing election this year, or not, or from the new P.P.C. we do not know. Clearly this matter is not going to go away and it needs to be debated, and I think it has been very useful. I have to say that if the mover of the motion is willing to have it voted on in 2 parts I would have a lot of trouble in not supporting part (a). That is because I believe fundamentally, and I have always believed, that there should be separation of roles. I have met through my C.P.A. contacts enough speakers in Commonwealth Parliaments to be absolutely convinced that we can cope and in fact we can prosper from having an elected Speaker. Part (a) of the proposition gives me no problem at all even if the report is somewhat thin, and we would have liked more detail. I agree that part (b) is a bridge too far and I think Deputy Breckon said very well that there has to be some work in between part (a) and part (b) of this proposition and that work is all about further research, consultation, dealing with those difficult issues of detail; how would it all work? It is far too soon to be charging anybody with bringing forward legislation, far too soon. If you believe that we should have an elected Speaker and we should have a separation of roles, then I am afraid, whatever the time of year, whether it is at the end of the election cycle for some Members or not, then you have to say

pour for part (a). It is frankly quite extraordinary that some Members have been saying: “Well, it is too late in the 3 year term to be fiddling around with this matter.” That is funny because shortly we are going to be asked to more or less unpick the fiscal strategy weeks before an election. It is okay to change the fiscal strategy but not to make an ‘in principle’ decision about how we organise ourselves as a parliament. I think that is a very weak excuse to make. By all means vote against this if you think that to support part (a) means that you do not love Jersey. That is your view, and Members are entitled to have it. I take exception to that. I do love Jersey, I am not Jersey born, but I believe we will be better served with an elected Speaker. I will certainly be supporting part (a).

The Greffier of the States (in the Chair):

Just to say from the Chair, Constable, I am not sure it is possible to split the proposition into 2. To split a proposition must mean that every component part stands alone. Clearly (a) may stand alone although it would rather leave a decision floating in midair, but (b) cannot stand alone. On the assumption that (a) were rejected (b) is meaningless, I think it hangs together, I am afraid.

4.1.19 Deputy P.V.F Le Claire:

As Members will recall I recently withdrew a similar proposition because of the concern I had at the time that the issue was personalised. Then, as now, I really much regret that the issue, for whatever reason, either in defending doing nothing or in changing it completely, the actual individual office holder has been brought into discussions, comments, et cetera. I think it has been, in my personal opinion, very, very poor. I have to ask Members to consider the actual position of the office in relation to what Jersey is trying to set itself out for in the future and ask whether or not debating this today is, as has been suggested, a bad thing? I wish I had the oratory skills of the Constable of St. Helier, but I believe that he put the points across extremely well that I would like to try to put across. Maybe in support of what he said, adding do we really, although holding allegiance to a historical duke, wish to have the head of our Government as the Presiding Officer and President of the States appointed from afar? As well as the head of our courts appointed from afar in a modern world? I believe personally that the roles could and should be split. I have often remarked and written in the *J.E.P.* that that was my view. That does not infer any view either way as to whether that position should be held by the current post holder in the presiding office of the States or as the Chief Judge. I think there are issues about the 2 being linked. I also think that in order for us to mature beyond where we are now we need to take some fundamental steps in governance in Jersey. To be told 2 weeks ago by one of our most senior States employees when confronted with a problem to say nothing because they were fearful of their position, and that is the way the system works, to be told earlier today by a States colleague that although they supported in principle my proposition for splitting the role of environment, they could not support me because they would be worried about some future position they had, I think is really, really pitiful. Really pitiful. When it comes to Members being fearful about what they truly believe and not wanting to say because of the fear factor of what will happen to them if they do say what they really believe and what they hold true. I do not know what extent that comes into play in regards to the Constables who have to attend upon courts to justify whether or not there is enough Centeniers in their parishes or be fined by the courts. Whether or not it is just Constables being Constables and hearing from the parishioners who they listen to. But the set in Jersey of representation has now clearly gone beyond a balance of countryside and town life to the advantage of the countryside in this Government, in my view. I believe disproportionately, no, in the first review that was done externally in Jersey, well before *Clothier*, they did make the analysis that the proportional representation was slightly higher from an urban perspective than it should be. But given that Jersey had such a strong agricultural heritage they did not think at that time, although it was out of kilter, that was necessarily wrong. That was more than 30 years ago. The population of Jersey has grown immensely in town and the surrounding Parishes, St. Saviour and St. Clement and St. Brelade as well, if we want to carry forward a system of governance that is from a perspective of what people are telling us then how much more weight are we putting upon the few in the country

to the many in the towns. I think disproportionately the view is that we should remain as we are, do not fiddle with it, do not mess with the particular peculiar aspects of this jurisdiction. I love Jersey, I am sure most people that have lived here for any length of time can put their hand on their heart and say in many respects, no matter how bad it is, it is a brilliant place to be and it gives you an opportunity. Do we want to continue to ignore the fact that we have stepped into a different world? We are now internationally in the spotlight financially and also for other reasons which are being looked into, and we are moving towards becoming more of a self-governing jurisdiction. Representing ourselves on the international stage. I do not think that we can move forward until we break the mould that somehow we have to continue to live in deference to these past traditions and these past ways because I think they serve us no longer. Many States Members will disagree with me, but I think many members of the public who are of my age or younger, would probably agree with myself and the Constable of St. Helier. I think in debating this today although it will probably not be supported, I think it is really a great pity that there have been suggestions that we are somehow doing Jersey a disservice by debating this, and that we should never debate this. That would not be any democracy that I would like to be involved with. Everything should be up for debate. There will always be issues about the complexities of change. There will always be the argument that we should not change because we do not have all of the information yet. But even though we know we have all of that information, we all know we have the information, we have even been told on committee that the information is available, we do not want to admit that we have it. Because we do not want to admit that we have all the information we use that as an excuse for not making a decision. If only that could be applied across the board to everything we did then we would have to look at some of the larger projects we have recently approved and ask where the information for those were, which we did not have. I do not think it is right to pressure the office of the Bailiff. To interfere with the governance of Jersey's executive function, I think that is as wrong as us trying to interfere with the courts. It seems, in his position particularly, he is in a no-win situation. I think it is very difficult for somebody that puts the kind of effort into the role that the current post holder does, to be in that position. It saddens me that his attempt to try to stick up for the Island during the Liberation Day speech, when one particular part of what he said has been picked up on and the rest has been dismissed, I think is a great shame because we have missed out on the fact that as before the Bailiff as a person has stuck up for the Island that he loves. That saddens me because as an individual I think he is not only hard working but also an amenable person and I know that that much hurt him. I believe from a mature perspective that it is time to separate these roles, it is time to separate putting questions about Executive Department functions in front of him every week for approval or his deputy for approval. I think it is time to separate him from putting propositions in front of him for his consideration and it is time to have an elected Speaker. I believe if we are going to continue into the future with the office of Bailiff then it must be as either a single civic leader or the supreme judge in Jersey. I think it is time for the civic role to be defined, some of those being apportioned to the Chief Minister and I think it is time for the courts and their ability to act properly and independently is put beyond the reach of those that would criticise them and beyond the reach of those that would wish to have them to do things, that they should know better, they should not try to coerce the judges or the Bailiff or anybody else to doing things out of turn. We should manage the policies, we should direct the Executive, we should allow the police and the rest of the departments that we look after to operate functionally and fairly for all. I think as far as maturing is concerned if we cannot even debate this without being painted as some anti Jersey person, I think it is rather sad because we are not anti Jersey we just think Jersey could be better. If we split these roles, those of us that support this ... I would not like anybody to suggest that Jersey should do something and outside pressure, has been suggested, it was definitely brought down upon us in relation to changing our fiscal policy, it was definitely done in terms of the O.E.C.D. (Organisation for Economic Co-operation and Development) pressures and the E.U. in relation to our finance industry and it definitely was the precursor for the reason why we have G.S.T. in the first place because we had to change our tax structure under extreme outside pressure, even though it was of our volition, but I would like to see Jersey more in

a position where it is capable of standing up strongly and independently on all of its respective governance issues and ward off and stand up to outside pressures and outside groups and tell them: “We are well run, we are well regulated, and we are well governed.” I believe we can do that now but I believe that we can do that better if we split the role.

4.1.20 Deputy R.G. Le Hérissier:

Deputy Pitman mentioned that she was not terribly interested in history, she wanted to deal with the situation as it presented itself. There is no doubt it is a situation locked into history and if it was not we would have resolved it a lot earlier. There is no doubt the separation of powers started with the Code of 1771 when the Royal Court was separated from the States bar 2 groups, one being the Bailiff and the other being the Jurats. That process as we all know continued until the 1948 reforms when the Jurats did depart the States to be replaced by the Senators, the Rectors departed the States but the 2 most contentious issues that were to tax that committee and have taxed every subsequent one since were the role of the Constables and the role of the Bailiff. There has been no easy resolution. It should also be remembered that the Crown Officers used to play quite a mixed role, for example, I was just reading a little article on the Daniel and Prison Board cases here and the Attorney General, for example, found himself representing the interests of the Crown. I had an article on it which says: “The Attorney General on the other hand in a speech which reduced the Assembly to utter confusion upbraided the Bailiff in his absence for his behaviour in the Daniel case on other occasions. ‘When an official took upon himself such responsibilities, he argued, it was time to question his authority and the solution the government, the UK Government, had arrived at was the only one under the circumstances.’ There followed an indescribable scene and the President adjourned the sitting.” This notion, that the Crown Office is almost a homogenous group representing the interests of the Island, vis-à-vis the Crown/UK Government, is one borne fairly recently. Reform is indeed an ongoing process and positions are not frozen in time, despite the fact we would like to. Another thing that has complicated things, Sir, is that our autonomy has always been equated with the preservation of our special institutions. So any attempt to interfere with those institutions has been seen as an attempt to interfere with our autonomy. That has led us down some interesting paths although sometimes led us to defend the status quo, perhaps as Deputy de Faye, lately of the Italian Army, so magnificently did this morning, if sadly up the cul-de-sac, so to speak. What I am saying is, history is very important. There is a process of reform going on, it may be very slow, I do not think we have to necessarily criticise people who are engaged in that process. My belief is, Sir, I do tilt towards the separation of powers although I think there are things wrong with this proposition. My belief is we should avoid having to do it under obvious duress because that is going to make us look even, quite frankly, more stupid and is going to make us look as if we are bowing to external pressure. The history of the Island in the 19th century and part of the 20th century has been okay, it has been duress, but we have always turned at the last minute and we have often always turned on the basis of very limited concessions. The political judgment lies - if you are dealing with this thing pragmatically as opposed to in a principled way - on how to make, as I defer to a u-turn expert, the concession without making too much of a concession. I know it sounds terrible but in many ways, Sir, that has been the way in which the relationship has been handled and the way in which people like the Bailiff within that relationship have had their role, perhaps gradually attenuated. There was no doubt, Sir, many mistakes were made when Ministerial government came in. We never sorted out the senior positions and we ended up with 3 senior positions for Lieutenant Governor, the Bailiff and the Chief Minister. Somebody asked me: “Who opens the Flower Shows?” There could be, I suppose, technically 3 people arriving to do so. I know there are protocols but there is no doubt, Sir, we never thought it through. I do think as the Constable of St. Helier said, we are making very heavy weather of how other jurisdictions have dealt with this. They have dealt with it. But it was unfinished business, unfinished business. Just moving on more randomly, people who are seeking the removal of the Bailiff or indeed people who are, for example ... while I agree with the principle and it often boils down to an issue of perception, or people who are saying, for example, we might get different

decisions if we had independent judges and commissioners handling this current case, for example, I often think it is code language for saying, we might get amenable decisions. Quite frankly that is a very wrong reason. I think those people would get the shock of their life, they might find they would get even tougher decisions than the ones ... or wrong decisions than the ones they were seeking. That, I often think, is a wrong reason for trying to change positions, but, there is an element of that and it is certainly in this proposition where the former Senator Vibert talked about the fact that decisions about his questions and so forth have led to decisions he is very unhappy with. The other random point is an interesting point which contradicts myself, nobody has mentioned the McConnell case which involved the Guernsey Bailiff and that is the only case, as I understand, and I stand to be corrected, where the case of the Bailiff has gone before the European Court of Human Rights when a Guernsey person brought up the fact that the Bailiff in their estimation or allegation was involved in planning decisions because I think he was chairman of some sub-panel on planning. The finding of this case was that they did not argue for the separation of powers, I think applying the margin of discretion which the European Court does, they argued that assuming he would have divest himself of these various administrative committees he was involved with, the Guernsey Bailiff, it was, in fact, satisfactory for him to retain his present roles. So that is quite interesting. That is the only time, as far as I am aware, where the position has been tested out in a broader forum. But my real worry, Sir, is it is a great pity that this was not brought forward as part of an overall and more holistic proposition, albeit supported by P.P.C. for overall constitutional reform. It would have made it much easier to handle, we could have looked at the whole role of the Crown Officers in context and given it the proper consideration it deserves. I think eventually there will be a separation; I think Deputy Le Claire is right. There will eventually come to be a separation, we might be dragged screaming and shouting into this situation and that would be very sad, Sir, because we will look like incredibly reluctant reformers in the process. But there will be a separation and then we will have to deal with it. I would ask the proposer whether she is prepared, as she was asked this morning but from a different perspective, whether she is prepared to withdraw this proposition and were she to be re-elected or one of her colleagues, to bring it back to the new Assembly with the whole issue of overall constitutional reform? The very point that Senator Shenton made at the beginning of this debate.

4.1.21 The Deputy of Grouville:

I would like the proposer of this proposition in her summing up to explain if she has spoken to the current postholder about his views on the role because if somebody was coming forward with changes to the Deputy's role or whatever, I would certainly expect them to have spoken to the Deputies and what they do and how they go about their business. I would like to know if she has sought the opinion of the current post holder. The conflict of the role has been attempted to be explained to me many, many times. But I still cannot see what the big problem is? What the big conflict is, just because somebody has listened to how the legislation is formed why they cannot then legislate here and preside over the courts? The Attorney General tried to explain it to me before, he did a very good job, but I still cannot see the huge conflict, the huge problem. Maybe other people can explain this to me, maybe the proposer too, because there is all this sort of shock horror of people in other jurisdictions saying: "Oh, my goodness, you have the same person in this dual role." But what is the problem? If somebody can attempt to explain it again, please, please do. It will come as no surprise to the professor on my right here that I am going to take a traditionalist stance in this, and I support the way things are at the moment. I think the role is steeped in history and like I say, I see no problem at all. I do not begrudge the proposer for bringing it forward. We live in a democracy but I think it would be nice to know if she has gone out and investigated and spoken to the current post holder. I think it would also be useful, as the speaker before me said, if P.P.C. could bring forward a holistic report rather than just criticising the proposer and what she is attempting to do, whereby they can maybe set out what they consider to be the huge conflicts and the huge problems, I think that might be a way forward, if indeed we want one. I personally do not.

4.1.22 Deputy R.C. Duhamel:

This appears to be yet another case of piecemeal reform. As the saying goes, we are where we are, and we would all like to be somewhere else. I really only want to make one point and that is when we get into these pickles it would appear that there are elements or sections within the propositions which are certainly worth supporting, but then we find ourselves getting dragged into argument and counter argument to find ways not to support a positive way forward. The only thing that I am thinking of, Sir, is that on the basis of your ruling you discussed just recently to a question by the Constable of St. Helier as to whether or not the proposition could be split, I am wondering whether or not the House or the debate would be helped by the proposer withdrawing part (b)? Which does not stand on its own because that in effect would allow States Members who are wanting to support the principle but agree that there is an element of work, a body of work that needs to be undertaken to determine the format to be undertaken, and we just agree the principle. This House does generally like agreeing principles, and it might well be a way forward if indeed the proposal is in order and the proposer would be prepared to withdraw the part (b)?

4.1.23 Senator T.J. Le Main:

I have listened to several speeches and the one by the Deputy of Grouville I concur wholeheartedly. I have not had anybody saying to me over 30 years of being a Member of this Assembly about the problem with this dual role. I have been to many conferences all over the world, C.P.A. conferences, and constantly all I have had is absolutely people complimenting us on the way we run our affairs; we have a stable parliament and a stable Island and whatever. People have not been complaining to me about the dual role of the Bailiff and the changes that are being proposed by Members who have not been in this Assembly for too long. They are complaining about the way we are going about starting to lose our heritage and some of our traditions. I can assure you that is a very worrying factor as far as I am concerned. We are slowly eroding our heritage. I was like Deputy Power, I have not had any mandate from constituents Island-wide now or in the past about the issues. I have served for 30 years in this Assembly, Sir. I have sat under many of the Bailiffs that have been here in the last 30 years and I have not seen or even had concern about any of the Presidents of this Assembly interfering and making political statements as highlighted by Deputy Pitman. Absolute rubbish, as far as I am concerned. As I say, I keep hearing about Deputy Pitman, and one or 2 others, about all the people that are contacting them all the time about some of these issues. I do not get them. I do not know what is wrong. I have an Island mandate and I do not get all the comments. I forewarn this Assembly that if you continue to erode our heritage, the heritage that I want to leave my children and grandchildren which I inherited from my parents and grandparents, then we are going to find ourselves in disputes and other issues as we are starting to find with various factions of this Assembly. I will not support this and I will not support it even next year if it comes back again. I believe we have a long tradition of good government, a wonderful judiciary and everything else that goes with it. I compliment all those in the judiciary, the Bailiffs, the previous Bailiffs, and I compliment the Connétable with the honorary systems with all that as well. I can see all that going as well, slowly. It is slowly being nibbled away. I want no part of it and I am not going to take any part of it. I do not support this at all.

4.1.24 Deputy S. Pitman:

Firstly I would like to thank all States Members apart from Senator Ozouf for making a debate. Also, Sir, to thank you for your assistance in getting this proposition together. I would like to deal with a few individual Members first. To the Deputy of Grouville's question as to whether or not I have sought the views of the Bailiff. I have, and that is in his report of 1999, the *Cry for Constitutional Reform* and the perspective from the office of the Bailiff. That is where I have sought his views. That is quite a comprehensive document. Secondly, Deputy Breckon, I would refer him to the *Clothier Report* If all the *Clothier Report* has been followed, all the recommendations we could elect a Speaker and a Deputy Speaker and not have the problem of the Constable of a Parish and the Deputy of a Parish then taking those roles. In those recommendations

there was one election day, one type of States Member, an elected Speaker from those Members who would all be the same. This would do away with Deputy Breckon's issues. What we have now is 10 Ministers and Scrutiny and only 2 recommendations from the *Clothier Report*. To the Deputy of St. Mary, she made the assertion that the paragraph that said: "guidance or assistance where needed from the Bailiff would remain there to be utilised at the Chief Minister's discretion when he or she felt it appropriate." To assert that this will cause more conflict of interest than the Bailiff's current dual role position is quite outstanding. What I am trying to say, Sir, is in his role in dealing with external relations it is obvious to me that the Chief Minister will at some point take advice from the Bailiff.

The Deputy of St. Mary:

Just to clarify, I made no assertion. I simply said I did not understand how the political head would need to seek the guidance of the Chief Judge and was that not a point of conflict where we started out. There was no assertion, Sir, I just genuinely asked for clarification from the Deputy.

Deputy S. Pitman:

I think I have answered your question. To those Members who believe that this proposition is about breaking the tradition and that to bring this proposition you have to be a Philistine. I would say to those States Members, I am a local and I am proud to say that I am a local States Member who is not in part of making the lives of Jersey people much harder to live through G.S.T. and an incredibly flawed income support system. I do believe in preserving our traditions but not when they are unjust and undemocratic. This is why I bring this proposition to the States. The argument that there are too many important constitutional questions and ramifications for Jersey for this proposition to be considered; this was the speech of Deputy Scott Warren and Senator Shenton and other Members who have also alluded to this, including Senator Ozouf who also said that I had made personal attacks about the Bailiff. I would like to ask him what these personal attacks are? As far as I am concerned everything I have written on the site is factual. May I also say that it is rather hypocritical of the Senator to accuse me of this as it is something his Elect Jersey 2005 did to Members of the J.D.A. with relish.

Senator P.F.C. Ozouf:

Point of order, Sir, that is nothing to do with me. She should withdraw it, she is casting aspersions on ...

Deputy S. Pitman:

Indeed this was the reason why it was set up, was to crush to the J.D.A. Furthermore, this was also the reason why Senator Ozouf was behind the election campaigns of Senator Le Main, Deputy de Faye and Deputy Maclean.

Senator P.F.C. Ozouf:

The Deputy is casting aspersions on me.

The Greffier of the States (in the Chair):

Deputy, I do not think we need go any further down this route, please. Please come back to your summing up.

Deputy S. Pitman:

Going back to the proposition, Sir, the important constitutional questions and ramifications for Jersey if the role of the Bailiff was to split would be the incumbent Privileges and Procedures Committee who would be required to undertake the task of researching the issues in full and would have 3 years to do it. Furthermore, and I say again, there are a number of reports and propositions presented to the States with this research already done and which also supports my proposition. I do not see any logic in the views that we need more time. It is an excuse and I believe firmly that if

this were a Council of Ministers or a single Minister bringing this proposition it would be passed. I maintain the proposition, Sir, and call for the appel.

The Connétable of St. Helier:

Can I just clarify with you, Sir, your earlier ruling that this matter cannot be taken in 2 parts? It just seems to me that it could be but if that is your ruling, so be it. In that case could I ask through you, Sir, whether the mover of the proposition be willing to withdraw part (b) in which case presumably part (a) would stand on its own?

The Greffier of the States (in the Chair):

Procedurally I do not think it can be split if it remains as such, but it would be open to the Deputy if she wished to seek the leave of the Assembly, which she would now need, to withdraw part (b).

Deputy S. Pitman:

No, Sir.

The Greffier of the States (in the Chair):

The Deputy wishes to put it in one part. The appel has been called for. I can announce the proposition has been rejected, 5 votes were cast in favour, 46 votes against and one Member abstained from voting.

POUR: 5	CONTRE: 46	ABSTAIN: 0
Senator S. Syvret	Senator L. Norman	Deputy R.C. Duhamel (S)
Deputy J.A. Martin (H)	Senator F.H. Walker	
Deputy G.P. Southern (H)	Senator W. Kinnard	
Deputy P.V.F. Le Claire (H)	Senator T.A. Le Sueur	
Deputy S. Pitman (H)	Senator P.F. Routier	
	Senator M.E. Vibert	
	Senator P.F.C. Ozouf	
	Senator T.J. Le Main	
	Senator B.E. Shenton	
	Senator F.E. Cohen	
	Senator J.L. Perchard	
	Connétable of St. Ouen	
	Connétable of St. Mary	
	Connétable of St. Peter	
	Connétable of St. Clement	
	Connétable of St. Helier	
	Connétable of Trinity	
	Connétable of St. Lawrence	
	Connétable of Grouville	
	Connétable of St. Brelade	
	Connétable of St. Martin	
	Connétable of St. John	
	Connétable of St. Saviour	
	Deputy A. Breckon (S)	
	Deputy J.J. Huet (H)	
	Deputy of St. Martin	
	Deputy G.C.L. Baudains (C)	
	Deputy P.N. Troy (B)	
	Deputy C.J. Scott Warren (S)	
	Deputy R.G. Le Hérisssier (S)	
	Deputy J.B. Fox (H)	
	Deputy S.C. Ferguson (B)	

	Deputy of St. Ouen	
	Deputy of Grouville	
	Deputy of St. Peter	
	Deputy J.A. Hilton (H)	
	Deputy G.W.J. de Faye (H)	
	Deputy J.A.N. Le Fondré (L)	
	Deputy D.W. Mezbourian (L)	
	Deputy of Trinity	
	Deputy S.S.P.A. Power (B)	
	Deputy A.J.D. Maclean (H)	
	Deputy K.C. Lewis (S)	
	Deputy of St. John	
	Deputy I.J. Gorst (C)	
	Deputy of St. Mary	

5. Planning and Environment: division into 2 Ministerial offices (P.114/2008)

The Greffier of the States (in the Chair):

Very well, we come now to P.114/2008 in the name of Deputy Le Claire. The Planning and Environment Division into 2 Ministerial offices. I will ask the Greffier to read the proposition.

The Deputy Greffier of the States:

The States are asked to decide whether they are of opinion to request the Chief Minister to bring forward for approval the necessary Regulations under the States of Jersey Law 2005 to allow for the division of the Ministerial office of Planning and Environment into 2 Ministerial offices to be known as the Minister for Planning and the Minister for the Environment.

5.1 Deputy P.V.F. Le Claire:

I lodged this proposition in the last few days of the previous session and I apologise for not having more work behind this than I would have liked to have done, I was taken for an operation, I am afraid, and I was put out for a while. I am able to say that at least ... if I was not able to get around to putting the work into this speech as I might have liked to, I at least did take the effort to contact the Minister and speak with him on several occasions. I have also today spoken with the new Head of Planning that is making himself acquainted with the States Chamber today. I have very much appreciated their information and would like to thank them for that. If I can begin, I want to make one thing perfectly clear, that is my strong belief that Senator Cohen and his Assistant Minister, the Deputy of Trinity have performed exceptionally well in their duties and responsibilities. Indeed they continue to do so. They both have my continued support. They demonstrate a high regard for consultation and a keen application to work hard for the public and the office they hold as individuals. There are no personal criticisms of them whatsoever and I would like to make that point clear from the start. The purpose of this proposition is to request the Chief Minister to bring forward for approval the necessary Regulations under the States of Jersey Law to allow for the division of the Ministerial office of Planning and Environment into 2 Ministerial offices to be known as the Minister for Planning and the Minister for the Environment. It has also implications in a broader context. This is in relation to policy determined by the Council of Ministers and perhaps even the number of Ministers within the Executive. It also has far wider implications in relation to how we develop the Island and how we protect the Island's environment and the health and welfare of all life within this jurisdiction. For the avoidance of doubt I shall repeat a point I have made in my report. Approval of this proposition does not change the balance between the Executive and non-executive Members as this is protected by the 'Troy' Rule. I shall reiterate this point; supporting this does not undermine the balance of power in the States between the Council of Ministers, its Assistant Ministers and the remaining Members of the States. The States of Jersey Law, at Article 18, states that the Council of Ministers consists of a Chief Minister and 9 Ministers. The titles of the 9 Ministers are set out in Standing Order 117. The restriction that I referred to

earlier, which is commonly known as the Troy Rule is translated in the States of Jersey Law at Article 25(3) through a restriction which states that the total number of members in the Executive, namely the Chief Minister, Ministers and Assistant Ministers cannot exceed 23 individuals. Therefore there is no reason why the legislation could not be amended to increase the number of Ministers to allow for the changes that the States would wish, if the Chief Minister was to agree, so long as the new Ministers were made up from the existing numerical numbers of Assistant Ministers and a re-organisation of the Executive accordingly. The preferred option is clearly a matter for the States and their considered judgment as to whether or not it wishes to request the Chief Minister to do so. The process of changing the Ministerial structure is unfortunately quite complex under the legislation as agreed by the States, unlike other jurisdictions where a Prime Minister or Chief Minister might be given considerable latitude to create and amend the number of Ministries the situation in Jersey has been very tightly restricted by the States of Jersey Law 2005 and the Standing Orders of the States of Jersey. Unfortunately, under this legislation as agreed by the States, the rights of individual members are severely restricted in relation to changing the Ministerial structure. Article 29 of the States of Jersey Law allows the States to make Regulations to establish or abolish Ministerial positions and transfer functions between Ministers. Regulations made under this Article would therefore be able to make the changes that I am seeking. Unfortunately, Article 29(4) states that only the Chief Minister may lodge draft Regulations under this Article. This means that no changes can be made unless the Chief Minister is willing to bring regulations to the States. This is in itself something that may need to be looked at in the future if Privileges and Procedures were of the opinion that it needed to be. Today having set out what it is that is possible for us to do and what it is I am trying to achieve from a structural perspective as clearly as I can, I will turn to why I believe this change is desirable, moreover and much more importantly, why it is that a status quo is no longer acceptable if we are to have proper regard to our Island and its environment into the future. The first part of my deliberations focus upon the Minister and the Assistant Minister and their dual roles and responsibilities. Under the current system the Ministers have 2 portfolios for which they are responsible; planning and environment. When he was elected to the States Senator Cohen brought a skill set to the post that in the words of Deputy Fox: “was rich with valuable experience from a former life.” His former senior position at Heritage was not the only perspective that he chose to work from though. Once in post he quickly took up from the important work that had been done by Senator Ozouf. That important work included moving from the seminal piece entitled “*The State of Jersey*”, which was the first Island environment review. This was a key document in environmental management of Jersey. Understanding the issues and its considerations and Senator Ozouf, in tabling that document, is to be congratulated. He went at that time in that position from somebody - and I hope he will forgive me for saying so - who was a bit manic in terms of free marketeering into somebody that was not only changed but challenged by the opportunities and interests that environment were placed upon him in that role. I think he did remarkably well. He carried that forwards into his new role, and with the Eco-Active programme that was launched recently, I attended the reception, I have not been to ... I thought it was very well ... there was not many States Members there. I thought it was very well organised with members of the Gerard Le Claire Trust involved and also the Durrell Group to help businesses become more environmentally conscious, I thought that was a great initiative and I think they are to be applauded for that. He has also made those conditions part of Regulations of Undertakings considerations and I think that is also very responsible. He was a changed man, if he does not mind me saying so, I think he is a changed man from that perspective and I think he has brought some environmental benefits that he himself might not have thought he would have done several years ago. Once in post Senator Cohen set about a series of consultations on key Island issues. These issues were, from a Jersey context, staggering. If one recalls where we were in terms of consultation and public concern at that time, especially in regards to the Waterfront and the skyscraper buildings, then one can recall exactly what was happening. Setting up the architects and the consultation that Senator Cohen did, I think, was a very important move. He brought into play global leaders in terms of architectural experience and design and he travelled

the world to inform himself as to what could be done, what should be done and what not be done and he brought those difficult areas of concern from the public and from his own perspective to various forums and empowered them in a way that they had not been empowered before. The way that the Minister and his Assistant Minister, together with his department, handled the Waterfront and the extensive series of interactions with the Environmental Scrutiny Panel's various concerns was a first class lesson on how to get it right, not only from what was proposed but what could be done and had yet to be thought of. His work in this area, the planning role, has been exemplary in my view. I do not think, however, for this debate that I need to dwell on this even though I sense that I am getting close to gaining his undying support, and gratitude perhaps, for this gushing that I am doing. Nevertheless, while I applaud him for his excellent legacy that he leaves Jersey, in terms of his efforts for planning, I have thought it necessary to request that more cognisance and concern is brought to bear at this stage on his role with the environment. His difficulty has not been that he has not been willing to champion the environment per se but that he stands so strongly for the improvement of design in the built environment that I believe he has been hopelessly unable, in turn, to champion the environment with the same level of application. I do not wish to imply that he could not have done this given time, but he is only human after all and the work that was required ... **[Members: Oh!]** Super Fred. That was not my comment. That is Senator Perchard's comment. The work that required in putting forward the built aspects of the Waterfront, in order for them to progress at all, have been a mammoth task and one that will be an endearing legacy for centuries to come. The catalyst for seeing the problem and understanding that there was a problem though came when it was time to debate the Planning for Homes proposition. On many occasions, having met with Senator Cohen and his Chief Officer to discuss issues in relation to planning, I have always put forward the belief, rightly or wrongly, that I believe Jersey needs a strong champion of the environment, one that is unbridled by the concerns of planning and, at the moment, I believe that the 2 are so hitched together that it is impossible for that to occur. The difficulty he faced with the Planning for Homes proposition was that he could not determine everything and do all of the work and so passed on to his Assistant Minister that role in terms of consultation and I think, if we look at the speeches, all Ministers agreed that she had done a very, very good job there. I would like to convince Members that what I am saying is right in a way that will engage them with the issue rather than myself or any of the issues I have been engaged in over the last few years or more in my own district and specifically at La Collette, and I have ventured into other areas where I have had environmental concerns such as Trinity infill and the firefighting foam issues at the airport. But rather than me trying to give Members for considering this today, I thought the best thing to do was rather than use my own words, use the words of Senator Cohen. The words from Senator Cohen from 16th July, in my view, are to be considered. In summing up on the Planning for Homes proposition he said: "I would like to begin by congratulating the Assistant Minister, the Deputy of Trinity, and the officers for their extraordinarily hard work in bringing forward this proposal. Whether individual Members support it or not, they cannot feel anything other than the support for the enormous efforts that the Assistant Minister and officers have put in to getting this proposition to this stage. Furthermore, I would like to compliment the Connétables for all their support in putting together this proposal which has taken some considerable time and a great deal of effort on their part. I would like to firstly deal with an issue raised by Deputy Mezbourian yesterday. Deputy Mezbourian raised the issue of the conflict between the roles of the Minister for Planning and the Minister for the Environment. I wholeheartedly agree with her as the tensions between the 2 roles representing diametrically opposed interests on occasions is often irreconcilable. In this case, there are irreconcilable issues. As Minister for the Environment, I want to defend the countryside and as Minister for Planning, I want to provide decent homes for our retiring population. A number of officers at Environment form the Rural Strategy Economy Group and they have raised the issue of the loss of farmland that will result from rezoning of a few sites. However, they represent just one side of this debate, that of the effective rezoning specifically on the loss of farmland and nothing else. It is my job to balance all the issues and my conclusion is unequivocal. Having considered all the issues, I have no doubt that building our rural

communities and providing much needed high quality housing for our retirees prevails in the case of the current rezoning propositions. In this case that means that my planning obligations have specifically prevailed. I would wholeheartedly support the separation of the roles of Environment and Planning Ministers, however, Members must realise if this is pursued, it has very specific implications for the balance of the States. But to reiterate, I do consider the 2 roles are, at times, diametrically opposed and balancing the 2 will always be just a balancing act. The Minister will have to come down firmly on one side or another.” Now, we have had the comments from the Council of Ministers and, no doubt, we are going to hear from the Ministers as to what questions have arisen from this consideration. One thing is certain, though, I am not certain exactly what the Minister meant when he said that it has specific implications for the balance of the States. It does not have specific implications for the balance of the States from an Executive and Non Executive perspective. I have explained that quite clearly for Members because this might come into play for other Ministers and other new Ministerial positions in the future. I think it is important for us to understand that the ‘Troy’ rule is sacrosanct at this stage and we cannot affect the balance, but we do not necessarily have to be tied to 9 Ministers. The decision or the preference not to increase the Ministers may be something to do with how many seats are present around the table when key policy decisions for this Island are made at the Council of Ministers and to suggest that another seat or another 2 seats if there was a Children’s Minister could not be added is ridiculous because, having looked through the minutes of the Council of Ministers when they are issued, it is quite obvious that on occasions, many occasions, some Ministers are not present and some Assistant Ministers take their place. But it may have something to do with the fact that a review of the Ministerial function is preferred at a later stage. It may have something to do with the fact that the national review of everything at once is the old guard defence system. We cannot review something in isolation. That is the best way to go. Let us not change anything. It is working quite nicely. Stop all reviews by saying nothing can be done until we change everything and until we have all the information. My concern is, at this time, I do not believe the environment has a sufficient champion. I would like to end my opening speech here. Although I could go on, I do not wish to be accused of putting anybody else to sleep and I can see Deputy Baudains in the far corner drifting off into the environment of Never Neverland and it is getting late. I will let Members say what I probably could say in terms of the environment and address their issues and answer their questions as best as I can when I sum up. I make the proposition.

The Greffier of the States (in the Chair):

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

Deputy J.A.N. Le Fondré:

I am debating what to do on this. I think I will declare an interest on the basis of having a live planning application with the Department and directly with the Minister. I do not feel comfortable taking part in any matters that may have an impact on the Department and I shall, therefore, withdraw from this one and other Planning and Environment Department matters that come before.

The Greffier of the States (in the Chair):

Thank you, Deputy.

5.1.1 Senator F.E. Cohen:

I have been privileged to work with Deputy Le Claire in his role as a member of the Environment Scrutiny Panel. [**Approbation**] He has complimented me so it is my opportunity to compliment him and I am not going to lose it. He is hard working and tirelessly promotes the interest of the environment. His work in relation to many of the issues has been a model of positivity, most particularly in relation to the development of the Esplanade Quarter where he has put forward many ideas that have been adopted and now form an integral part of the present scheme. When I first heard of this suggestion, I fully supported the principle of separating the department and I made

that clear in my summary in the rezoning debate. However, I was really focusing on the key issue which is not that there is a problem within the department but that the environment does not have a dedicated champion and that States Members do not have access to an environment dedicated champion unencumbered by other interests. I have spoken at length to officers and I now accept that the best way forward is not the separation of the department. Indeed, officers at a recent get together felt that the department as a whole would benefit from being much closer together. They wanted the departments to be in a single building because they felt that by doing so, particularly in relation to planning, that planning officers would have more direct access to their environment colleagues and thus be able to have greater consideration and information in relation to environmental problems and issues. The issue, to repeat, is not that the department is problematic in its function, but that States Members need a champion for the environment that is unencumbered by other matters. As has been clear in a number of debates, particularly the energy from waste debate and the rezoning debate for retirees, the current position is that the Minister for Planning and Environment has to wrestle with the tensions, come out with a conclusion and the States Members do not benefit from going through this examination and analysis of the tensions themselves. I believe that this can be resolved by ensuring that the Assistant Minister, in all such debates, speaks for the environment unencumbered by planning issues. Furthermore, the Assistant Minister could have special responsibility for the environment in exactly the same way as Deputy Maclean has specific responsibilities for harbours and airports, a system that works extremely well. I think, in addition to this, it is necessary to focus the department on its true role which is environment through and through. Environment in the natural form, the natural environment and environment in the built form, the built environment. Therefore, I would propose that the Planning and Environment Department drops the name, Planning, and becomes specifically the Environment Department with 2 subdivisions, the environment and the built environment. We have recently seen the arrival of a new Chief Officer, someone who I believe will run the department exceptionally well and I think he should be given a chance to run the department as it is in its present form. If the concepts that I have laid out of giving the Assistant Minister specific responsibility for environment and ensuring that the department is referred to and known as the Environment Department with 2 subdivisions, the environment and the built environment, if that does not work in a year's time, then I fully accept that we should revisit this concept, but I firmly believe that the new Chief Officer should be given the opportunity of running the department as it is for at least a year and, therefore, I will not be supporting the current proposition.

5.1.2 Deputy D.W. Mezbourian of St. Lawrence:

I will be supporting the proposition because I think that, at the end of 3 years under a new system of government, there can be no doubt that many Members here consider that some parts of the system are more successful and effective than others and I believe the current dual role of the Minister for Planning and Environment is not as successful or effective as it could and should be. I have mentioned this on a number of occasions in the House and, indeed, I raised the issue in July during the debate on the provision of land for lifelong dwellings, as Deputy Le Claire has mentioned, and my concern was that the Rural Economy Strategy Group had given comments during the consultation process concerning the loss of land which they considered had been capable of sustaining a wide range of crops. In short, they considered that we would, in fact, be losing some good agricultural land and the Minister for Planning and Environment told us that they represent just one side of this debate, that of the effective rezoning specifically on the loss of farmland and nothing else. That is absolutely right. That is what they did represent. That is what they were there to do. The Minister told us that it was his job to balance all the issues and his conclusion at the time was unequivocal. Having considered all the issues, he considered that there was no doubt that building our rural communities, building on green fields, building on good agricultural land, and these are not his words but mine, would provide much needed high quality housing and his decision, in that case, was building these houses would prevail in the case of the current rezoning propositions, current at the time of the debate. He told us that, in fact, my planning obligations

have specifically prevailed. I repeat my words from July when I saw that the position of the Minister for Planning and Environment is compromised. The States of Jersey should not be in the position whereby the responsibility of a Minister to effectively undertake his duties to us all is conflicted and even though we have just heard from the Minister that he does not now support this proposition, he feels that the new Chief Officer should be given a year or so to settle in and sort out any issues, and he has told us that perhaps his Assistant Minister should have delegated functions and responsibility for the environment, nevertheless he has told us in this House that his position is compromised. He told us that there are tensions between the 2 roles. They represent diametrically opposed interests and on occasion, they are irreconcilable. We have today the opportunity to remove compromise, to remove conflict and remove them, I believe, we must. It is always interesting to have comments from the Council of Ministers because obviously they either support or oppose propositions. What we do not know is whether their comments are a consensus opinion, and I think it would be interesting to hear whether any other Ministers feel that they should be supporting a position whereby one of their colleagues stands in this House and tells us that he is conflicted because he should not be. No Minister should be conflicted. I believe that the Minister himself is better placed than anyone to tell us whether he considers the role to be conflicted and that is, indeed, what he keeps telling us. It was not only the recent debate on the rezoning for lifelong homes that he commented that he finds it difficult to balance, and that is the word he uses, the role. I cannot speak on the conflict of the Minister for Planning and Environment without mentioning the conflict that he undoubtedly faced when considering the Goose Green planning application and I notice the Minister smiling. He surely would have expected me to mention this. Without doubt, and through no fault of his own, he faced a clear conflict in considering the rights of the applicant to build and the impact upon the environment and our quality of life that those rights would surely have. Notwithstanding the conditions imposed upon the developer, many of us believe that the Minister's role as Planning Minister outweighed his role as Environment Minister to the detriment of our environment and, for many of us, the quality of our way of life. Deputy Le Claire has spoken of the need for a champion of the environment and who can argue against that? I will finish by saying that our quality of life is, and must be, protected and we protect that, I believe, through retaining the quality of our environment. It cannot be championed by a Minister who must balance it with consideration of planning applications and the rights of developers. This is not about logistically separating a department. It is about splitting the dual role of the Minister. Our Island heritage and environment needs protection, it needs preservation and it needs conservation. We have the option today to take the first step towards committing ourselves to protection, preservation and conservation of our environment and even if I am the only Member who speaks in favour of this, apart from Deputy Le Claire, notwithstanding any of the comments made by the Minister about now not supporting the proposition, I am very much a supporter of the environment and I will go with this today.

5.1.3 Deputy C.J. Scott Warren:

I, too, have heard the Minister for Planning and Environment agree that at times he has had a conflict when making decisions and I think that I commend Deputy Le Claire for bringing this to the House today. Having read through all the comments, and I have obviously listened to the Minister for Planning and Environment, I believe we are calling this Ministry by the wrong name at present, that it should be not just Department for the Environment but a Ministry and a Department for the Environment rather than Planning and that within that, and this is quite in line with what the Minister has said this afternoon, there is a big role for an Assistant Minister. I see the Assistant Minister though on the planning side, but certainly it does seem to me, especially with a new Chief Officer, that we, as the Council of Ministers and States Members, have an opportunity to re-examine how the future of Planning operates within the wider context of maintaining a sustainable environment. While I believe Deputy Le Claire's intention of 2 Ministries makes sense in some ways, we are constrained by our 'Troy' rule and the fact that we already know that we need to create another Ministry for Children. Obviously we cannot, sadly, have umpteen Ministries and

probably realistically we would not want umpteen Ministries, but we have to make sure that if we are going to make changes that they are the right changes, and I think this should be examined now, and as soon as possible when there is a new States Assembly, because proposed changes by a new Chief Officer can be brought quickly to this House. I am afraid I do not support the proposition because I do agree with the Minister for Planning and Environment that separating the 2 roles out will mean less working together, but I still believe that a separate person and body is necessary under the Ministry for Environment and I do think that Deputy Le Claire has done us a service today by bringing this proposition.

5.1.4 Senator P.F. Routier:

I think this proposition has come about partly because of some of the decisions that the Minister has made to absent himself from various States decisions and to declare an interest and say there was a bit of a conflict. I think he has brought this on himself to a certain extent so I am not going to support this proposition, but I am going to ask the Minister in future that he will not withdraw from debates in the future. He will have to balance the issues of the environment and balance the issues of the built environment and make that decision and stay in the debates and come to a conclusion and not decide to withdraw. As I say, I am not going to support the proposition, but I challenge the Minister to that.

5.1.5 Deputy R.G. Le Hérisier:

Senator Routier has taken the words out of my own mouth. **[Laughter]** I, like Deputy Mezbourian, and she has put it very well, but unfortunately she cannot be with us again, but I, like her, Sir, was pretty saddened by what happened over the over-55 developments and I told the Minister and his Assistant many times it was the wrong approach. The Assistant Minister was doing an excellent job, but it was not her job, it was the job of the Assistant Minister for Housing. It was not her job to whip up enthusiasm. It was her job to apply the planning rules to that particular situation and I think the suggestion which the Minister has put forward, I am afraid it cannot be sold by being in the House more, as Senator Routier said. It can only be sold by having someone who will fight for the environment because there is a necessary tension, there is often a conflict and the idea it seems is that the Minister is going to push down the resolution of this conflict to the new Chief Officer which is utterly off-beam because the Chief Officer cannot resolve issues, in my view, which ultimately will often be political issues. Do you want to break into the green zone? Do you want to push this particular development and so forth and so on? These are ultimately political issues and although people find the House an absolutely tiresome place to resolve planning decisions, there are times when they will have to be resolved and if there were a strong and independent Environment Minister, they could represent that interest on the floor of the House and they would be prepared to go against the Planning Minister and say: "Look, you have got the Waterfront badly wrong. You are overdeveloping, you are allowing yourself, and this is a hypothetical case, to be driven by developers and so forth and so on and this is my stand and I intend to go and put it forward strongly to the House." I am afraid this idea of somehow smothering the conflict still within the Planning Department and giving it to the poor Chief Officer to resolve, which is what it seems like, is totally wrong. There is still a case and if people are saying: "Oh, we must apply the 'Troy' rule" and then we have decided. We have not decided. We have yet to decide how to handle children's services but I know, gracefully, the Minister for Housing will be gracefully bowing out, not his own politician so there may well be a vacancy there. We should not get hooked on: "Oh, let us shuffle round the Ministers and see if we can create the numbers." Yes, it is just a rumour I have started this afternoon **[Laughter]** but all support would be gratefully received. **[Laughter]** Sir, I think we have to stick by Deputy Le Claire's proposition. I am very saddened that the conversion on the road to Damascus has experienced yet another u-turn and I will be voting for Deputy Le Claire.

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

The built environment and the environment heritage, what is the missing element? The missing element is the community and I am afraid that the element that looks after the community, the other Constables. The Constables, without exception, are champions of heritage and the environment and in protecting their heritage and their communities, they will obviously get involved in the built environment so, in fact, I am not going to support Deputy Le Claire. I am going to vote against this.

5.1.7 Deputy R.C. Duhamel:

Under the comments from the Council of Ministers, I think they have really hit the nail on the head. In the paragraph before the penultimate paragraph, we have: “The notion of planning is a subset of the environment. It is widely understood in other jurisdictions including the U.K. (United Kingdom), Scotland, Wales, Eire, Isle of Man and Guernsey where it is also the convention for Planning to sit within Environment.” I am not particularly persuaded that we need 2 Ministers, separate Ministers, at the moment. However, I think if there was a name change and a focus change and we had a Minister for Environment with subsidiary positions as work for the economic development and harbours and airports where the Assistant Minister has got a specific responsibility in this regard for planning issues, then I think that may well kind of resolve the log jam. That could be done immediately or after the next elections without the requirement for further changes to the States of Jersey Law or anything else. Picking up on the point that was made about the potential extra place, if we do see the demise of the Minister for Housing and end up with trust bodies or non profit making organisations or whatever taking his place, and it would be a shame to see him go as he is part of his Island heritage **[Laughter]** then perhaps a review could be undertaken to see whether or not things have changed to the extent that 2 separate positions might become necessary. So I think, at the moment, I would be in favour of a name change with a focus on environment and a subsidiary Assistant Ministership looking after planning issues or indeed 2 Assistant Ministers, one for Environment and one for Planning and that would do the same thing under the Minister.

5.1.8 Deputy S. Power:

If I were to tell Members the issues that I deal with in the Parish, up in the top 2 are planning issues and environment issues and I do not mean that I deal with that formally, I deal with it informally. I get stopped when I buy my Sunday papers, I get stopped when I am up at Quennevais and people feel strongly and passionately about these 2 departmental areas. At the outset, I will say that I do not agree with splitting the department at this stage, but it is an area that generates a huge amount of interest from the public and sometimes wearing your Parish hat and your Planning hat and any other hat that I wear can be extremely difficult, but it is something that we all have to do. Every one of us has to do some sort of balancing act. We try and do the very best we can so that we do not get conflicted or get ourselves into hot water. But it is an issue, I would say, as a Parish Deputy that has a mixed Parish built environment and countryside, this is an area that causes a genuine amount of concern. Having said that, I heard what Deputy Le Claire said and, at the outset, I say I will not support this proposition, but I did also hear the Minister for Planning and Environment say that he was minded to switch the name of the department from the Planning and Environment Department to the Environment Department, including the natural environment and the built environment. I certainly would have to learn a lot more about that in order to be comfortable with that because I feel that he runs the risk of perhaps occluding the overlap and the roles between those 2 departments. People do understand planning, people do understand a planning application, people do understand a planning refusal or a planning approval or a planning panel or a request for reconsideration. They understand the specific aspects of planning, a set of drawings, an architect, a quantity surveyor, an extension over a kitchen, an extension over a garage. They understand these things, but when you diffuse that into something called the Environment Department, I do not think that is going to work. I do understand the issue and the importance that has to be given to the environment and I do think that in the first 2 years and 9 months of Ministerial government that the

Environment Department has perhaps been perceived as playing second fiddle to the Planning Department and that is something that has to be addressed. Having said all that, I think one of the solutions may be that the Planning and Environment Department stay as it is and that the Minister for Planning and Environment stay as he is, but there may be a role in the rejigging of the Assistant Ministers, and what I mean by that is we have, at the moment, 2 Assistant Ministers in one department, one Assistant Minister in another department and there may be a role in one or 2 particular places. It might apply to Health and it might apply to Planning in another department where we have cross-departmental responsibilities among one or 2 Assistant Ministers. That would mean that perhaps in the Planning and Environment Department there would be an Assistant Minister, but there might be another Assistant Minister who might have some form of responsibility that would give specific responsibility in this area and perhaps other areas that are linked to the environment, linked to agriculture, linked to other areas. I think that may be a possible solution, but I would urge the Minister, at the moment, to not consider, without some serious discussion widely, with renaming the department or rejigging the image of the department. I think the perception is that it is the Planning and Environment Department whether it is the natural environment or the built environment and that move may be perceived as diffusing the edges of both areas' responsibilities. That is all I really have to say. I have a deep interest in this area. My work when I first came into this Assembly on the Environment Panel I still regard a deep affection and that was the designer homes review. I subsequently moved on to the Planning Panel and my work on the Housing Sub Panel so I do think that my areas of **[Interruption]** ... I thank you, Minister. It is always worthy praise from the Minister for Housing when he acknowledges the fact that I have got no talents of any kind in his view **[Laughter]** but he will not mind if I choose to disagree with him. But I do have a strong interest in this area and I would urge the Minister for Planning and Environment to think deeply about remodelling or renaming.

5.1.9 Deputy J.A. Martin:

I will be brief. It is lucky today that Deputy Pitman brought in *Clothier* because we would not be where we are and *Clothier* said 7 departments and one was called Environment which should have had under it, Planning and Environment, Public Services and Housing. We decided we could not do that and we went, and I think it has already been clearly said by Deputy Duhamel, we have a Planning and Environment where if it had been Environment with all these others sitting underneath it, we have so moved on with the big environment issues, but not this House and not this Planning and Environment Department. Everything that goes on in planning, building in the countryside, what the Constables decide, should have the environment top. It does not. **[Approbation]** This is why all the tinkering in the world, if we keep it this way around, as Deputy Power has just said, everyone understands planning, but where is the plan in the bigger picture? The 9 by 5 Island environment of Jersey. It is not in this. The Minister for Planning and Environment has an expert on architecture and everything else. Where is my environmental planning expert? There is not one. It is not the Minister, the Minister for Housing tells me, and it is certainly not the Assistant Minister who just built lots of housing and put green field sites into housing. I have much respect for the Assistant Minister for Planning and I do not see the expert in that person on the environment. I fully, fully would endorse this proposition because we have nothing better. We have put too much emphasis on planning and we ignore the environment even when we do, as Deputy Mezbourian has pointed out, ask people who do have expertise whether these fields or not should be built on. As long as there is someone with a rich enough purse to come along and somebody is going to get something out of it, we roll over. That is not somebody with experience in the environment. We will live to regret some of these decisions we have made under this Planning and Environment Department so I really cannot see other way forward and I will be supporting this proposition.

5.1.10 Deputy P.N. Troy:

Of course before I start, I have to say that I am a developer **[Laughter]** How everyone loves developers, Sir. I think this is a big enough general thing that I am not conflicted in any way **[Laughter]** over whether the department is split, but I think there are issues here in that Deputy Le Claire's proposition at the moment, as it is put, could put 2 Ministers at loggerheads over planning issues. We have, at the moment, a Minister for Planning and Environment who looks at the planning issues, the environmental issues, his department report to him, he has an Assistant Minister who works with him, they work well together in the department and they speak to each other and they work together over the whole thing. Deputy Le Claire's proposition would take that away. You would now move to an adversarial approach between your environmental and your planning section and I do not know whether that is a good thing. Maybe Members think it is, but I think that the department is working well at the present time in the way that it is working. The Minister has very good officers and advisers who put to him and to his Assistant Minister and to the Planning Applications Panel all of the issues around any application, whether it be the built environment or whether it be the environmental issues. I really do think that there is a danger here that you are going to take something that is working well, where you have got a Minister and Assistant Minister working in harmony together and throw the whole thing into disarray. I think it is dangerous and I am worried about the fact that the Minister is now saying: "Well, I am going to react to what Deputy Le Claire is doing and I am going to split the department internally anyway because that might be a good idea, based on what Deputy Le Claire is saying." I think he should really reconsider that very carefully because he does have a system that is working well at the moment and I think to move it into a confrontational stance between himself and Assistant Minister, Members in the department on the environment and Members of the planning side working all against each other, I think that is a very dangerous route to go. I feel that it is the totally wrong thing to do and I would ask him to reconsider his plans. I am not going to say anymore than that because I did get lots of boos of derision when I stood up to speak, but I think it is important. Do not take something which is working well and where there is harmony and put something in which will create discord and not work well.

5.1.11 Senator P.F.C. Ozouf:

I just wanted to respond to Deputy Martin and Deputy Mezbourian. I like Deputy Martin and Deputy Mezbourian very much, but I think Deputy Mezbourian is unfair to scold the Minister for Planning and Environment in relation to his decisions for Goose Green. Perhaps she can be forgiven because I do not think she was in the Assembly when this Assembly passed the rezoning proposition for Goose Green. The Assembly had, in that Island Plan review, which I would say and remind Deputy Martin is the Island Plan which deals with environmental issues, social issues and economic issues and it was this Assembly that was deciding the trade off between those particular issues and so she is wrong. Deputy Mezbourian is wrong to scold the Minister for Planning and Environment about Goose Green. That decision was made in this Assembly, nowhere else. The Minister for Planning and Environment was simply implementing the wishes of this Assembly and Deputy Martin is wrong also to say that there was not an Island environmental plan because that is what the Island Plan is about. I do not also want to criticise Deputy Le Claire because I think that he is well-intentioned, and he also said some nice things about me in his proposition. **[Laughter]** He reminded me of the difficult days of the former Environment and Public Services Committee, but why was the Public Services Committee and the old Planning and Environment Committees put together? They were put together to do away with silos and while it was difficult, I think there is, as a result of that 3 year period, a much more collegiate approach between the old Public Services and Planning and Environment. In fact, Deputy Le Claire is absolutely right when he said that I took environmental matters with me into another department. I think the environment matters perhaps more so than I otherwise would have known if I would not have done that difficult job. Environmental matters should be at the heart of everything we do. There is a trade off between economic matters, social matters and environmental matters and, in fact, creating a separate silo for the environment probably, with respect to Deputy Le Claire, is a backward step. We need to move it forward and we need to put environmental matters in other departments too. I agree with the

suggestion of having an Assistant Minister with the special responsibility for something. We have done that at Economic Development with Deputy Maclean having specific responsibility and Constable Fisher with Financial Services. I think that model, I am pleased to say copied by some other Ministries, has worked. I think we need to build on that in the new system, but there is going to have to be 2 Assistant Ministers in Planning. Maybe they should be shared Assistant Ministers, maybe they should be an Assistant Minister with special responsibility for environment. The Deputy of Trinity could not be the special Assistant Minister for responsibility for environment as well as chairing the Planning Panel. That would need to be changed so we are going to have to have 2 Assistant Ministers for Planning or Environment, if that is what people want to call it. I do not think labels really matter, but if that is what people want to do, and perhaps that Assistant Minister with responsibility for environment should be shared with somebody in the Treasury or the Chief Minister's Department. It may be that that Assistant Minister should be able to get their tentacles into other departments. I think there has got to be a debate about how we deal with cross-cutting responsibilities in the new Assembly, dealing with cross-cutting responsibilities of children, senior citizens, housing, economic matters and that is a debate to be had. How can we harness Assistant Ministers? Well-intentioned I would say to Deputy Le Claire in his motivation, but there is probably a better way of doing it which has been discussed. I am afraid I will not be voting in favour.

5.1.12 The Deputy of St. John:

It was not so long ago that the Minister for Planning and Environment very publicly said that he had too much power.

Senator F.E. Cohen:

Would you allow me to interject? I never said I had too much power. It was incorrectly reported.

The Deputy of St. John:

Thank you for that clarification, Sir. **[Laughter]** Should I rephrase that and say that the media suggested that the Minister had too much power and maybe that is a public perception. I do not believe that, in this particular instance, the particular Minister concerned, in any way, abuses that position and does his job extremely well. Having said that, surely this is a possible way of fixing that conflict, which has been outlined very clearly by Deputy Le Claire. Planning matters are often accused of being politicised and I have sat through many a debate in this Chamber about planning and I have heard many Members saying that we should not be discussing this in this Chamber. We should not politicise planning issues, but by having a Planning Minister you are politicising planning issues. Surely the most important thing is the environment. Maybe Planning should not have a Minister at all because we politicise it by doing so. So I think by Deputy Le Claire's proposition here, that goes some way to achieving that utopia of depoliticising planning issues. We get far too political with planning issues in this Chamber and for the media as a result. We then get accused of some of the things that have been thrown around this Chamber today. Deputy Martin referred to some. I think that is a shame because there are some good decisions made in planning through a lot of consultation, a lot of public input and I think it should be very much a matter for the public and maybe lay people that should be sitting on our Planning Panel rather than politicians. Planning is politicised whether we like it or not and this is a possible way of changing that. If the Minister had agreed in principle that he should split the roles in his department at officer level, I do not quite see why he should object so much to splitting it at political level too. I think Members should give this serious consideration. This is a serious proposition and I think it has serious intentions and I read into it that that serious intention is to depoliticise the planning issue and give much more weight to the environment issue because it is the environment that the public are more interested in. They are only interested in planning when it affects them, affects their planning application or them as a near neighbour. What the public generally are interested in is protecting the environment and that should be the main thing that the Environment and Planning Department

is looking at and by having a Planning Minister, that muddies the waters. It politicises it. I think Deputy Le Claire's proposition here has legs, it should be seriously considered and I, unless somebody can convince me otherwise, will be voting for it.

5.1.13 Deputy I.J. Gorst:

I am pleased to be able to follow the last 2 speakers. If I might just put the opposing view to the Deputy of St. John, I appreciate what he is saying but, in actual fact, I think that myself and certainly my parishioners believe that the politicians' involvement in the planning process particularly the Planning Panel gives public accountability to that process and I think we have particularly seen that. I do not have any experience of previous committees, but I do of the current panel and I think I can speak on behalf of the majority of my parishioners when I say that they are pleased with the way that the current panel uses its political powers and does bring some accountability to the whole political process and understands, shall we say, and takes on board the layman's point of view when it comes to planning applications. I would put the opposing view there. I am also pleased to be able to follow Senator Ozouf. I, however, do take issue with perhaps one of his terminology and that was he said that, in the past, he felt that the Environment Department and the Planning Department had worked perhaps into a silo mentality and that is never good and we must always aim for a joined up government and to avoid silo mentalities, but I do believe that there ought to be some separation between the 2 activities. So, rather than saying that we are aiming for a silo mentality, we should be aiming for a separation. We need to ensure, and I am not sure that we are there now, and I am not sure that the Minister's proposal takes us to that point, but we need to ensure that there is a balance of political power between these 2 areas and while the Deputy's proposition calls for a Minister for Planning and a Minister for Environment, I am not sure that that is a suitable approach for the reasons outlined in the Council of Ministers' comments in that other jurisdictions those 2 areas sit together, but I do believe that there is a greater role that could be played by an Assistant Minister for the environment. The only drawback to that is the current power is vested in the Minister. The Minister is the corporation itself and the Assistant Minister ultimately is responsible to the Minister or the Minister is ultimately responsible for decisions made. So, I believe and, Sir, it seems that in the last 6 months everything that politicians say are construed as being electioneering or canvassing for votes, but I do believe that the next Chief Minister should review the role of the Assistant Minister along the lines that Senator Ozouf outlined, that we should have an Assistant Minister perhaps for the environment or perhaps for planning and a Minister for the Environment. We should have Assistant Ministers for the elderly, the disabled and for youth and for children. There are a multitude of areas where that could work, but if we are to go down that road, it is vital that those Assistant Ministers have some power, not necessarily that they sit on the Council of Ministers. I do not think that that is necessary but they are able to act, they are able to speak and they are able to come to this Assembly and carry authority for, at the end of the day, it is in this Assembly that the tension between Planning and Environment must be discussed and must be resolved. So, while I would, on the one hand, like to support this proposition, I am not sure that it is the separation of Ministries that is required, but it is the whole area of the role of the Assistant Minister, the power the Assistant Minister must have, but ultimately the conflict between Planning and Environment should be resolved in this place and there should be a political representative to help resolve those issues for this Assembly. It is with regret that I will not be supporting it, but I do believe firmly that more action must be taken and I hope that the Minister is obviously not up for election as a Senator this time so perhaps he will be Minister for Planning and Environment again, but he will give an undertaking that he will go forward along the lines that I have just outlined and anyone that is going to be standing for Chief Minister or become Chief Minister, Sir, perhaps they will also take note of what I have said this afternoon.

5.1.14 Senator L. Norman:

Just briefly, the comments of the Council of Ministers on this proposition I find quite sensible. What they say is there is a tension between development pressures and protection of the environment and they point out, quite rightly, those tensions are inevitable and, quite honestly, they will not go away no matter how many Ministries we create. The tensions are, in many ways, healthy because they create debate. When applications are considered and determined by the panel or indeed the Minister, many things are taken into account. They take into account the quality of the architecture, the requirements of the applicant, the impact on the neighbours and, of course, very importantly, the environmental impact of any particular development application. Now, what concerns me, if responsibility for the environment is removed from the Minister for Planning and the Environment, the Planning Minister and his panel are still going to have to determine the applications, but then the Planning Minister is no longer responsible for environmental issues and environmental issues will become less relevant when planning and development applications are considered. That is likely to be to the detriment of the environment and, on that basis, I cannot see this proposition, this division of responsibilities, working in the interests of the environment, more likely to be exactly the opposite. Therefore, I cannot support it.

5.1.15 Senator J.L. Perchard:

Just a brief comment: Ministerial government, as we know, is only 3 years and it is sought by the proposer of this proposition, and others, it must be said, that the Planning and Environment Department responsibilities are conflicting and unmanageable. This may be true. The Minister has given his most recent of opinions on this subject, but it is a fact, Sir, that this may also be true of other Ministries and departmental functions. I suggest that it is not only the functions of Planning and Environment that need a review, but the whole Ministerial and departmental functions would benefit from a review. For example, do we, on an ongoing basis, need a dedicated Housing Ministry? Should culture not be part of Economic Development? **[Laughter]**. Sir, while I have some sympathy for this proposition, I will not be supporting it as I consider it piecemeal, on the hoof, reform. If this proposition fails, I commit to bringing a proposition to the new House, the new Assembly, requesting that a review of the functions and responsibilities of all departments, Ministers and their Assistants, be undertaken with recommendations being brought back to this House for approval by the new Assembly.

5.1.16 The Deputy of Trinity:

While I congratulate the Deputy on bringing this proposition, splitting Planning and Environment into 2 will not be the answer. I am pleased that we are having this debate because everyone is very much supporting the environment and so I hope when, in future, environmental issues come to this Assembly, everyone will give it its full support. The Deputy, quite rightly, highlights that there are issues and sometimes Planning and Environment are at loggerheads with each other and it has been mentioned, the rezoning debate. Environment versus the need for building lifelong homes, but it is more beneficial, initially, to have that argument, discussion, making sure that there are policies in place within the department so when the whole picture is brought here to the States Assembly for discussion, we have the whole picture. The Minister has a responsibility to protect this environment and the demands of the planning process to be evaluated under one Ministry and the Minister can then be based on having the full information. There are always areas that can be improved, but to dividing that, the problem will just not go away. The issues will always be there and, as I said before, if you are within 2 Ministries, then 2 Ministries will just be at loggerheads with each other where so you can have it in one department and come forward with this right decision. One area that we can work very well together in Environment and Planning is in the Island Plan review taking place at present and it is looking over all the issues on waste, coastal areas, Ramsar, as well as the built environment and other issues and this shows the importance, I think, of having one Ministry to look at that area so when that Island Plan comes here for the review, environment issues will be here on the list of priorities. Planning for me has been a very steep learning curve as well as environmental issues. Before I was elected I knew nothing about

planning and I hope I have learnt an awful lot over the last ... **[Laughter]** I hope I have. I think now with the new planning process, Environment's comments are vital in any decisions that we make and it is the place to do it and we can do it. I urge the House to vote against this proposition, however well-intentioned it has been.

5.1.17 Deputy G.W.J. de Faye:

The newest Members of this Assembly have been taking their seats for just over 2 and a half years. I, myself, now are looking at 5 and a half years' of experience. There are other Members with much longer records, if I can put it that way, and what have we learnt? What have we learnt? Well, we have learnt some very fine words. Someone needs to champion the environment. Not quite sure who that is. Is that the Planning Minister or is the Environment Minister? No, Members of the Assembly, it is you. All of us have to champion the environment and I listen with increasing despair to the pontification and navel gazing that has been going on over the last hour or so about how we might take one or other approach to aspects of our bureaucracy. What a lot of tosh it has been. I am afraid to say, at the end of the day, this House is responsible for the policies. It is the Ministers who execute those policies. That means that if it is a planning application that goes through the process, someone, quite possibly the Minister, has to take the final decision, but oh, no we are suggesting a new method because there will now be possibly an Environment Minister who thinks that the Planning Minister's decision is not appropriate to the environment. So, where does this leave us? The Environment Minister says no, the Planning Minister says yes. This, I regret to say, is an irreconcilable position and clearly must be entirely the wrong way to resolve this. Now, I utterly applaud the current Planning Minister's skilful techniques in delegating aspects of his decision making to, for example, world renown architects who can advise the Minister on style, **[Approbation]** architectural aspects, Corinthian columns, no doubt art deco, art nouveau, et cetera and an interesting educational experience for us all it has been, but at the end of the day, it will be the Planning Minister who has to take the decision and he or she must weigh up the environmental concerns. I am afraid we are spending far too much time ducking our responsibilities. We want a Minister for this, we will have a Minister for old people, we will have a Minister for working people, we will have Ministers to cover every conceivable subject just so the Minister can get on with it and we do not have to worry about it. I am afraid that is a hopeless approach. The fact is that we must all worry about it. It is for the States to determine the policies and, in this particular case, determine wisely the environmental policies that balance against the planning policies. I think we are all familiar with what we are talking about. It is the Island Plan. That is why we do not need 2 Ministers. We have the Island Plan where, in enormous detail, planning issues are carefully balance against environmental issues and if we have got the Island Plan wrong, then we need to amend the policies of the Island Plan to bias them either more in favour of the environment or more in favour of planning and development, but we simply cannot turn around and leave it to Ministers to try and veto each other's decision because we would simply get nowhere. Where would we be? We would be with the Ministers saying we cannot agree so we have had to come to bring it back to the States to decide. So, Members, if you really wish to all belong to the Planning Committee, vote in favour of this proposition because that is where all planning decisions will probably end up, in this House. No, the correct way is for the States to determine the policies and to let, please, a relatively small number of Ministers, ably assisted by Assistant Ministers, to execute those policies. If you do not like what the Minister is doing, change the Minister. If the Minister is clearly too biased towards the developer, too bias towards ghastly and ugly constructions because it was the wrong world renown architect or too bias perhaps in your view, indeed Deputy Le Hérisier to u.P.V.C. (Unplasticised Poly Vinyl Chloride) windows, for and against, or in the unlikely event you consider a Minister too biased towards the environment, just change the Minister. Thus I have to remind you, although it happened only once, so it is just a little brief piece of history that many of you will have forgotten, that is why there was a debate for the role of Minister for Transport and Technical Services so that the 2 candidates could spend 10 minutes telling you pretty much in as much detail as they could in the 10 minutes available what

they were going to do within the policy brief set before them. That is why Ministers are obliged to put their position forward in an election and indeed Privileges and Procedures have been so perspicacious as to now make it a compulsory event even if there is no election. That is what they wish to do. Why? Because it is important to see how a Minister will operate within the policies but please, and please, Senator Perchard, do not, do not go forward with this massive review of everything. I cannot think of any worse to kick off a new run for an excited new States in January than to contemplate deconstructing the entire bureaucracy and putting it back together again like some ghastly Lego nightmare. Please do not go there. **[Laughter]** But Members I think we need to get a view, and a clearer view, on how things work within our Government and this will not work.

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

I will be brief. This was always going to be a very tough one but we are here to make tough decisions, but the very title itself, Planning and Environment, is like driving a Ferrari with the handbrake on. There has to be some compromise. I was very impressed last year with Deputy Mezbourian who was holding a radio interview at Bel Royal while trees were literally falling around her so I think that shows her green credentials but, as it has been said, Jersey is a small Island 9 by 5 and, in my experience, the people of Jersey want less bureaucracy, not more bureaucracy. I congratulate Deputy Le Claire for bringing this forward, but I am afraid I am just slightly edging with going with the status quo. I am afraid the Minister has 2 hats and he is going to have to wear them for some time to come.

5.1.19 Senator S. Syvret:

I will certainly be supporting this proposition. It does not seem to me that Members of this Assembly, no matter the kind of debate we have, often have, as we had for example earlier today, but we have a problem with public administration in Jersey. A problem essentially of regulatory failure. We, as a single level, small scale administration, appear to be structurally incapable of regulating and policing ourselves. Now, there may be no perfect solution to that problem, but we ought to at least recognise it and accept that we should do what we can within the bounds of the practical to remove those administrative conflicts of interest which bedevil our system. It was the same at Health and Social Services. Health and Social Services runs nursing homes and the department also is responsible for regulating and policing them. It is a complete conflict of interest just as there are similar conflicts in any number of other departments. We, as an administration, have made no real or effective attempts to get to grips with that issue. In fact, the whole fundamental problem of administrative conflicts of interests was not addressed by the *Clothier Report*. They had the opportunity to which was one of the main things I drew to their attention when speaking with them, but they took no notice of it whatsoever. The fact is in Jersey we have only one level of government and effectively when you have a Minister for Planning and Environment, that Minister - assuming the Assembly has confidence in him - will effectively be both the central government instigator of the overarching environmental and planning policies and also the actual development regulator as well. It is an intrinsic conflict of interests. While, in all practicality, a small Island like Jersey probably cannot avoid and completely remove such conflicts of interests from within its administration, there are a few glaring issues where we do need to make that distinction and we do need a separation between the planning and the environment functions. We all know through experience that really when the chips are down in Jersey, the environment always loses. The environment always loses ultimately to the development. That is what always happens and what we need, therefore, is a Minister who can be a champion of environmental issues. Now, this is another concept I just want to finish with which will obviously not go down well with the Council of Ministers, but they very much like this doctrine of being team players, teamwork. Well, in an administration the size of Jersey, it is, in fact, not necessarily in the public good for all of the executive departments to ultimately always agree with each other and not to make life difficult for each other and not to have public disagreements, political disagreements within this

Assembly. There are inevitably conflicts, tensions, balances that need to be struck and maybe the occasional clash between Ministers is just what is needed to draw those tensions out into open view and perhaps ultimately have them resolved by this Assembly, but what we cannot carry on doing is having such clear administrative conflict of interest and any kind of fundamental disagreements about whether the environment should prevail over planning or vice versa ironed out behind the closed doors at a Council of Ministers meeting. We need a little more tension and a few clearer divisions of responsibility within our public administration and I will be supporting the proposition.

5.1.20 Deputy J.B. Fox:

Being on the Planning and Environment Committee at the time of Senator Nigel Quérée and Alastair Layzell, I can assure you that they both rigorously supported the environment as well as their responsibilities for planning at the same time and I have got no doubt to suggest that the present postholders do exactly the same. We are, at the end of the day, responsible in the States as it has already been said for policies and if the policies are not providing the right balance, then it is us that need to address the issues either by a backbencher or through the department's Ministries, et cetera. I cannot support this one because I see too many conflicts and it is one of those areas that you have got to do everything in a co-ordinated form whether you are looking at a small development or a small principle within the countryside of building, shall we say, a bungalow which could impact on bungalows on every corner all the way through the countryside as was one case that was put through the States here, or whether it be to looking to return the huge headland back to nature which again are important areas. They both require an environmental role and they both require a planning role and working together provides the solution. The headland at St. Ouen that was brought back by the States from the old Belle Étoile I think it was called, is one such example of where both sides work together. It is a thankless task. There is always somebody that wants the opposite and then can change their mind when it is something that might affect them in their own building desires or whatever, but it is something that is part of the responsibilities of a Minister and the Assistant Minister and all the other voluntary organisations, and let us not forget them, that play their part involved in looking after our Island. The last Island Plan, which is a living document, increased the green zones and made it much more difficult for developers, planning or anybody else to infringe on those zones, but they did loosen up other areas to allow additional development in the interests of what the Island's needs were at that particular time. The Island Plan, as I say, is a living document. It is there to enable it to be adjusted as and when appropriate. It is recognised that there is a need for adjustments which are going through the process at the moment and through its review. I think this is a much more appropriate area of looking that if we need to strengthen our environmental credentials, then this is one of the areas to approach it. The other is through the States of the House, but splitting up the responsibilities in a name only I do not consider it is going to achieve it.

The Greffier of the States (in the Chair):

I will call on Deputy Le Claire to reply. Please be brief.

5.1.21 Deputy P.V.F. Le Claire:

I will be finished by 5.25 p.m. If I take a minute to throw away some of my response, then that might save us 10 minutes. First of all, I would like to thank very much all speakers in the debate today because I think, for once, we had a very productive debate that was not only independent in people's application, but also productive in what they suggested could be improved and what they disagreed with. So, there is a lot in there which I am sure Senator Cohen and the Chief Officer can go away and chew over with the Assistant Minister to think about for the next few months. One of the things I think that I can do is rather than respond to each individual Member, as is sometimes customary, is thank some Members for supporting me that have spoken in support of this and address a couple of the points. There is this notion that everything elsewhere is done in Planning and Environment Departments so we should not be different. As I said, I became ill at the end of

the last session. I was going in and out of consciousness and I thought it was some of the speeches, but I ended up quite ill and I was not able to do the work that I was able to, but I did manage to do a little bit of work. Just a cursory look at what other places gave me evidence that not everybody puts these issues in the same portfolio. You can look to places such as Scotland and the United States of America and Canada and other places where they have environmental protection agencies that offer federal oversight in relation to the environment. But you can also look more closely at places like Oxfordshire and Hertfordshire, where hurricanes hardly ever happen. Oxfordshire County Council has responsibility for many key local services and employs over 20,000 people to deliver them. Each year the Council manages £845 million of public money in the provision of the services on behalf of Oxfordshire's 615,000 people and the way that they govern their jurisdiction is to have departments and council members that look after different areas and those areas are not as we have. They are split into environment agencies and planning and regulation committees, separate entities. In Hertfordshire, from the internet, planning, external relations and waste are under the strategic planning responsibilities of one councillor and the countryside management and rural affairs are under the responsibilities of another. So, I do not believe just from a cursory investigation that the notion that everything should be under one roof is necessarily correct, but what I do agree with, having discussed this with the Chief Officer, is there is a need to bring the individuals under one roof to work together in one location and perhaps, who knows, even the Girls' College or somewhere else could be a new place for these people to come together under one roof because having them separated, as they currently are, does not make them very functional in my view. I believe that there is an opportunity for Jersey to go forward with us all taking more regard for the environment by participating in the Island Plan review, but it really does not do much good to anyone if we only think that by altering that document we have done our bit, by having looking at the strategic policies of the States we have covered the bases because putting anything or everything into that document will not do any good unless those policies are regulated and it is exactly what I was going to say in my summing up that was pretty much covered by Senator Syvret. It is the regulation of the policies and the oversight of the incidents of environment whether they be planning, as in building homes, or whether they be water pollution issues or extensions or land reclamation. If people have read the *J.E.P. (Jersey Evening Post)* they may have seen some issues that ex Senator Qu  r  e and ex Deputy Layzell were faced with in relation to arguing about what was best for the Waterfront in connection with what was being thought through by the Waterfront Enterprise Board and the Harbours and Airport Department. There are some issues about land reclamation. Land reclamation does feature in the Island review. There are issues about the Ramsar site and there are issues about making policies stronger but policies, in my view, are going to be no good if they are separated and put into all the different departments in small ways and then not have anybody bringing them all together and championing those issues. I honestly do not believe I have been left with enough time to argue my points through to the satisfaction of Members either way. Obviously given the hour, they would rather proceed to the vote. I would like, though, to say that while I believe there is a deficiency in departments polluting and not being picked up and practices occurring that are not being guarded against, there is clear evidence from this debate that the Minister is willing to go forward and consider these issues and I thank him for that. I also would like, if other Members have any time to discuss these things outside of the Chamber and hear what I have to say about these issues, and I do apologise I did not manage to put in as much work speaking to people before, but I would certainly like to press these arguments. I think we can do better if we have somebody that is responsible for the environment. At the moment I do not believe that we do have somebody that is independently responsible for the environment, and I do not necessarily believe that that is going to be a confrontational thing. I think that sometimes that can be a helpful thing. If the Planning Minister is faced with an unwanted project and he is being told by the Law Officers that he must approve this within a set period of time or they will revert back to their original plan, maybe one of those conditions that can be written in, if it is not already, that it must meet the satisfaction of the Member in charge of the environment. I particularly liked, in finishing, the aspect put forward by Deputy Gorst of St.

Clement. It certainly is an area where we can take responsibilities from Assistant Ministers and pass them over. That is what they do in the United States of America where they have improved their environment significantly over the last few years and in introducing an environmental protection agency there, they have given that Member in charge of that department multiple millions, hundreds of thousands of people working for them. They have given that person a Cabinet-type status in respect of their portfolio. So, individual places, just as with Parishes, have planning concerns, but there would be, as the Constable of St. Martin has pointed out, an overarching federal or Island-wide environmental policy and environmental designated politician that could champion those and relate to those issues. I make the proposition and ask for the appel.

The Greffier of the States (in the Chair):

Very well. The appel has been called for. The proposition has been rejected: 14 votes were cast in favour, 34 votes against.

POUR: 14	CONTRE: 34	ABSTAIN: 0
Senator S. Syvret	Senator L. Norman	
Connétable of St. Mary	Senator F.H. Walker	
Connétable of St. Clement	Senator W. Kinnard	
Connétable of St. Helier	Senator T.A. Le Sueur	
Deputy R.C. Duhamel (S)	Senator P.F. Routier	
Deputy A. Breckon (S)	Senator M.E. Vibert	
Deputy J.J. Huet (H)	Senator P.F.C. Ozouf	
Deputy of St. Martin	Senator T.J. Le Main	
Deputy R.G. Le Hérisssier (S)	Senator B.E. Shenton	
Deputy J.A. Martin (H)	Senator F.E. Cohen	
Deputy P.V.F. Le Claire (H)	Senator J.L. Perchard	
Deputy D.W. Mezbourian (L)	Connétable of St. Ouen	
Deputy S. Pitman (H)	Connétable of St. Peter	
Deputy of St. John	Connétable of Trinity	
Senator S. Syvret	Connétable of St. Lawrence	
	Connétable of Grouville	
	Connétable of St. Brelade	
	Connétable of St. Martin	
	Connétable of St. John	
	Connétable of St. Saviour	
	Deputy G.C.L. Baudains (C)	
	Deputy P.N. Troy (B)	
	Deputy C.J. Scott Warren (S)	
	Deputy J.B. Fox (H)	
	Deputy S.C. Ferguson (B)	
	Deputy of St. Ouen	
	Deputy J.A. Hilton (H)	
	Deputy G.W.J. de Faye (H)	
	Deputy of Trinity	
	Deputy S.S.P.A. Power (B)	
	Deputy A.J.D. Maclean (H)	
	Deputy K.C. Lewis (S)	
	Deputy I.J. Gorst (C)	
	Deputy of St. Mary	

ADJOURNMENT

Senator S. Syvret:

I propose the adjournment, Sir.

The Greffier of the States (in the Chair):

Yes, Senator. Just 2 matters to raise with Members before the States adjourn, there were 2 further propositions lodged this afternoon P.144/2008 Draft Income Support (Special Payments) (Cold Weather Payments) (Amendment) (Jersey) Regulations in the name of the Minister for Social Security and the Draft States of Jersey (Powers, Privileges and Immunities) (Scrutiny Panels P.A.C. and P.P.C.) (Amendment) (Jersey) Regulations P.145/2008 in the name of the Privileges and Procedures Committee. The other matter is, and I see Deputy Le Fondré on his feet, just to remind Members that the Assembly agreed this morning that the business tomorrow morning will start with the proposition of the Deputy of Grouville on the Goods and Services Tax Exemptions P.103/2008. I understand there was a slight misunderstanding this morning in which it was suggested that the proposition from Deputy Le Fondré could be taken tomorrow but that proposition has only been lodged for one week and cannot be taken until 16th September. The Assembly stands adjourned until 9.30 a.m. tomorrow morning.