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of the
BERMUDA SENATE
OFFICIAL HANSARD REPORT**

29 July 2019

*Sitting number 20 of the 2018/19 Session
(pages 609–648)*

**Sen. The Hon. Joan E. Dillas-Wright, MBE, JP
President**

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BERMUDA SENATE**OFFICIAL HANSARD REPORT****29 JULY 2019****10:00 AM***Sitting Number 20 of the 2018/19 Session*

[Sen. the Hon. Joan E. Dillas-Wright, President, presiding]

The President: Good morning, Senators.
The Senate is in session; shall we pray?

PRAYERS

[Prayers read by Sen. the Hon. Joan E. Dillas-Wright, President]

CONFIRMATION OF MINUTES*[Deferred]*

The President: The Minutes of the 24th of July 2019.

Sen. James S. Jardine: Madam President.

The President: Senator Jardine, you have the floor.

Sen. James S. Jardine: Madam President, I move that consideration of the Minutes of the meeting of Wednesday, the 24th of July 2019, be deferred.

The President: Is there any objection to that motion?
No objection. The Minutes are deferred.

MESSAGES

The Clerk: No messages, Madam President.

The President: Thank you, Clerk.

REPORTS OF COMMITTEES

The President: There are none.

ANNOUNCEMENTS

The President: There are none.

NOTICES OF MOTION

The President: The first motion is the Pensions (War Service) Order 2019.
Senator Campbell, you have the floor.

PENSIONS (WAR SERVICE) ORDER 2019

Sen. Vance Campbell: Madam President, I hereby present for the consideration of Senate the draft Order entitled the Pensions (War Service) Order 2019, proposed to be made by the Minister responsible for Defence under the provisions of section 16A of the Pensions and Gratuities (War Service) Act 1947. And I give notice that at a later point in the meeting I will move that the said draft Order be approved.

The President: Is there any objection to that motion?
No objection. Thank you, Senator Campbell.
The second one is the Money Service Business Order 2019. And that is yours, as well.

Sen. Vance Campbell: That is right, Madam President.

The President: You have the floor, Senator Campbell.

MONEY SERVICE BUSINESS ORDER 2019

Sen. Vance Campbell: Madam President, I hereby present for the consideration of Senate the draft Order entitled the Money Service Business Order 2019, proposed to be made by the Minister of Finance under the provisions of section 11(7) of the Money Service Business Act 2016. And I give notice that at a later point in the meeting I will move that the said draft Order be approved.

The President: Is there any objection to that motion?
No objection.
Thank you, Senator Campbell.

Sen. Vance Campbell: Thank you, Madam President.

PETITIONS

The President: We have one petition, the Stenprop Limited. Senator Campbell, that is yours again.

Sen. Vance Campbell: That is correct, Madam President.

The President: You have the floor.

STENPROP LIMITED ACT 2019

Sen. Vance Campbell: Madam President, I hereby present the following petition: The Petition of Stenprop Limited, a company incorporated on the 26th of October 2012 in Bermuda, pursuant to provisions of the Companies Act 1981, requesting the enactment of provisions to enable Stenprop Limited to discontinue out of Bermuda, as more particularly set out in the draft Private Bill entitled Stenprop Limited Act 2019, which accompanies the petition.

Madam President, I move that the said petition be referred to the Parliamentary Joint Select Committee on Private Bills for consideration and report.

The President: Is there any objection to that motion?

No objection. It will be [referred] to the Private Bills Committee.

Thank you, Senator Campbell.

Sen. Vance Campbell: Thank you, Madam President.

STATEMENTS

The President: We have a Statement on the Law Reform Commission.

Senator Kathy Lynn Simmons, Attorney General and Government Leader, you have the floor.

Sen. the Hon. Kathy Lynn Simmons: Good morning, and thank you, Madam President.

The President: Good morning.

LAW REFORM COMMISSION MEMBERS APPOINTED

Sen. the Hon. Kathy Lynn Simmons: Madam President, since 1968, Bermuda has had an ad hoc Law Reform Committee appointed by the Attorney General, which was initially a Cabinet sub-committee. However, in 2009 the Progressive Labour Party Government acknowledged the need to establish a statutory law reform commission to engage in continuing and systematic law reform.

Madam President, in advancing the establishment of a law reform commission, Commonwealth best practice suggested that the process of law reform is most effectively led by a permanent body with a clearly defined role, whose existence and independence have statutory support. A review of Commonwealth practice carried out during the development of the Law Reform Commission legislation in 2009 indicated that a wide range of Commonwealth countries, large and small, developed and developing, had law reform agencies with the following broad characteristics:

- they were established by statute;

- they had promulgated mission statements asserting their independence of government and commitment to secure input from the lay public;
- they had websites and/or webpages to facilitate public outreach; and
- they were members of the Commonwealth Association of Law Reform Agencies.

While the position in all British Overseas Territories was unclear, the British Virgin Islands [BVI], the Caymans and Jersey, which were less constitutionally developed than Bermuda, had all established law reform agencies on that basis. It was unarguably clear that Bermuda lagged behind international best practice previously in establishing an independent statutory law reform agency. Ultimately, Madam President, Bermuda adopted legislation in the form of the Law Reform Commission Act 2009, which reflected the best provisions of both the BVI and the Cayman Islands legislation, and made provision for the establishment of an independent law reform commission. The Law Reform Commission Act 2009 [the Act] came into operation on February 4th, 2011.

Madam President, as provided for under the Act, the commission consists of a chairman and between four and seven commissioners who, in the opinion of the Governor, are suitable for appointment by reason of their qualifications, training and experience. The commissioners are appointed by the Governor, having been nominated for appointment by at least two of the following: namely, the Attorney General, the Chief Justice and the President of the Bar Council.

Madam President, I am pleased to inform Senators that, on nomination of the Chief Justice and myself, the Governor has appointed as Chairman of the Law Reform Commission senior attorney, Mr. Delroy Duncan. Five commissioners have been appointed: former Attorneys General, the Honourable Michael Scott, MP, and Mr. Mark Pettingill; and lawyers, Mr. Rod Attride-Stirling, Ms. Kim Wilkerson and Ms. Jacqueline Maclellan. All appointees bring a wealth of experience and commitment to advancing the much-needed reform of Bermuda's laws.

Madam President, the functions of the commission are to study and keep under review the laws of Bermuda, with a view to their systematic development and reform. Particular functions of the commission as prescribed under section 6 of the Act include:

- the development of the law with the aim of making it more responsive to the changing needs of Bermudian society;
- the adoption of new or more effective methods for the administration of the law and the dispensation of justice;
- ensuring that the law of Bermuda is in conformity with the Bermuda Constitution and with international treaty obligations; and

- making recommendations to the Minister for the elimination of anomalies in the law, the repeal of obsolete and unnecessary Acts or provisions of an Act, and the simplification and modernisation of the law.

Madam President, in the performance of its functions, the commission may:

- review and consider any proposals for the reform of the law, which may be referred to it by any person or authority;
- initiate and carry out, or direct the initiation and carrying out of, studies and research necessary for the improvement and modernisation of the law;
- prepare and submit to the Minister, from time to time, a programme for the study and examination of any branch or area of the law, with a view to making recommendations for its improvement, modernisation and reform;
- undertake, pursuant to any such recommendations approved by the Minister, the formulation and preparation of draft legislation;
- provide, at the instance of any Ministry, department or agency of the Government of Bermuda, proposals for reform or amendment of any branch or area of the law; and
- appoint or empanel committees, whether from among the members of the commission including the chairman, or from among persons outside the commission, or both, to study and make recommendations to the commission on any aspect of the law referred to it by the commission.

Madam President, the staff of the commission will consist of a public officer who will be the director of the commission and such public officers as are necessary to carry out the work of the commission. The director is responsible for the administration of the commission and performs functions as assigned by the commission. In addition, a Parliamentary Counsel will be assigned to assist the commission and government departments with the studies and research necessary to make recommendations to the Minister for the improvement, modernisation and reform of the law. The preparation of draft legislation on behalf of the commission will also be the responsibility of the Parliamentary Counsel responsible for law reform.

In addition, Madam President, the Act makes provision for the Minister to engage consultants and experts, who will be paid such remuneration as the Minister approves, to assist the commission in the performance of its functions. The expenses of the commission will be met out of funds to be appropriated annually by the Legislature. It is intended to use existing resources to support the commission during this initial stage. During the remainder of this fiscal year, the expenses of the commission will be moni-

tored and assessed to determine the level of funding to be appropriated during the next budget.

Madam President, the commission is required to submit a report to the Minister on the results of any study it undertakes or directs. The report must include its recommendations and may even include draft legislation. Further to this report, Madam President, by April 1st of each year, the Act requires the commission to prepare and submit to the Minister a report containing a summary of its activities for the preceding year. In addition to any information the commission considers to be appropriate, the report must include any proposals for the reform of the law that have either been made by the commission or referred to it by any person or authority. The report must indicate which proposals are being worked on by the commission, a timetable for completion, as well details of any proposals that have been rejected as being unsuitable for study and the reasons for rejection. Finally, Madam President, the Minister must cause the report to be laid before both Houses of the Legislature.

Madam President, in closing, this Government acknowledges that the need for comprehensive and systemic reform of Bermuda's laws is as urgent today as it was in 2009 when a formalised law reform body was conceived. Therefore, I am pleased today to inform Senators and members of the public that we are advancing this initiative. Over the next several weeks, the contact information for the commission and how persons can make submissions will be provided.

I would like to take this opportunity, Madam President, to thank the chairman and the commissioners for their willingness to serve in these very important roles. I have no doubt that their excellent qualifications, experience and commitment to law reform will advance our collective best interests.

Thank you, Madam President.

The President: Thank you, Kathy Lynn Simmons, Attorney General and Government Leader in the Senate.

INTRODUCTION OF BILLS

The President: There are none.

FIRST READING OF PUBLIC BILLS

**CORPORATE SERVICE PROVIDER BUSINESS
AMENDMENT ACT 2019**

**TRUSTS (REGULATION OF TRUST BUSINESS)
AMENDMENT ACT 2019**

INSURANCE AMENDMENT ACT 2019

**CHARTERED PROFESSIONAL ACCOUNTANTS
AMENDMENT ACT 2019**

The President: The following public Bills have been received from the Honourable House of Assembly and are read for the first time. Their titles are, respectively, the Corporate Service Provider Business Amendment Act 2019; Trusts (Regulation of Trust Business) Amendment Act 2019; Insurance Amendment Act 2019; and the Chartered Professional Accountants Amendment Act 2019. And these Bills will be taken up in the Orders of the Day.

FIRST READING OF PRIVATE BILLS

The President: There are none.

QUESTION PERIOD

The President: Senators, does any Senator want to ask any questions on the Ministerial Statement that has been read by the Attorney General, that you have just received, on the Law Reform Commission?

No one wants to raise questions. Thank you.

ORDERS OF THE DAY

The President: The first Order of the Day is the second reading of the Public Service Superannuation Amendment Act.

Senator Kathy Lynn Simmons, Attorney General. Oh, I beg your pardon . . . Senator Campbell. I do beg your pardon.

Sen. Vance Campbell: Thank you, Madam President.

The President: You have the floor. This is your Bill.

Sen. Vance Campbell: Madam President, I move that the Bill entitled the Public Service Superannuation Amendment Act 2019 be now read a second time.

The President: Is there any objection to that motion?

No objection.

Carry on, Senator Campbell.

BILL

SECOND READING

PUBLIC SERVICE SUPERANNUATION AMENDMENT ACT 2019

Sen. Vance Campbell: Thank you, Madam President.

Madam President, Government wishes the Senate now to give consideration to the Bill entitled the [Public Service Superannuation Amendment Act 2019](#). The Bill seeks to increase the age of compulsory retirement on a voluntary basis from 65 to 68 years for certain public officers, not including police, fire and prison officers; members of the Royal Bermuda Regi-

ment; and teachers, and to make related amendments.

Madam President, Senators are aware that Bermuda, like most of the developed world, is faced with the challenges associated with the growth of an ageing population. The result of the projected population for the period 2017 to 2067 (50 years) illustrates that the number of working-age persons 20 to 64 are expected to decline from 40,099 to 25,296, a decrease of 14,803, or 37 per cent. This fall in the number of working age [persons] is due to the lower birth rate experienced in recent years and the projected continuation of a low birth rate.

The numbers of persons over the current pension age, 65, are expected to increase from 11,080 to 16,168, an increase of 5,106, or 46 per cent. The projected ratio of the number of working age to the number of over-pension age, the pensioner support ratio, is projected to fall from 3:6 to about 1:6. Madam President, this phenomenon is not too dissimilar with what is being experienced in other parts of the developed world. Madam President, to address what is clearly one of the most important demographic issues of the 21st century, it is important that governments prepare early.

To this end, Senators will recall that in the 2018 Speech from the Throne, the Government undertook that, "the Legislature will be invited to discuss options for such revisions to the age of mandatory retirement from the Public Service, which will preserve the right to retire at sixty-five but permit a post holder to work beyond that age without the requirement for permission to do so." Madam President, this was a promise made in the Speech from the Throne, and it is a promise that has been kept.

Madam President, in the lead-up to the tabling of this legislation, the Premier, the Honourable David E. Burt, JP, MP, in keeping with the promise to invite the Legislature to discuss options for such revisions to the age of mandatory retirement from the public service, tabled a Motion on the 10th of May, inviting those who sit in another place to agree the recommendations of the report of the Labour Advisory Subcommittee, entitled Reviewing the Retirement Age, which was also tabled on the 10th of May.

Madam President, as was observed in the November Speech from the Throne, in many cases, the designation "senior citizen" does not describe our energetic men and women aged 65 and older. In most countries, retirement is coming to be viewed as a time of personal reinvention and new opportunities, rather than withdrawal and winding down. In addition, there is also a global consensus that old age is no longer determined by traditional markers imposed by society, such as how many birthdays a person has had or whether a person has retired or has received a pension cheque. Instead, personal ability is considered to be the key determinant of age.

Madam President, the above-mentioned report provided useful facts, and the recommendations from this report were as follows:

1. Create a single piece of legislation that sets a retirement age and a pensionable age, and allows for reemployment provisions. The aims of the legislation will (i) gradually increase the retirement and pensionable age simultaneously from 65 to 70 over a 10-year period, with the retirement age moving to 68 within a 5-year period; (ii) allow for annual reemployment contracts to be utilised for five years after the prescribed retirement age; (iii) ensure early retirement provisions are in place for workplace pensions and the Contributory Pension Fund payments; and (iv) ensure employers are not prevented from retaining older employees for as long as it is desired by the employer after the retirement and reemployment periods.
2. Create new legislation or utilise existing legislation to prohibit age discrimination in the world of work pertaining to older workers, ensuring quality in recruitment, hiring, compensation, benefits, training, workplace conditions and career development.
3. Create a financial and retirement planning toolkit which can be utilised by employers, workers and community stakeholders to increase financial levels of the workforce.

Madam President, as previously advised, in the first instance, the Policy and Strategy Section within the Cabinet Office will work with the committee, unions, churches, sports clubs and other key constituencies to implement the financial and retirement planning toolkit recommended by the report. The report provided useful facts and figures, and the key policy objectives of the recommendations were as follows: to stabilise pension funds; to allow working men and women the benefit of greater capacity to earn, and therefore, better prepare for their eventual retirement; and to use the longer lifespan in the modern era to the benefit of the society and the people of Bermuda.

Madam President, Senators will recall the comprehensive and thoughtful debate in another place on the 31st of May, during which general support on this matter was portrayed. Hence, Madam President, the purpose of this amendment is to provide for the following:

1. It requires contributors, as defined under the Act, save for police officers, fire officers, prison officers and teachers, to compulsorily retire at 68 years of age.
2. It permits contributors as set out in [point] 1 above to voluntarily retire at 65 years of age, retaining also the ability of contributors as set out in [point] 1 above to retire at 60 years of age.

3. It removes the discretion of the Head of the Public Service in permitting a contributor who has reached the age of compulsory retirement to continue in the public service until the later age, not exceeding the age of 70 years.
4. It permits contributors, as set out in [point] 1 above, to continue in the public service until a later age, not exceeding the age of 70 years, subject to an annual certification of medical fitness and the confirmation of their head of department to the Permanent Secretary of the relevant Ministry that the contributor is competent to fully discharge the duties of the post.
5. To confirm that, where a contributor has reached the age of compulsory retirement and continues in the public service, having not retired, he or she shall (a) continue to contribute to the fund; (b) not receive their pension until such time as they have retired from the public service; and (c) continue to accrue any benefit to which they are entitled on continuing to contribute to the fund after reaching the age of compulsory retirement.

Madam President, Senators should note that the proposed amendments meet the policy objectives contained the 2018 Speech from the Throne, which were “to revise the mandatory retirement age to take account of our longer lifespan, the necessity to add additional stability to pension funds and to promote greater choice among the working population about when one retires from full-time employment.”

Also, it is important to note that, consistent with section 91 of the Bermuda Constitution Order of 1968, these amendments do not create any pension terms less favourable to officers in the public service than the laws enforced at the time when they were engaged as public officers.

Madam President, Senators should also be advised that the Ministry of Finance asked the actuary to consider the impact on the Fund of allowing members to retire at 67 on a voluntary basis. The actuary found that this change would not have a material impact on the Fund. Madam President, in their 2018 report, the Fiscal Responsibility Panel also recognised that there was a need to raise the retirement age.

Madam President, the proposals contained in this legislation are reflective of the changing demographics of Bermuda’s population, which must be mitigated by the ability of people to work for longer and contribute to a fund that supports public officers in retirement. Madam President, Senators are advised that an increase in the age of retirement for uniformed service personnel and teachers will be the subject of a fulsome consultative effort with the service chiefs and their representative unions.

Before closing, Madam President, I would like to look at the key clauses in this Act, if you do not mind.

The President: Certainly. Continue.

Sen. Vance Campbell: Madam President, clause 2 amends section 12 of the principal Act. Currently, [section] 12(3) provides that “A person whose first employment with the Government commences after he has attained the age of fifty-seven years shall not contribute to the Fund (or be entitled to any benefit under this [principal] Act) unless he elects to contribute to the Fund.” This will continue to apply to teachers.

New section 12(3A) increases the relevant age from 57 to 60 years for contributors other than teachers in consequence of the increase age of compulsory retirement for such persons affected by clause 3.

Section 12(4) is substituted to include an election under subsection (3A) and simplified as former paragraph (a) is spent.

Clause 3 amends section 22(2) of the principal Act to increase from 65 to 68 years the age of compulsory time for public officers to whom that subsection applies, which does not include police officers, fire officers, prison officers, members of the Royal Bermuda Regiment and teachers.

Clause 4, Madam President, amends section 24 of the principal Act by inserting new section 24(3A), which provides for automatic deferral of a contributor’s pension until he ceases to be employed in the public service for contributors falling within section 22(2) (i.e., not uniformed officers and teachers). This replaces the right to elect deferral for such persons who continue in employment after the age of compulsory retirement, which was introduced by the Public Service Superannuation Act 2007.

Clause 5 amends section 32(2) of the principal Act, pensions to begin to accrue day after attaining age of compulsory retirement if persons do not elect to defer pension until retirement under section 24(3), so that it no longer applies to contributors falling within section 22(2), in consequence of the amendments made to section 24 of the principal Act by clause 4.

Lastly, Madam President, clause 6(1) makes transitional provisions in relation to amendments to section 12 of the principal Act by clause 2. [Clause] 6(2) specifies the persons to whom amendments to sections 24 and 32 of the principal Act (made by clauses 4 and 5) apply to ensure amendments comply with section 91 of the Constitution.

And lastly, clause 7 provides for the commencement, Madam President.

In closing, Madam President, it is important to note that, in order to solve the ageing population dilemma in a holistic manner, we must first and foremost recognise that this is more than an issue of social security and pension plan benefits, and taxes. Fundamentally, it is a question of finding ways to improve economic growth and integration.

With those introductory remarks, Madam President, I conclude my initial remarks. Thank you, Madam President.

The President: Thank you, Senator Campbell.

ANNOUNCEMENT BY THE PRESIDENT

SENATE VISITORS

The President: And before I open it up to other Senators, I would just like to acknowledge the presence of the Financial Secretary, Mr. Anthony Manders, in the Chamber, as well as Ms. Miriam Rogers, the Parliamentary Counsel.

Welcome to you all.

[Public Service Superannuation Amendment Act 2019, second reading debate, continuing]

The President: Would any Senator care to speak on this Bill?

Senator Kempe, you have the floor.

Sen. Nicholas Kempe: Thank you, Madam President. Thank you, Senator Campbell, for introducing the Bill.

I guess there are two sides to the argument about the retirement age. From one side, obviously, we have a country with a demographic projection that is skewing towards an average older age. So, of course, the strains on our pension funds are going to be significant. And there are people who are struggling when they get 65 and may wish to, or need to, keep working either to stay active or to fund our longer life expectancies and what is needed down the line.

The other half of it, of course, is young people trying to access the workforce, finding fewer openings being available, and of course, the burden—I know we are talking about public service here, but—also on employers when, especially after the 2010 downturn, they needed to lighten their workforce. And obviously, if there was a mandatory retirement age, that was a way to go about it without necessarily having to go through a whole bunch of redundancy payments and this sort of thing.

I note that Senator Campbell spoke about, I guess, looking for holistic approaches, and also, the promise about people being able to work for longer without permission being needed to do so. So, I guess that brings me to a couple of comments and a question. And I will start with the question.

In [clause] 3(b) of the amendment [to the proviso] . . . so, on page 2, it amends section 22. And it inserts that once you go 65, you will need to provide a medical fitness report to say that you are physically or mentally capable to perform the roles in the job. However, it also says that it is going to be subject to “annual confirmation by the contributor’s Head of De-

partment to the relevant Permanent Secretary that the contributor" (and here is the key bit, that the contributor) "is competent to discharge the duties of the post." So, when we talk about without needing permission to do so, this clause specifically seems to me that you do require permission to continue to work. And that is from, basically, your superior or your supervisor or whatever in the respective role.

So, I guess my question is, So, what comes down to this? If the previous iteration of the Public Service Superannuation Act basically forced people to retire at 65, and therefore being retirement, there is no redundancy payout for years worked, what happens if you want to keep working? And if your doctor says you are capable of keeping working, but the Permanent Secretary or the head of the department, that relevant Permanent Secretary, says that you are not the right person anymore, is that considered a redundancy? Is it considered a retirement? So, I would certainly like some answers around that and how that plays out to pay out costs to the government in this case.

What I will also ask is, seeing as this ageing demographic and, obviously, the pension challenges are more with the public service as opposed to private sector pensions, but still the ageing demographic and how we are going to confront that as a country is something that needs to be had. In the Employment Act, there is no mandatory retirement age. So, any mandatory retirement that people have in the private sector is because it has been expressly included in their employment contract. Now, some companies do have that; some do not, because age discrimination is not covered under the Human Rights Act.

But my question is, this model seems like it could work in a broader sense, whereby if there was a mandatory retirement age, that after a certain age, both employer and employee have a mechanism that is the same across the board, whereby someone, because someone may at a certain point just want to work a few less hours, or do whatever, but still want to keep working. And for an employer, it is tough to manage this, the weight of, say, 10–20 years of accumulated redundancy, or 13, I guess, where it maxes out, and the need to also promote internally and do this kind of thing when people are waiting for opportunities to open up.

So, I would like to know, would this similar sort of mechanism be considered for the Employment Act? And what happens when someone wants to keep working past 65 and is physically fit, according to a doctor, but their supervisor says, *You're not competent to discharge the duties of the post?* Thank you.

The President: Thank you, Senator Kempe.

Would any other Senator care to speak on this Bill?

Senator Jardine, you have the floor.

Sen. James S. Jardine: Thank you, and good morning, Madam President and listening audience.

The President: Good morning.

Sen. James S. Jardine: I support this legislation not just because I am over 68.

[Laughter]

Sen. James S. Jardine: But because I think there are many of us who are well capable of working beyond 65. And I think this allows for that. Also, not just because the Fiscal Responsibility Panel recommended it, but also the SAGE Commission, upon which I served on the subcommittee dealing with pensions, and one of the recommendations that we did make at the time was to increase the retirement age beyond, [what it is] currently, at 65. So, I think these are all steps heading in that direction.

There are also a whole lot of other recommendations contained in the SAGE Report, dealing with pensions, which I hope Government will look at in due course. I know they have adopted some of them. But it is a continuing process. So, I do support this Bill.

I had one question, and it is really a point of clarification, I guess. I listened to the Senator's presentation. And I was trying to find out whether, once you reach the age of 68 and you have been given permission to continue to work to age 70, do you continue to contribute to the PSSF [Public Service Superannuation Fund]? Or does that actually cease once you reach 68, regardless of whether you continue to work or not? Let me put that another way. If I am continuing to work to age 70, do I have to make contributions to the PSSF during that two-year period of time? And that is the one question of clarification that I had.

Apart from that, Madam President, I do support the Bill. Thank you very much.

The President: Thank you, Senator Jardine.

Would any other Senator care to speak on this Bill?

Senator Hayward, you have the floor.

Sen. Jason Hayward: Good morning, Madam President.

The President: Good morning.

Sen. Jason Hayward: Madam President, I wholeheartedly welcome this Bill that is put forward by the Government. I was responsible for chairing the LAC [Labour Advisory Committee] Subcommittee, who explored this whole topic regarding the retirement age and age discrimination. And it was the committee in which I chaired that provided the recommendations that Senator Campbell read before us today.

The first thing the committee did was diagnose whether or not there is a problem. And we recognised that there is a problem. Senator Kempe highlighted some of the challenges regarding the financial hardship that persons do have transitioning from a working individual to a pensioner. We also recognised that there were problems with the funding of our Public Service Pension Fund, and we asked ourselves, Would changes in that direction assist with the problem?

The other thing we had to recognise was that Bermuda's population is ageing. And so, the demographic makeup of our population is changing, and it is rapidly changing to an ageing population. As a result, there had been no real shift in the way in which employers were treating persons as they reached the age of 65, even though life expectancy was longer.

We looked at the other measures, such as persons not just transitioning from the workplace to being a pensioner, but persons transitioning from the workplace to [signing up for] Financial Assistance. So, this week they are working; next week, you can retire; and you find that you are not making ends meet, and you sign up for Financial Assistance.

We also looked at the fact that Government had, the previous Government had allowed, and it continued under this Administration, for persons to retire under our early retirement incentive scheme. We found that persons were taking their early retirement incentive scheme and then knocking on the former employer's door to try to get employment back. What they have found is that they could not sustain their financial obligations in society on the funds that they were receiving from the early retirement scheme.

Working beyond the age of 65 is not uncommon in Bermuda. There are thousands of persons . . . I think in the last census, there were 2,530 persons 65 and over working in our population. And so, that gives us an idea of the capability of persons to work over 65. That number actually increased from the 2010 Census.

What was highlighted in the last census also was the unemployment rate for those persons 65 and over. Now, naturally, you would not have an unemployment rate for those 65 and over, because they would not be considered as part of the active workforce or actively seeking or looking for work. But in this particular instance, it had tripled the number of persons who were actively seeking work over the age of 65. And so, it spoke about the demands in our society to make some sort of change.

Changing the pension age society-wide is a little bit more difficult. And I think beginning with the public service is a good idea. When we looked at other societies, the majority of the developed European societies, they have removed retirement age. It is all very flexible when it comes to retirement ages. And so, when speaking with some colleagues, some colleagues currently have mortgages that will extend be-

yond their age of 65, due to their need to refinance during the [economic] downturn and things of that nature. And so, this would help individuals a lot.

But we have to look at it and say, *This is not just for health. This is about recognising that people are still capable to perform at a high level at age 65.* Certainly, there will be some jobs which we would have to review, based on their physical requirements, and to determine if somebody is still capable of doing the job. And I think that is where the assessment from the supervisor is needed. I do not think it is one of those subjective things that will be put in place. You will note that all public servants are protected by the Bermuda Public Service Union. And in order for somebody to be denied, certainly there would have to be valid grounds. But I do not think the aim is to shift the retirement age, to then continuously deny individuals. That makes absolutely no sense to the aims and objectives that we are trying to achieve.

Like Senator Kempe did state, many persons agree to retire at age 65 through their employment contracts. And I believe many persons are not aware that they actually agree to retire at age 65 in their employment contracts when they begin employment. And if I just look at myself, as a younger individual, when I went to sign the employment contract, the last thing I was probably worrying about was 30 to 35 years down the line. And so, we do have a defined retirement age specified in the National Pension Scheme legislation. It does have a section in there that says pension age, and does speak to 65. And that is the age in which the insurance companies actually abide by.

What this Bill actually does is allow persons to work to the age of 68. We believe, through our research, that 68 was a good . . . was a sufficient time period for the first adjustment. Ultimately, we are proposing that persons work up to 70. But as you know, in the public service, persons still do have rights to work up to 70. And this is at the discretion of the Head of the Civil Service.

Madam President, when we reviewed the data, there was not a one-to-one relationship with our younger workers. So, it is not, an older worker retires, and then somehow it creates space in the public service for a younger worker. What we find in the public service is that, when an older worker retires, most times, their jobs are filled by a more experienced or older worker. It all depends on which job category they are actually in. But based on our ageing population, sometimes you replace an older Bermudian worker with a younger or older non-Bermudian worker. That can also be a factor. So, it was not a one-to-one relationship, where there are younger workers being prohibited from entering the public service because persons are working longer.

You should also appreciate that the public service has a natural attrition rate, where persons leave the public service for a number of reasons. When persons leave the public service, for a number

of reasons, I mean, that also creates opportunities for persons coming in and filling vacant posts.

These provisions also go a long way in creating a more sustainable Public Service Superannuation Fund. Obviously, if persons are working longer, they are contributing more. And also, the liability for . . . the Government is able to reduce its liability and defer the liability for a longer period of time. And that is a positive step. The actuary has actually advised that this will not be a meaningful step, and it will give the Public Service Superannuation Fund some additional life.

I think that these changes are timely. They make sense. I think that anybody viewing these changes will see that they are in benefit of our society. And I thank the Government for bringing them forward. Thank you, Madam President.

The President: Thank you, Senator Hayward.

Would any other Senator care to speak on this Bill?

No. Then, Senator Campbell, you have a couple of questions to respond to.

Sen. Vance Campbell: Thank you, Madam President.

Madam President, it is good to have a summary by the Chair of the subcommittee that put forth the recommendations, and I appreciate that, coming from Senator Hayward.

So, from there I will deal with the questions, Madam President, that were put forward. The first being, What happens if an employee wishes to continue to work? The doctor says they are competent to work, but the head of their department says they are not fit to continue to work. There will be no redundancy in that instance, Madam President. There would simply be the retirement at the age of 68. So, they will receive their pension and the like.

There was also a suggestion/question from Senator Kempe, saying that this makes sense and could work in a broader sense, being in the private sector, I assume. Is that correct, Senator . . . Madam President, is that correct that he was referring to the private sector, that this could possibly work?

The President: Senator Kempe, do you want to respond to the question?

Sen. Nicholas Kempe: Yes. I was referring to the broader Bermudian economy, both private and public.

The President: Thank you.

Carry on, Senator.

Sen. Vance Campbell: Well, that would actually fall under the Ministry of Labour and Home Affairs and would be a matter for that Ministry to consider.

Sen. Nicholas Kempe: Point of clarification?

The President: Will you accept a point of clarification, Senator?

Sen. Vance Campbell: I will accept it.

The President: Yes. Carry on.

POINT OF CLARIFICATION

Sen. Nicholas Kempe: Yes.

I believe the Public Service Superannuation Act would be subservient to the Employment Act, but I am not entirely certain on that.

Do you know?

Sen. Vance Campbell: We would have to take that under consideration, Madam President.

The President: Thank you, Senator Campbell. Carry on.

Sen. Vance Campbell: And there was also one final question, regarding once a person reaches the age of 68 (I think this was coming from Senator Jardine) and they choose to continue and are allowed to continue to age 70, do they still contribute to the PSSF? And the answer to that would be yes, they do.

So, with that, Madam President, I move that the Bill entitled the Public Service Superannuation Amendment Act 2019 be now read a second time.

The President: Is there any objection to that motion?

No objection.

Carry on, Senator Campbell.

SUSPENSION OF STANDING ORDER 26

Sen. Vance Campbell: Madam President, I move that the Standing Order 26 be suspended in respect of this Bill.

The President: Is there any objection to that motion?

No objection.

Carry on.

[Motion carried: Standing Order 26 suspended.]

Sen. Vance Campbell: Madam President, I move that the Bill entitled the Public Service Superannuation Amendment Act 2019 be now read a third time.

The President: Is there any objection to the third reading?

No objection.

Carry on.

BILL**THIRD READING****PUBLIC SERVICE SUPERANNUATION
AMENDMENT ACT 2019**

Sen. Vance Campbell: Madam President, I move that the Bill do now pass.

The President: It has been moved that the Bill entitled the Public Service Superannuation Amendment Act 2019 do now pass.

Is there any objection to that motion?

No objection. The Bill is passed.

[Motion carried: The Public Service Superannuation Amendment Act 2019 was given a third reading and passed.]

The President: Thank you, Senator Campbell.

Sen. Vance Campbell: Thank you, Madam President.

The President: The second Order of the Day is the Fund Administration Provider Business Act 2019. And I believe that is Senator Campbell.

The second Bill is yours as well, Senator Campbell?

Sen. Vance Campbell: That is correct, Madam President.

The President: You have the floor when you are ready.

[Pause]

Sen. Vance Campbell: Madam President, I move that the Bill entitled the Fund Administration Provider Business Act 2019 be now read a second time.

The President: Is there any objection to that motion?

No objection.

Carry on, Senator Campbell.

BILL**SECOND READING****FUND ADMINISTRATION PROVIDER
BUSINESS ACT 2019**

Sen. Vance Campbell: Thank you, Madam President.

Madam President, I am pleased to present the [Fund Administration Provider Business Act 2019](#) [the Act] for the consideration of the Senate. The Bill seeks to enhance Bermuda's supervisory and regulatory

regime for those engaged in fund administration provider business, an important segment of Bermuda's financial services sector.

Madam President, by way of background, in March 2018 a discussion paper entitled "Proposed Enhancements to Investment Business, Investment Funds, and Fund Administration Regimes" was issued by the Bermuda Monetary Authority (the BMA, or Authority). As indicated in this paper, input from industry stakeholders was sought regarding proposed modifications to the framework in place for these sectors. Following the feedback received from the discussion paper, the Authority made a commitment in its 2018 business plan to support the introduction of the legislative proposals in respect of fund administration business. And this proposal involves enacting a new standalone fund administration Act, the Fund Administration Provider Business Act 2019.

Madam President, the Fund Administration Provider Business Act 2019 is the first of a series of enhancements to the investment business and investment fund regimes proposed in the March 2018 discussion paper. Madam President, the Fund Administration Provider Business Act 2019 is derived from the original Investment Funds Act 2006 (the IFA) which provides the legislative basis for Bermuda's investment fund and fund administration businesses. While the IFA 2006 has been subject to amendments over time, these amendments have tended to be ad hoc in nature, addressing specific issues and particular circumstances related to investment fund vehicles. However, with the evolution of the fund business, it is the Authority's view that its oversight of fund administration businesses, and investment fund products, will each be better accomplished via separate legislative frameworks. Furthermore, introducing a legislative regime that is specific to fund administrators will put this sector on the same footing as other regulated financial institutions in Bermuda.

Madam President, the Authority has proposed that a majority of the existing provisions within the IFA, related to the fund administration business, predominantly found within Part III of the IFA, be incorporated in the new Fund Administration Provider Business Act 2019. When developing the new Act, the Authority sought to ensure that relevant provisions of the IFA were updated where appropriate in the new framework so as to be consistent with how comparable provisions are presented within recently adopted legislation covering other regulated financial institutions.

Madam President, the new Fund Administration Provider Business Act 2019 seeks to provide consistency and clarity in respect of how fund administrators exercise their functions and how the Authority supervises them. Key aspects of the regime for fund administrators, which have been subject to enhancement in the new Bill, include:

1. carrying on fund administration business in or from within Bermuda;
2. safeguarding of other assets for clients;
3. minimum criteria for licensing;
4. statement of principles;
5. reporting requirements; and
6. new code of practice.

Madam President, I will now elaborate on each of these points.

Point 1: Carrying on fund administration business in or from within Bermuda. This section is derived from section 41, Part III, of the IFA and is a core element of the current fund administration business regime. This section prohibits a person from carrying on the business of a fund administrator in or from within Bermuda without a licence. The Authority believes that additional certainty is required with regard to when one would be considered to carry on or purport to carry on the business of a fund administrator in or from Bermuda.

Accordingly, this legislation provides that fund administrators will correctly be regarded as carrying on fund administrative business within Bermuda if they occupy premises in Bermuda or make known, by way of website, promotional materials, legal documents, or letterheads, that they may be contacted at a particular address in Bermuda, or are otherwise seen to be holding themselves out as engaging in or carrying on fund administrator business in or from within Bermuda.

Furthermore, the Act makes it clear that a company incorporated in Bermuda shall not carry on the business of a fund administrator anywhere in the world without being licensed by the Authority.

Point 2: Safeguarding of other assets. The Act makes provision for Bermuda licensed fund administrators to provide, subject to a specific application process, certain safeguarding services for other assets only, and not in respect of financial instruments or client monies.

It is intended that fund administrators which provide any such safeguarding services will be subject to additional obligations, which will be contained within the regulations which can be made by the Minister of Finance pursuant to the new Act and an updated Code of Practice, which the Authority will be empowered to issue. Licensees who are granted permissions to provide such safeguarding services in respect of their clients' other assets will be subject to additional reporting and disclosure obligations including the requirement to prepare audited financial statements submitted to the Authority on an annual basis.

Point 3: Minimum criteria for licensing. The minimum criteria for licensing of fund administrators is currently set out in the Schedule to the IFA. The Authority must be satisfied that the minimum criteria are met and continue to be met by entities seeking to be licensed or which are currently licensed as fund administrators. The new Act updates the existing mini-

imum criteria for licensing to ensure that the provisions contained therein are consistent where appropriate with those reflected within recently adopted legislation covering other regulated financial institutions.

For example, Madam President, the Act strengthens the existing requirements for business to be conducted in a prudent manner by adding a provision specific to maintaining adequate accounting and other records, along with accompanying systems of control and associated policies and procedures. Also, further emphasis is given to corporate governance obligations, by reflecting these obligations independently rather than as a subset of the fit and proper persons criteria.

Point 4: Madam President, in relation to statement of principles, the new Act requires the Authority, consistent with other supervisory Acts for financial services providers, to publish, as soon as practicable after the legislation comes into force, a statement of principles which identifies the manner in which the Authority proposes to act in respect of the following:

- (a) interpreting the minimum criteria specified in the Schedule to the Act and grounds for revocation;
- (b) exercising its power to grant, revoke or restrict a licence;
- (c) exercising its power to obtain information and reports, and to require production of documents; and
- (d) exercising its powers to impose a civil penalty, censure publicly, make prohibition orders and publish information about any matter to which a decision notice relates.

Point 5: Reporting requirements. Section 47 of the IFA requires fund administrators to submit an annual statement of compliance to the Authority, but the information to be included in this statement is general in nature. In keeping with international best practice in this area, the Act expands and makes more specific the requirements of the statement of compliance by way of the following:

- (a) requiring that the statement of compliance be signed by two directors, one of whom must be the chief executive or equivalent officer;
- (b) introducing more extensive confirmation requirements; and
- (c) providing the Authority with the power to, upon application, grant an extension in relation to the filing of an annual statement of compliance.

Madam President, also, it is proposed that fund administrators be subject to new requirements with respect to the filing of annual financial statements, including a requirement for the appointment of an auditor and the filing of annual audited financials in the instances where the fund administrator has been

approved to provide safekeeping service for the clients' other assets.

Point 6: Madam President, in relation to code of practice, the Act makes provision for such a code to be issued. In this regard, it is proposed that the existing code of conduct for fund administrators be revised to achieve alignment with, among other things, the revisions to be made to the minimum criteria for licensing.

Madam President, I can confirm that there are currently 27 fund administrators licensed under the existing IFA regime, which we would expect to be licensed under the new regime once it comes into force.

Madam President, I wish to emphasise the Authority sought input from stakeholders on all of these provisions in March 2018, by means of the aforementioned discussion paper and via a consultation paper and draft Bill issued in April 2019. This Bill represents a collaborative effort between the Authority and various industry stakeholders. Accordingly, I would like to thank all of those persons within the Bermuda Monetary Authority, the Attorney General's Chambers, the Ministry of Finance and the private sector who have assisted with the development of this Bill.

With those remarks, Madam President, I pause to allow other Senators to speak. Thank you, Madam President.

The President: Thank you, Senator Campbell.

ANNOUNCEMENT BY THE PRESIDENT

SENATE VISITOR

The President: And before we do that, I would just like to acknowledge the presence of Mr. Ifor Hughes from the Bermuda Monetary Authority, who is in the Chamber this morning. Thank you.

[Fund Administration Provider Business Act 2019, second reading debate, continuing]

The President: Would any Senator care to speak?
Senator Kempe, you have the floor.

Sen. Nicholas Kempe: Thank you, Madam President.

We understand that there was sufficient industry consultation, and we have no objections to this Bill.

The President: Thank you, Senator Kempe.

Would any other Senator care to speak on this Bill?

No. Then, seeing that you have full support, Senator Campbell, over to you.

Sen. Vance Campbell: Thank you, Madam President. And thank you, Senators, for your support.

Madam President, I move that the Bill entitled Fund Administration Provider Business Act 2019 be now read a second time.

The President: Is there any objection to that motion?

No objection.

Carry on, Senator Campbell.

SUSPENSION OF STANDING ORDER 26

Sen. Vance Campbell: Madam President, I move that Standing Order 26 be suspended in respect of the Bill.

The President: Is there any objection to that motion?

No objection.

Carry on.

[Motion carried: Standing Order 26 suspended.]

Sen. Vance Campbell: Madam President, I move that the Bill entitled Fund Administration Provider Business Act 2019 be now read a third time.

The President: Is there any objection to the third reading?

No objection.

BILL

THIRD READING

FUND ADMINISTRATION PROVIDER BUSINESS ACT 2019

Sen. Vance Campbell: Madam President, I move that the Bill do now pass.

The President: It has been moved that the Bill entitled the Fund Administration Provider Business Act 2019 do now pass.

Is there any objection to that motion?

No objection.

The Bill has passed.

[Motion carried: The Fund Administration Provider Business Act 2019 was given a third reading and passed.]

The President: Thank you, Senator Campbell.

Sen. Vance Campbell: Thank you, Madam President.

The President: We now move on to the third [Order] under the Orders of the Day. And that is the second reading of the Employment (Wage Commission) Act 2019.

Senator Hayward, this is your Bill. You have the floor.

Sen. Jason Hayward: Madam President, I move that the Bill entitled Employment (Wage Commission) Act 2019 be now read a second time.

The President: Is there any objection to that motion?
No objection.
Carry on, Senator, Hayward.

BILL

SECOND READING

EMPLOYMENT (WAGE COMMISSION) ACT 2019

Sen. Jason Hayward: Madam President, I am pleased to introduce the Bill entitled the [Employment \(Wage Commission\) Act 2019](#), which seeks to set up a Wage Commission in order to report on and recommend a minimum and living wage regime for Bermuda.

Madam President, as my Senate colleagues will be aware, on the 10th of August 2018, a motion was brought before the House of Assembly for the consideration and approval of the Parliamentary Joint Select Committee's report on the establishment of a minimum/living wage regime. Among other recommendations in the report is the establishment of a Wage Commission.

Madam President, the report was approved, and the November 2018 Throne Speech confirmed Government's commitment to implementing a minimum/living wage regime. Madam President, the International Labour Organization, or ILO as it is commonly referred to, defines minimum wage as (and I quote) "the minimum amount of remuneration that an employer is required to pay wage earners for the work performed during a given period, which cannot be reduced by collective agreement or an individual contract."

The purpose of a minimum wage is to protect workers against unduly low pay. Madam President, the days of Bermudians being able to pick up and choose jobs are gone. The current economic climate puts the demand-and-supply equation for labour in the employer's favour. Unskilled workers now have to compete for jobs, and exploitation of workers is occurring. We have all heard of people who are making \$5.00, \$6.00, and \$7.00 an hour, and this is occurring in Bermuda, which has one of the highest costs of living globally.

To illustrate, Madam President, Honourable [Senators] may be aware of a job advert earlier this year in which persons were looking to hire a live-in caregiver. The job responsibilities listed were to take care of an elderly person suffering from dementia, clean, cook, provide companionship, run errands,

work five days a week from 9:00 am to [9:00 pm], and be on call seven nights a week. The successful candidate would have two days off, but would have to prep meals before leaving, and make \$10.00 an hour, less room and board. Madam President, I think we can all agree that this embodies the term "exploitation."

Madam President, this Bill seeks to provide for the establishment of a Wage Commission, which will be mandated to enquire into the provisions of a statutory wage scheme with the objective of making recommendations on a minimum hourly wage and a living wage rate, which would be prescribed by the Minister responsible for Labour. Madam President, the composition of the Wage Commission will consist of a total of eight persons: a chairman, five members and two ex officio members representing the Ministry of Finance and the Ministry responsible for Labour. Members will be appointed by the Minister responsible for Labour for a period of three years and have broad experience and expertise in economics, law, statistics, and other suitable qualifications.

Provisions will be made to pay the Members of the Commission in accordance with the [Government Authorities \(Fees\) Act 1971](#). The fee is set at \$100 per meeting for the chairman and \$50 per meeting for the members. A consequential amendment to the Government Authorities (Fees) Act 1971 will be made.

Madam President, to facilitate the proceedings of the Commission, the Bill authorises the Minister to designate a public officer to be the secretary to the Commission, thereby reducing the need for additional administrative costs.

Madam President, the Bill stipulates that the functions of the Commission are to make recommendations on the minimum hourly wage and the living wage rate. To fulfil this mandate, the Commission is required to conduct research, enquiries and analysis, and to consult extensively to ensure that all stakeholders—including employers and employees, and organisations representing employers and employees—have the opportunity to make a contribution. Should the Commission require information from an employer or employee or some other person, they will be able to compel persons in writing to supply the information and appear before the commission. The Commission will also have the power to take copies of the documentation provided.

Madam President, every three years, the Commission will be required to make a report to the Minister responsible for Labour with regard to the proposed minimum hourly wage. It may be necessary for a review within the three-year cycle in the event of a significant economic change in Bermuda or unforeseen consequences of the minimum or living wage that need to be researched and rectified.

Madam President, the Bill sets out the requirements for the content of the report that the Commission is to submit to the Minister, which in-

cludes (1) the determinations of the Commission on the findings and conclusions of the research, enquiries, consultations and recommendations; and (2) the subsequent recommendations and the reasons for the recommendations. Madam President, the Bill requires that the recommendations must include an analysis of the impact on the economy of Bermuda, the competitiveness of the economy of Bermuda and any other issue that may have been raised by the Minister responsible for Labour.

Madam President, once the Minister has received the report, he will be obliged to table it for the House of Assembly and the Senate, and may by order prescribe the minimum hourly wage.

Madam President, a living wage is different from a minimum hourly wage in that it purports to provide a decent standard of living for the worker and his or her family. Madam President, as with the minimum hourly wage, the Commission is also mandated to make a report to the Minister responsible for Labour every three years with a proposed living wage rate. The requirements for the production of the report are the same for the determination of the living wage rate as they are for the minimum hourly wage. Once the Minister has received the report, he or she must table it in both Houses of the Legislature, and may by order prescribe the living wage rate.

Madam President, the Commission's powers are accompanied by enforcement measures. Persons who fail to produce any record, document or information; intentionally delay the work of the Commission; or refuse to answer any questions are subject to a fine not exceeding \$2,000 and \$100 for every day that the offence continues. In the case of a corporate entity, the fine will be \$7,000 and \$500 for every day that the offence continues. Madam President, the Bill provides a regulation, an order-making power, for the Minister, which will enable him or her to prescribe the minimum hourly wage, the living wage rate and any matters that are necessary for carrying out the provisions of the Bill. The regulations will be made in due course following the Wage Commission's report and recommendations.

Madam President, we are clearly well behind the times internationally in the establishment of a minimum wage. The ILO asserts that more than 90 per cent of their 186 member states have one or more minimum wages set through legislation or binding collective agreements. Today we are on the road to making a living wage a reality for Bermuda. Our people deserve to live in dignity. They deserve to enjoy decent work. And a part of that is to provide for a living wage, and this legislation will make it happen.

In conclusion, I would like to thank the Parliamentary Joint Select Committee for their work in the production of the report and on the establishment of a minimum/living wage regime. Thank you, Madam President.

The President: Thank you, Senator Hayward.

ANNOUNCEMENT BY THE PRESIDENT

SENATE VISITORS

The President: I would, at the time, like to acknowledge the presence of the Permanent Secretary, Chris Farrow, policy analyst, [*sic*] as well as Jane Brett, policy analyst . . . Sorry. Jane Brett is the policy analyst. But anyway, the Senate welcomes both of you to the Senate.

[*Laughter*]

[*Employment (Wage Commission) Act 2019, second reading debate, continuing*]

The President: And now back to the business at hand.

Would any Senator care to speak on this Bill? Senator Kempe, you have the floor.

Sen. Nicholas Kempe: Thank you, Madam President. Thank you, Senator Hayward.

Certainly, ensuring that people are able to live in Bermuda on what the most basic of pay rate allows is an important thing to ensure that we achieve. What I am certainly struggling with, and this is where, I guess, the devil is always in the details, is what . . . when I was on the Joint Select Committee which seems to have preceded this Commission that will then determine what the wage is, one of the key things we, at least I, struggled with was the detail of breakdown that we could get from the Office of the Tax Commissioner.

Obviously, and this seems to have fallen off a bit with the Living Wage Commission Act from the motion laid in another place that set up the Joint Select Committee that seemed to target the effect of foreign workers on lowering the . . . essentially the market price for labour at the lower end of the pay scale, and [what] effect [it] may have had on Bermudian workers. But again, that was the assumption put forward in the motion. And it was really hard to find the supporting data behind that because the Payroll Tax Commission could say that certain industries paid "X" or "Y," but they could not say to whom on a kind of broader demographic scale they were falling to.

So, that made it kind of difficult to understand what the effect of the living wage would have on different groups of people. Obviously, there is a living wage for someone working in Bermuda with a family, with children, with all these things in Bermuda. And I know this [about] the Wage Commission Act now, the cost of child care is included in the living wage. So, and again, this raised problems when we were discussing it, theoretically, at the Joint Select Committee level, well, how do you set the wage on no-children,

one-child, two-children, three-children, et cetera? And as those are individuals' choices, is that a burden that should be borne by an employer, by the Government? How are we passing on these costs?

And if a certain wage was raised, would all that income go . . . would that all of a sudden entice Bermudians to work in those industries? Would it simply be increasing the amount of foreign cash sent overseas for people who are able to, essentially, reduce their cost of living in Bermuda as they are, you know, looking for economic opportunity, and this kind of thing? And I say that not . . . there is a clear distinction between exploitation and people who choose to, say, bunk as an adult because their spouses and children are back home. And that is a beneficial short-term economic position for them.

The other struggle was with tipped wages. And the numbers from the Payroll Tax Commission and other reports seem to only capture what is the base pay and not the amount of money earned in gratuities. So, one could say someone is earning \$8.00 an hour as a flat wage, but they could effectively be taking home \$24.00, \$25.00 because of the way that industry has developed its payment and reimbursement culture, based on kind of a profit share on volume of business done.

And there did not seem to be any really good data for us to make decisions, and what positions taken could, you know, adversely affect the employees, adversely affect the business operators and/or completely cost-out hospitality as a destination, depending on which way those assessments were made. But again, there was a rather glaring lack of, kind of, economic data which we could come to unbiased recommendations on. So, I am assuming that the reason another commission was set up after the previous committee was to continue to academically research this and get some good data so that we can have a policy which protects employees, insures that the cost of business and the cost of living in Bermuda are not radically skewed and that allowed people who want to work to not feel like they are being excluded simply because there is exploitation-level wages or expectations coming out of it.

So, we certainly support the continued work of this Commission. But we would like to see what comes out of it at the end and how much consultation and research have been done accordingly. Thank you.

The President: Thank you, Senator Kempe.

Would any other Senator care to speak?

Senator Jardine, you have the floor.

Sen. James S. Jardine: Thank you, Madam President.

Madam President, there are many studies and articles surrounding the subject of minimum wage and the benefits, the real benefits of implementing such a

regime. Obviously, there are also studies showing the economic, possible economic downsides of implementing a minimum wage scheme, as well.

Additionally, while there have been attempts at calculating the so-called living wage, which is quite different from the minimum wage, as we have heard earlier on today, there are very few countries that are actually implementing a living wage on a required, legal basis. There are a number of countries that have voluntary living wage amounts, but very few that have actually implemented a living wage regime.

The UK is one of the few countries that has attempted to move in the direction of establishing a living wage, having recently established a new national living wage payable to workers over 25, effective in April of 2016. This wage rate is substantially higher than what was the national minimum wage rate, but in itself is not a true living wage rate. It is something less than a true living wage rate, some fall somewhere in between that. And its aim is to reach a wage rate level of about 60 per cent of the median UK earnings.

A living wage rate has been determined by many countries and cities around the world, as I said. But most of them are voluntary. However, in the United States, for example, there are 122 living wage ordinances in American cities. So, they are not necessarily state-wide. They are not necessarily federally implemented. But there are some ordinances that exist in the cities in the United States. So, the living wage is not something that is new, but it is something that is being implemented in few countries around the world, and it tends to be in cities and ordinances.

My own view on this complex subject is there can be real benefits to those who remain employed after the implementation of a minimum wage regime, and that the possible economic downsides depend entirely on the country in which the minimum wage is being implemented, its own economic circumstances and, probably more importantly and just as key, the level at which the minimum wage is set. And we have heard some questions this morning about whether the minimum wage, for example, would include tipping or exclude tipping. And if so, how is it calculated?

Studies have shown that some cities within countries, the implementation of a minimum wage has had a positive impact on employment, while in others, it is not entirely clear what that impact has been, neither negative nor positive. Additionally, certain types of businesses have been affected positively or negatively more than other businesses. There are 159 countries around the world that have a minimum wage at present. And they include USA, Canada, the UK, Australia, France, Germany and many more. The Cayman Islands, the BVI, the Bahamas, Barbados, St. Kitts, Trinidad and Tobago all have minimum wage regimes. And they have legislation in place. So again, what we are debating or what we are discussing today is not something new.

Now, before I go any further, just to put everybody at rest, I want to say I am in favour of establishing a wage commission. So, I will put that behind us, and then we can move on to some other points. I think it is important we do have a wage commission.

It will be the work and recommendations of this Commission that will be absolutely critical in determining the outcomes of establishing a minimum wage. All those who live and work in Bermuda should be able to live with dignity, as we have heard, and be able to feel that they are not intimidated in the workplace or feel uncomfortable about complaining about the wage rate, which many feel at present. And I think we have heard that there are some employers who are taking advantage of that, both Bermudian and non-Bermudian staff.

I want to say that it applies not only to the wages that some workers are being paid, but in some cases the living conditions in which some of our workers have to exist. And I do not want to let that go without some mention. It is not just the wages that are being paid, but it is the living conditions in which some of these workers are having to exist.

So, Madam President, it is a delicate balance that we have to keep between paying a fair wage for a fair hour's work whilst at the same time being alive to the effects that an increase in operating costs may have on businesses in Bermuda. And as I said during our discussion on the amendments to the Health Insurance Act, a company has a number of options that they can adopt when costs go up, one of which is simply to increase the price that it charges us for its goods and services.

So, as was stated in another place 10 days ago, Bermuda's cost of living is a major concern for Bermudians. And when the Wage Commission meets to consider a minimum wage, it will, as required under section 10 of this Bill before us, Madam President, have to make, in conclusion, if I may quote from section 10—

The President: You certainly may.

Sen. James S. Jardine: It says, "shall specifically state the effect of the determinations made . . . on the economy of Bermuda as a whole." So, that is one of its requirements that it has to fulfil as it comes up with a minimum wage.

The big question is, Will the establishment of a minimum wage and eventually a real living wage result in a loss of jobs? As I have said already, there is an enormous amount of literature on this topic. And there are studies which suggest that there will be job losses, and others that show that there will not be job losses. There is a huge amount of literature out there. And I must say, I did not plough through all of it, but ploughed through some of it. And I just wanted to refer to one or two pieces. The first one is an economic report written by the Federal Reserve Bank of San

Francisco, dated December 21st, 2015. And they conclude, on page 5 of their report, after examining a great deal of evidence, and if I may quote them, Madam President?

The President: You certainly may.

Sen. James S. Jardine: They say as follows: "Coupled with critiques of the methods that generate little evidence of job loss, the overall body of recent evidence suggests that the most credible conclusion is a higher minimum wage results in some job loss for the least-skilled workers—with possibly larger adverse effects than earlier research suggested."

Now, the key to that is, and I just want to repeat that. The conclusion is a higher minimum wage results in some job losses. So, to me the critical point is, what rate do you set for the minimum wage? And that will determine, to some extent, whether or not it has any significant impact on existing jobs. So, it is important that the Commission get the minimum wage rate right.

And I will make one further interesting observation from a detailed study carried out by Meer & West from Texas A&M in 2015, in which they conclude as follows—and if I may quote them, Madam President?

The President: Certainly. You certainly may.

Sen. James S. Jardine: They say the following: "The voluminous literature on minimum wages offers little consensus on the extent to which a wage floor impacts employment . . . [W]e argue that the effect of the minimum wage should be more apparent in new employment growth than in employment levels . . ." (And that is key, new employment growth rather than current employment levels.) "[W]e find that the minimum wage reduces net job growth, primarily through its effect on job creation by expanding establishments." (So, that is establishments that are already existing and looking to expand.) "These effects are most pronounced for younger workers and in industries with a higher proportion of low-wage workers."

So, they also say in their report, and I did not quote it here, but they also say in their report that, for new businesses that are seeking to establish, they will be looking at the minimum wage rate. And if it is of a sufficiently high level, they will look to automate in a more effective way rather than hire additional staff.

So, I just wanted to stress that. They are talking about new employment growth, not necessarily those jobs that already exist.

So, Madam President, you know, there are many information papers available online, which shows that certain jurisdictions have dealt with determining minimum wage in different ways. Now, I know I am going to be criticised for referring to our neighbours to the south. But we can learn from them, as

they have learned from us many times in the past. And if you will allow me just to mention one.

The President: Absolutely, you can.

Sen. James S. Jardine: And I am referring to the Cayman Islands. They went through this exact same process in 2015. And their minimum wage advisory committee report issued in February of 2015 was extremely informative. Now, it is 220 pages, and I am sure people do not want to plough through it all. But if you do plough through it, it sets out a very good guideline of what they followed in coming up with their minimum wage. Now, I am not suggesting that we should just blindly copy what they did. But it does provide something for our Wage Commission to at least read, if they have not already read it, to give them some idea of how they might want to approach coming up with a minimum wage.

And it includes a lot of things that are mentioned in our Bill here that should be considered. They actually go through the process, so you can see how they have determined what, for example, economic impact it would have. Now, they have set their minimum wage at C\$6.00 per hour, which is about US\$7.20 per hour. So, as I say, they actually also brought in the ILO to give them advice. And we have heard Senator Hayward refer to them in his opening remarks. They were heavily involved in their process, as well.

The report from the Bermuda Joint Select Committee on this report was also very informative. And I did go through all of that several times. And it showed the work that they have carried out. And it also acknowledged, on page 9 of their report, and if I can quote it, Madam President, because I think it important again.

The President: You certainly may.

Sen. James S. Jardine: And they said as follows: "It is acknowledged that the analysis conducted has limitations, and the members are also cognizant of the unintended consequences that can arise if this process is not well consulted and well thought out." So, they themselves recognise that the process that this Commission has to go through has to be fairly consultative. It has to be fairly detailed so the rate that they come up with at the end of the day is something that is fully supportive.

Madam President, on pages 13 to 21 of the Joint Select Committee [report], and again they came up with certain insights, they provided certain insights to the various methodologies that are used throughout the world. And I believe there were three different versions. And it was useful to see that. And one of those indeed was the one that was selected by the Caymans in coming up with their minimum wage rate.

The Joint Select Committee also recognised the importance of the effect of the minimum wage levels on the cost of living in Bermuda. So, they do not just blindly send this out. They did actually consider it. And I wanted to quote specifically from them. (And I am looking at Senator Richardson, because I think he is going to fall into play here.) And it says, if I may quote them, Madam President.

The President: Yes, you may.

Sen. James S. Jardine: They say, "The Cost of Living Committee is equally as important, as they review the competitive economic environment to assess whether or not a lack of competition within key economic sectors artificially inflates the cost of goods and services." So, there is a sort of dynamic role being played by the Cost of Living Committee and by this Commission, working in tandem as they go through this process. And again, that is, in my mind, a very important process.

So, Madam President, there is a huge amount of literature out there. And I think what you read today may be different from what you read yesterday. I think the key point I want to get across is that the level that is set for the minimum wage will determine what impact it has on cost of living. It will impact . . . probably going forward, not so much for the existing jobs, but for job creation, it will impact the jobs that may or may not be created in the future. And I think that is important.

There were two comments I wanted to make on the Bill itself. And the first, if I may refer to them, Madam President, was clause 3(2)(a)(iv), clause 3(2)(b)(i) (it gets very complicated), and clause 3(4), addressing young persons. And I see that the Bill does not apply to anyone under the age of 16. But any students above the age of 16, subject to certain requirements of other Acts, are caught by this Bill.

And it just seemed to me that, if we are going to say that students between the ages of 16 and, let us just say 22 or 23, are subject to this Bill, and therefore, those higher rates have to be paid, that may have an impact on summer employment or indeed on holiday employment. If the rates are too high, businesses that might normally have taken students in and paid them something fair and reasonable just simply may not hire them.

So, my concern is if students between the ages of 16 and, say, 22 are impacted and do have to fall into this regime, they may find it more difficult to obtain jobs. And I just sort of sound that note of caution and concern. And again, there are studies out there that have shown that, in fact, it has had no impact, and studies that have shown that it has had an impact. So, I think we just need to be alive to that one.

Clause 7 appears to give the Commission fairly broad powers to request information (and I quote from the clause) "such record or documents" as they

may request. Madam, I understand that the Commission needs to get information, and they should get information that is relevant to the work that they do. My concern is that they want to get information that is relevant to what they are doing, and hopefully will not be going and looking for information that is not relevant.

And I guess one small amendment that I would suggest might be that the Government look at and consider, and it is in clause 7(a), which could read, for example, “to supply that information” and “[b] to [produce] such record or documents as may be specified”—and this is the bit that I would add—*which might reasonably be required*.

Now, I suppose . . . I am not a lawyer, but that seems to be a term that lawyers love to use, *it might reasonably be required*, because they can argue that it is not reasonably required. But it is just something that I think, as a cautionary note, might be worthwhile adding so that people do not go on fishing expeditions for stuff that is not relevant to the job at hand. And I think that this is something that should be considered.

So, Madam President, as I said in my earlier comments, I support this establishment of a wage commission. I believe that there are people working on this Island who are paid far below subsistence levels. And again, it may be by choice, and that they are prepared to be paid that and are quite happy with it. And probably just as important are those who feel they do not have any other choice. They need to have a job, so they take whatever wage is on offer. And they are being paid at well below a reasonable subsistence level.

I want to finish with my own personal comments, as I said earlier, but also comments from another place . . . well, not *another place*, [but] another island, I should say. As I have stated earlier, I think it is very important that the minimum wage that is set is carefully thought through. And so, I want to really conclude my comments by supporting that thought by again quoting from the Caymans Islands Minimum Wage Advisory Committee report, and I am sure I am going to be chastised for all of these quotes from them. But I think it is very relevant, and it sums up my complete thoughts on this.

And, if I may quote from them, on page 77 of their report?

The President: You absolutely may.

Sen. James S. Jardine: They say as follows: “The aim should therefore be to establish a framework for a minimum wage that strikes a balance” (or as I would say, Madam President, the right balance) “and which is beneficial to the labour market supply while remaining affordable to employers and not seen as hampering businesses and the economy.” Thank you, Madam President.

The President: Thank you, Senator Jardine.

Would any other Senator care to speak on this Bill?

Senator Richardson, you have the floor.

Sen. Anthony Richardson: Good morning, Madam President.

The President: Good morning.

Sen. Anthony Richardson: Hello, Senators and those in the listening audience.

As is typical in these debates and conversations, we do necessarily think through the financial and economic aspects. What I want to do, Madam President, is preface my comments with two short, real conversations that I have had in the recent past in preparation for today. One was, I was talking to a guest worker, a professional person. And he was going through talking about his experiences. He has been in Bermuda for about less than two years now. And I was asking, as we normally do, you know, *How’s it going?* and what have you. And he said that one day he had an experience whereby he worked in an office and someone had been dismissed. And the person came to him in a different situation and said, you know, *It’s because of people like you that Bermudians don’t have jobs*.

And he talked to him in terms of, first of all, the person who made the accusation did not know what this person’s job was. And then, after the conversation, he talked about the idea that he was a qualified accountant and the person who was dismissed was, effectively, a handy-person, but who often turns up late and all the rest of it. So, there was, in his mind, justification for that person to have been dismissed. But then he went on to talk about the idea that some of the things that he has seen . . . Oh, his perspective of Bermuda was that Bermuda is a land of opportunity.

And then he talked about from his homeland, or from where he lives, that they have a different perspective in terms of, you do not necessarily have, for example, three meals a day. And you do not live in a place that is reasonably comfortable and those things. And so, we talked about what is effectively a mind-set. And so, I will come back to that in a few minutes.

Another conversation I had was with another friend, who is visiting from the US, but lived in one of the islands before he went to the US. And we actually did a bit of a drive around Bermuda, and then we got on a boat tour. And, you know, naturally, as you are driving or on a boat, you give comments about what you see. And he was quite taken aback by what he saw as Bermuda’s extreme wealth. And we did go around, you know, the harbour and up to Morgan’s Point and all the rest of that.

And then, further on, we talked about the idea that, yes, this may be what you see. But the reality is

that, in the Bermudian context, it is superficial. Because there are many, many, many, many, many people who could not possibly afford to live in some of these accommodations, and who do get paid quite a minimal salary in that respect.

And so, for me, this . . . yes, I understand, of course, that there are the financial impacts. But there is a human element to what we are talking about today. And I think that has to be brought to the fore also as part of this discussion. Because notwithstanding what we may sometimes see on the surface, the reality is that the cost of the fuel and food and vehicles, electricity, bank fees and all the rest of it—they are the same for all of us irrespective of how much money we may earn.

And even as recently as this weekend, I was doing some online banking. And I said to myself, *There was a furore in the recent past when both banks increased their banking fees. But now it has died down.* But the reality is that you still have to pay those fees. So, it is a \$10.00-per-month per account fee and a \$0.50-per-[transaction] fee for online transfers. And I know from my previous job that those things will add lots to the bank's bottom line. But we will not necessarily remain focused on those things beyond the initial complaints when it took place. And so, I will leave that there.

My other comment, to bring into focus, is that again what we are used to is a capitalist society. And the reality is that capitalism is based on exploitation. So, as a business owner, what I am going to try to do is set my prices as high as I can. And to the extent that I employ you, or anybody else for that matter, I am going to pay you as little as possible to ensure that my profits are maximised. And that is one of those realities for us in Bermuda. And my comments may be a bit stark, I suppose. But we have come to accept that. And even as we go about our daily lives, we do not necessarily object to the idea of one person becoming very wealthy while other persons are just able to manage.

And I am saying all of that to say that part of this work and part of what we have to adjust to is the whole mind-set now in terms of really, for all persons who are involved in business and also the workers, how much is enough? To what degree are we prepared to continue to allow [for] the excesses of wealth in the context of persons who are not able to really manage?

There were comments earlier in terms of, what will the reference point be for setting, initially, the minimum wage and, ultimately, the living wage? And should there be an impact in terms of, do I as the employee have one child or two children or whatever the case may be? And am I married or otherwise? And the reality is that while each job may not be evaluated based upon my circumstances, we have to factor that into what we do. Because the community, the broader-based community, right, is starting in a big way to

see the impact of persons not being able to manage their daily financial obligations.

And so, we have to really, in my mind, press *Pause* and think about that. And, yes, there are going to be some financial implications in terms of whatever the rates are set at. But at some level, the question is, Is a job worth existing even if the person is only going to be paid, say, \$5.00 an hour? Because we have also had situations in Bermuda whereby—and I think Senator Jardine referred to this—some persons earn such little wages that they cannot afford to live, except there are multiple persons living in an accommodation. And I think we have heard, we may know ourselves personally, but we have certainly heard anecdotally whereby you may have a one-bedroom apartment, for example, with up to six occupants. Because that is what they have to do in order to afford the Bermuda rents.

And in many cases, I think when we hear about it anecdotally, it refers to some of the non-Bermudian workers who are here being paid very low wages, but there are also many Bermudians who have these same circumstances in that you may have more than one family living in very, very small accommodations. And from that, we see multiple dysfunctional social implications or impacts.

And so, to go back to the person I mentioned initially whom I talked to about what we are used to, it is for us to now start to contemplate a difference in that, yes, there are going to be, there may be, and I guess there are going to be some job losses. But some of those job losses may even be done as an excuse. And as a business owner, part of the conversation and consideration is, okay, if you are making "X" amount of money, what amount of that should really be shared with the workers? Because at some level . . . Listen, if you are making "X" amount, why can't more be shared?

And again, that is what I am talking about, about these shifts in mind-set that we have to go through. And it is not easy, because from a business perspective, it is . . . you know, I have taken the risk; it is my idea. My money is on the line. I have to pay bank loans and all the rest of it. But I think that is going to be a challenge for us as Bermudians, our society in terms of like going forward. Really, what is going to be our emphasis in ensuring that Bermuda as a society is able to continue as we go forward?

And having said that, I do recognise there are several marginal businesses in Bermuda. And what I mean by that is that there are some that are not making any profit in the full context of what a profit is. And in some cases, it is evidenced by persons saying that, *My employer is stealing from me as an employee.* And that arises because I might pay you, let us say, \$1,000 a week in this instance. And I make deductions for health insurance and pensions and all the rest of it. And I do not, then, pay those across to where they are supposed to go. And that is where the

accusation arises. But in some cases, I have a very marginal business, and I do not have the amount of money, in any event, to pay all those deductions. And that is why I do what I do.

I am not justifying that; but I am saying that there are going to be some circumstances by which those businesses may falter, but I justify that by saying this, is it appropriate for that business to be in existence if it cannot really fulfil its own obligations? And again, it is for us to start thinking this through, that these are going to be some of the realities of doing what is being proposed by the Wage Commission. But there has to be a fallout. It is what it is in that sense.

And when it comes to my example in terms of profitability, helping to determine what the impact should be on workers, if we go back to probably the late 1980s or early 1990s, there was huge discussion, from the negotiation point of view, between the unions and the Hotel Association, effectively. And the push back and forth was around, well, what is the profitability of the hotels in order to justify what the unions were demanding or requesting? And ultimately, what they did was they individually sent the information to Price Waterhouse. Price Waterhouse was then able to aggregate the data on a confidential basis and then give it back, because the people knew, generally speaking, what the hotel industry was doing. And that then gave a more realistic basis for the negotiations to continue. And obviously . . . not obviously, but then, ultimately, get to a successful outcome.

And so, those are some of the things that we are going to have to do that may be radical to really understand if the minimum wage is really the reason why someone becomes unemployed. Or is it the business interest being ultimately selfish in its decisions? So, rather than me have a lesser profit, I will dismiss you. And I am saying, in my mind, that is sometimes an excuse. We have to start figuring out what is realistic if we are serious about living in Bermuda, going forward. It is a serious conversation to be had.

And so, Madam President, I am one of those who certainly look forward to the work of the Commission, all of the analysis and the reference points that they will use. And from a business perspective, yes, I am prepared to consider what will have to happen in terms of ultimately sharing more of the business income with the workers.

As a final comment, going back to the person whom we were going on the cruise with, he works in the medical profession as a partner in an entity. And he suggested to his fellow partners that the profit of the business should be shared on a bonus basis with the physicians, the nurses and the rest of the persons who work in the medical facility. And he was challenged by, effectively, *What is wrong with you? Why would you want to do that?* And I am saying that this is the reality, that if there are profits being made, there may have to be a different basis upon which we really consider sharing those profits.

And my final comment, Madam President (I think it was referenced by Senator Jardine) –is that I want to say back in the day when it came to tips, you may be aware or Senators may be aware that a lot of Bermudians worked in the hotel industry as part of going between, say, age 16 and probably 20 (or 22 or 25, for that matter), during university. And at that stage, what used to happen is, number one, I would work in the dining room and I would receive my tips in cash. There were no guaranteed gratuities or whatever the case may be. And then, there were also the tips that went in a pool. And at the end of the month or the week, the maître d would say, *Okay, fine. This has been the pool of the grats.* And then they would split [the money] based upon a skill, between the waiters, the bus boys and all the rest of those.

And so, there was much more of a direct attribution of those gratuities with the extra workers, whereas now, in some cases, the gratuities are mandatory. They are on your bill. And so, I as the worker do not even see that. And in some cases, we may be aware that the employers are using what is the gratuities as part of their own income. And so, there is a degree of unfairness when it comes to this taking place.

And so, Madam President, those are my comments. And we are just trying to emphasise the fact that there is a significant human element in what is being discussed. And again, I look forward to the outcomes from the Wage Commission to see how they are going to have a positive impact on the social fabric of Bermuda. Thank you, Madam President.

The President: Thank you, Senator Richardson.

ANNOUNCEMENT BY THE PRESIDENT

SENATE VISITORS

The President: And before I determine whether any other Senator wants to speak, I would just like to acknowledge the presence of the Permanent Secretary, Ms. Aideen Ratteray-Pryse, in the Gallery, as well as Mr. Francis Richardson from the Shipping and Maritime Authority.

Welcome to you both.

[Employment (Wage Commission) Act 2019, second reading debate, continuing]

The President: Would any other Senator care to speak on this Bill?

Senator Jones, you have the floor.

Sen. Marcus Jones: Thank you, Madam President, and a hearty good morning to my colleagues here in the Chambers and to the greater listening audience.

I am going to springboard off of what my colleague, Senator Richardson, was making very clear.

And my words, the fact that we are in a capitalist society, so profit is the driving force for businesses. We know that socialism is a different animal, where most of the decision-making for an economy, for goods and services being produced by our population, is determined by the government. So, there are different things driving it.

So, we know that in a country like Bermuda, where we know we are battling with the high cost of living, the number-one ticket item in any business is the cost of its labour.

And just to make a comment in regard to gratuities, having worked in the hotel business and realising that gratuities have always been, shall I say, a contentious issue amongst employers and employees, and we do know that earlier in the early years when Bermuda went through the transition of voluntary gratuities to mandatory gratuities, there was a time when employers did their best (I am talking about in the hotel industry; I am not too sure about the restaurants) . . . but I know in the hotel industry, there was a certain level of gratuities that were being held by the employers to augment some of their revenues to be able to handle and underwrite the cost of labour.

But since which, we have had a number of agreements between the Hotel Association and the unions. I would say quite confidently that over the last 30 years, that has not been the practice. In fact, all gratuities that are received by the hotels are actually paid out to the workers. So, there is none of the keeping of gratuities by the hotel employers, because most unions would tell you that they ensure that their representatives are actually given a calculation sheet of how much was generated in gratuities and how much was actually paid out to the workers.

But having said that, because the employees' salaries and pay is such a large ticket item on any operation, any business operation, it is very sensitive. One of the thoughts I had was, in the hotel industry, we know that once the hotel, Madam President, hits 70 per cent occupancy, the employer is allowed to do lay-offs. And that is the hotel's way of responding to the drop-off in business. They lay off workers so they can reduce their costs. I can possibly see hotels and the like in the future saying, *We want to increase that occupancy level, because we have got to pay more in minimum wages. We want to be able to have some flexibility, and we may suggest that, hey, maybe that occupancy percentage should go up to 75 per cent to allow for the wiggle room to be able to make up for the increase in the minimum wages.*

Now, we are in favour, definitely, of this Wage Commission. We realise that the number-one purpose of putting together a minimum wage is to minimise the exploitation of workers in this country. We probably, all around this room, have been able to see examples of that happening within our community. We know for a fact that, in more ways than not, our foreign workers

are probably the number-one targets in unfair remuneration for their work.

I will say this, though. With the implementation of a minimum wage, I would like to think optimistically that there will be more of a level playing field, where the foreign worker will not be as exploited as much, because the statutory minimum wage limit will be in place. So, we should not see as [often] the foreign worker being chosen over the local worker because the playing field has been levelled.

We also recognise that the minimum wage should be sufficient enough to allow for a worker on the lower scale to be able to enjoy a reasonable standard of living, where they will be able to afford the basic necessities in life—food, shelter and things like that. But what is going to be a challenge for this particular Commission is to find the sweet spot, strike the right balance between protecting the worker and at the same time creating a flexibility for companies to be able to be competitive. That is going to be very, very challenging.

And in my looking at the legislation, I took note of [clause] 6(3). And, if I am allowed to read that, Madam President?

The President: You certainly may.

Sen. Marcus Jones: "The Commission shall, as it may be deemed necessary in the course of performing its functions under this Act, consult with—(a) employers; (b) employees; (c) organisations . . ." (that represent both employers and employees) "(e) Government Departments; and (f) any other person or body of persons."

When I read that, I was struck with the word "consult" with that list of persons. And I felt very strongly that [sitting] on that Commission should be actual practitioners within the workforce, who are actually dealing with the challenges of making operations and businesses work—i.e., actually having on that Commission union representatives, actually having on that Commission business owners who generally, the majority of their employees are on the lower scale of workers—i.e., hotel management, restaurant owners. Those are the employers who generally have workers who will be living off of the minimum wage. Because as practitioners, they will be able to take what is theoretically decided by the Commission and actually be able to apply it to day-to-day operations, I think that is very important.

The question of gratuities . . . and one may consider a sliding scale. We know that during the off season between November and March, the gratuity pool is going to be very small compared to the on season. So, one consideration may be made, does the minimum wage for that industry have to slide based on the season that they are operating in? I will challenge you to even venture to request that the workers take less gratuities in replacement of a higher

minimum wage. I would not think that they would be up for that. But that is going to be a challenge. And I think there are ways of making it fair for everybody.

So, in closing, Madam President, we definitely are in favour of this particular legislation. I believe it is important. I am concerned that, with the minimum wage that does not hit the right balance, we may have the threat of employers reducing hours or not—or even hiring on a part-time basis workers as opposed to full-time workers to control that and to minimise the impact of this particular statutory minimum wage rate. So, I think that needs to be looked at, and we need to be sensitive to that.

But I believe this legislation strikes the right chord, is going in the right direction. And, Madam President, I thank you for the time.

The President: Thank you, Senator Jones.

Would any other Senator care to speak?

Senator Michelle Simmons, you have the floor.

Sen Michelle Simmons: Thank you, Madam President.

I am going to be brief because so much has already been said about the need for establishing a wage commission. I totally support this Bill. And I think, as has already been stated by Senator Hayward when he presented the brief, it is clear that Bermuda is already far behind in terms of global policy with regard to a minimum wage and, indeed, even in terms of establishing a living wage.

I am sure that all of us around this table recognise that there is exploitation happening in Bermuda, exploitation of workers who are being paid very low wages. I am concerned that all employees who are gainfully employed in Bermuda should be treated fairly. And therefore, in terms of one's national origin, in terms of whether you are a Bermudian worker or a worker from another country, I think that workers should be paid equally in terms of workers who have similar roles in their employment contract.

I would like to just take us to the Bill on page 7, where we have, in Part 4, the Determination of Living Wage Rate. When I read the definitions, or the meaning, of "living wage rate," and if I may share this, Madam President, I will just read it very quickly.

The President: Yes, you certainly may, Senator Simmons.

Sen Michelle Simmons: It says, in clause 12(1), "For the purposes of this Act, 'living wage rate' means the amount of income necessary to afford an employee and his household a socially acceptable standard of living calculated to take into account such factors as . . ." and there is a list. I will come back to that list in a minute.

My concern in this meaning, or definition, is "his household," because that could mean any size household. And if people are using this as their basis for establishing a living wage, surely we need to more closely define "his household." Should it be a reference sized household? Should it be a household of two, three, four, up to ten people? I am just concerned that this needs to be tightened up a bit.

Also, with regard to the factors given in that same clause, it does say . . . Madam President, may I read it again?

The President: You certainly may.

Sen Michelle Simmons: It says, "a socially acceptable standard of living calculated to take into account such factors as the basic cost of—(a) food; (b) housing; (c) clothing; (d) medical care; (e) child care; (f) transportation." There is something that could be included in the list, because I know that it says "such factors as," but I think it deserves its own line item in that list, because I know when I look at my monthly expenses, it is probably the largest bill that I pay. And that is utility costs, which we all know are extremely high in this country.

So, included in that living wage calculation, I would like to know definitely that the commission will be looking at what this household is paying in terms of utility costs.

So, Madam President, I said I would be brief. I support all of the concerns already expressed about how we need to be treating employees in this country in terms of treating them fairly. And I would just ask that the two concerns that I have raised be considered.

Thank you, Madam President.

The President: Thank you, Senator Michelle Simmons.

Would any other Senator care to speak on this Bill?

Senator Robinson, you have the floor.

Sen. Dwayne Robinson: Thank you, Madam President. Good morning to all our listening audience and my fellow colleagues.

As my colleague has stated, we do on this side agree that everyone should be paid a wage that is considered liveable in the country they reside in. My concern (and I will be brief as well) is that the liveable wage may tip the scale in the favour of big business. And by that, I mean, if you have a small business, and we all know small businesses' backs are against the wall right now with operating costs, an ageing population, as well as lack of consumer purchasing power.

Most of the bigger businesses already, most likely—I will not say as facts—but most likely already pay a certain wage that would be considered liveable. So, this particular legislation will affect those who are

currently paying what would be considered below a liveable wage, which are most likely small businesses. So, I am concerned that Bermudians may be hit as employees who may receive notices to become part-time. And these are things that have been brought out by Senators around the table, but as consumers, as well.

Now, in the capitalist society that we live in, the less competition that you have tends to reflect on the level of service you receive. And I do believe that if we start to put more pressure on businesses that are up and coming, we may end up in a monopolised society where larger businesses have the ability to take and absorb the hit of a liveable wage [but] smaller businesses may disappear.

So, I wonder and hope that this is taking into account, when the liveable wage is created, whether or not, if these businesses do disappear, is our economy fertile enough for new businesses to rise up and take their place. Do we have any sort of idea whether or not folks will continue to take on the risk of entrepreneurship if the cost of living is still high and access to capital is so restricted? So, I do support a liveable wage. And I do believe that in our society, it is wrong for those to be making so much while others make so little.

But my biggest concern is that if we do go into this without considering that we may be eliminating the competitiveness of smaller business, then it may backfire on us, because the liveable wage will not be potent if people are unemployed. So, with those comments, Madam President, I will close.

The President: Thank you, Senator Robinson.

Would any other Senator care to speak on this bill?

Senator Campbell, you have the floor.

Sen. Vance Campbell: Thank you, Madam President.

I believe it was hinted at that there were days in Bermuda when you could quit your job in the morning and by mid-day have another job. I will even take that further. There were days or times in Bermuda when you could have two or three jobs simultaneously. And many people did so to make ends meet. Some did so so that they could enjoy certain benefits in life. But [today the] days are more difficult. So, I would not necessarily say they are gone, but they are more difficult—to be able to find someone holding two and three jobs.

And even if it was possible, you have to ask the question, Is that a good thing, especially when in many times it was a single parent who was working two and three jobs? So, it begs the question as to, Who is looking after the kids and whether that has led to some of the social issues we have today? But that is for another discussion.

I do not envy the task of the employment commission. It is not going to be easy. It is going to be

extremely difficult to establish a living wage in a climate, Madam President, when Bermuda's high cost of living has received much attention relative to the rest of the world. I will focus on the fact that the Progressive Labour Party does not want to see anyone exploited in any degree—not exploited less, we do not want to see exploitation at all when it comes to the amount that someone is paid. I think, you know, we respect a business above a minimum level, a living-wage level, to reward superior performance. So, if an employee is demonstrating superior performance, you know, this is not removing the choice of the employer to pay that employee a little more.

It does level the playing field, but maybe not from the perspective that was mentioned earlier if it then levels the playing field, then it costs the same, pretty much, Madam President, to hire a Bermudian versus an overseas employee at that level. So, whereas now, if an overseas worker is prepared to work for a wage that a Bermudian cannot make ends meet with, well, then, it is skewed in their favour.

I mentioned before in this Chamber about the changing economic model when we were discussing the retail business. And again, small business versus big business, I mentioned at that time the big business that has the corner, three-floor-story building, is a dinosaur. So, the newer businesses, the pop-up stores, have less overhead and may be able to absorb . . . and they are more nimble. Even if they have to take out a physical, static presence, they are more nimble than the big businesses, although they may be able to absorb this better than the big businesses, I would argue, Madam President.

The final area that I would like to focus on, we have spoken about the impact that this would have on businesses, absorbing this greater wage. I want to talk about the other side of that equation, the persons receiving the living wage when it is actually implemented. Madam President, I can be paid \$1 million. If I spend \$1.5 million, I am going to be in financial difficulty. So, again, we should bring some education with this in that, as I earn more, it should go to those bills that I may have struggled to pay. It should not be an extra trip this year or any trip at all.

So, again we need to bring some education. And it does not change the impact of some of the choices and the habits that we spoke of earlier. You know, if I earn whatever that amount, the living wage ends up being, I still have to be smart when I choose to do certain things in my life, if I choose to do them at all. So, I still have to have smart choices. So, we need to . . . with that living wage, I would like to see an education programme. This does not mean that you have hit the jackpot. You still have to be smart in your choices and the things that we do in life.

So, with those comments, Madam President, I do support this legislation. And I think it is long overdue. Thank you, Madam President.

The President: Thank you, Senator Campbell.

Would any other Senator care to speak? I think most people have spoken.

So, Senator Hayward, it is over to you.

Sen. Jason Hayward: Thank you, Madam President. And I thank you, the fellow Senators, for their interventions in this particular debate.

I had the privilege of being on both the LAC Subcommittee responsible for the living wage report and also on the Joint Select Committee responsible for a living wage. And in both of those committees, what we had to identify first and foremost, before we even discussed whether or not the country needs a minimum/living wage is, do we have a problem? And it was acknowledged by all in both committees that we do have a problem. And so, in the LAC Subcommittee report, the first paragraph, we tried to identify just the basic problem in very layman's terms. And if you will allow me to read that, Madam President?

The President: You certainly may, Senator Hayward.

Sen. Jason Hayward: "What is the problem? There has been a change in Bermuda's job market from employment which was primarily in tourism to employment predominantly in international business and related industries. This has significantly altered our economic and workforce landscape. Bermuda's economic growth and development, coupled with other economic factors, have led to a high cost of living. And while the cost of living has increased, wages in many job categories have remained stagnant.

"Employment statistics reveal that there are persons in Bermuda who fall in categories beneath the low income threshold. The cost of rent, food and other basic necessities has steadily risen over the years, while wages in many sectors have not similarly increased. Particularly during the recession, there have been instances where workers have taken a decrease in pay, which has diminished purchasing power for many households. As a consequence of the high cost of living, Bermuda has experienced high levels of low-wage poverty.

"While the impact of poverty in Bermuda may not be as easily recognised as it may be in other jurisdictions, over the last several years there has been a significant increase in the number of working families seeking financial assistance and other means of social support. The demographics of persons seeking support have also changed. Historically, mainly unemployed or retired persons have sought support. But now persons who hold full-time jobs or who are under-employed also require assistance."

And so, that was recognised that, you know what? There is a significant portion of our population struggling. We then went on to say, if that is the notion that we support, then what is the evidence to support that? And when we looked at it, we looked at the last

low income studies that the Department of Statistics actually produced, and that was in 2008. And those low income studies, the report was actually titled, Low Income Thresholds[:] A Study of Bermuda's Households in Need. And that was a very important title, Low Income Thresholds[:] A Study of Bermuda's Households in Need. In need of what? In need of what in particular is this referring to?

And this is [referring to the] need of some sort of financial assistance, some sort of subsidy, some sort of uplift. There were three different measures in that one report. One was a relative low income threshold. One was a low income cut-off. And one was a low income threshold. Madam President, if you will allow me, I can just summarise the data that were captured in that report.

The President: You certainly may, Senator Hayward.

Sen. Jason Hayward: As it pertains to a relative low income threshold, in 2007 there were 3,680 households with incomes below the relative low income threshold. And that was \$41,000. The relative low income threshold for single adult households was \$38,000, and there were 1,115 households that fell below the relative low income threshold.

As it pertains to a low income cut-off, in [2007] there were 3,050 households with income below the low-income cut-off of \$36,605. The low-income cut-off for a single-adult household was \$33,630, which translates into \$646.73 per week. Twelve per cent of single adult households fall beneath the low income cut-off.

And as it pertains to low income thresholds, the low income thresholds study revealed that in 2007, there were 3,010 households . . . 3,100 households in Bermuda currently living below established low income thresholds, which ranged from \$27,000 per year for a single adult household to \$76,000 a year for a family of two parents and two children younger than 16 years old.

And so, when we look at those numbers, we see that there are persons who, under any other categorisation, would be living in some sort of poverty. Remember, poverty is relative to the jurisdiction you are in. And so, no, we do not see those extreme levels of poverty. But based on a statistical measure, we do have households that are living in poverty. When we say "households," it is important that we recognise that when we are talking about households, we are not only talking about one adult at a time. Most times, that adult can have children, which means that we now have children who were born into conditions that they have no control over.

This translates into the Government needing to put some form of policy in place. There are only a number of things that can be done. You can provide your social protections, safety nets, and that is what we do through Financial Assistance. We can explore

the cost of living, but that is a very difficult measure. Or, we can say that, in certain circumstances, the wages which individuals receive are not acceptable, based on the cost of living in society.

We then used another set of evidence, which was the 2015 employment survey [Labour Force Survey], and we looked at the number of jobs with annual incomes less than \$35,991. And that is roughly around \$17 per hour on a 40-hour workweek. The majority of jobs that fell underneath that measure were, number one, cooks, cashiers, waiters and waitresses, and sales clerks within the retail stores. And then, there were a number of other job categories. But in each of those job categories there were roughly around 500 jobs that fell beneath that particular threshold.

That is important, because we can now clearly identify which industries will be impacted most. There is this notion that if you increase the minimum wage rate, then it would have an adverse effect on employment. But I believe you have to look at the territory that you are in and the requirements for that job.

The reports . . . none of the reports thus far are actually conclusive. There are studies in favour, and there are studies that are not in favour. But what there is no debate on is whether or not persons should be making low, unacceptable wages. See, when we focus on the pure economic argument, we fail to realise that there are a portion of workers in our community who are protected from low wage rates, and those are unionised workers. There are over 9,000 unionised workers in Bermuda. And I would venture to say that all of those workers receive in their compensation package what we would consider to be above a living wage or a minimum wage rate. And each year, we negotiate higher increases for those workers.

But what I have not found is where there is a trade-off between that higher wage rate that we negotiate and employers reducing their workforce. I do not find that correlation to exist. And so, if it is, if it will happen, it may be a minimal impact, may have a minimal impact on the overall economy. And that is why it is also important that we just approve a National Workforce Development Plan and we ensure that we have options for persons who may be disadvantaged. Retrain them so that they can work in jobs and receive a proper wage so they would have to rely on a minimum wage or a statutorily set living wage rate.

A wage commission is actually the most reasonable way forward. What we wanted to avoid from a committee level is the ability for politicians to arbitrarily put in place minimum and living wage rates. There is somewhat of a science behind it. Whatever methodology that a jurisdiction chooses will be the methodology that you will use perpetually, going forward. So, the only things that change are the inputs in the methodology, and not the methodology itself. Certainly, you can have revisions to your methodology. But if you

have a consistent way of calculating minimum and living wages, it reduces the amount of opposition you will get to the actual numbers. And it is a more objective way of doing things, rather than a subjective way.

But the ILO, in its minimum wage policy guide, actually supports that any statutory system use a tripartite model, a commission model in which you have representatives of the employers, representatives of the employees and representatives of the government. They will come together. They will look at all the data. They will have those conversations in terms of the pros and cons of the options that they may put forward. And then, they will come to a position where they will recommend a rate to the Minister in a report.

That is the most sensible way of doing things. And so, I am glad that the Government has not moved directly forward in putting a minimum or living wage rate in front of us and that they put a mechanism in place, so what we can do is develop what are the best and most appropriate rates for our community, based on the conditions that currently exist in our economy for this specific period of time.

What my colleagues, some colleagues, stated earlier in terms of exploitation and the way in which employees are abused, is a reality. I would have spoken about the way in which non-Bermudian workers in particular are treated. And they, many come to Bermuda under one auspice, [only] to find out that the conditions that they accept once they get to Bermuda are very much different than what they thought. And often, persons will have to work for very low wages, long hours, with no overtime [pay], no real vacation, no sick leave, even though these are provisions within our Employment Act. And persons do not speak up because they fear that if they do, their employment contract will be severed.

This is the reality. And so, if we can put matters in place which level the playing field and create a standard across the board, at least for the wage portion of the concerns, I think we will be doing everyone in Bermuda a bit of justice. And I wish that everybody should be in a dignified work environment. Decent work should be afforded to all. Nobody should be working in precarious working conditions.

I believe that the Wage Commission will come to a reasonable level. When the Joint Select Committee was mulling over what would be a minimum wage, we got to somewhere around \$12.25 as being reasonable. We already had somewhat of a benchmark regarding a minimum wage for domestic workers, the only group of workers who do have a prescribed minimum wage, and that is currently at \$10.00 an hour.

And so, I do not think what we will find is the commission setting an unreasonable wage that creates an undue burden on business. But while we remain concerned about business interests, our priority of concern should be the workers, the people who work nine-to-five, day after day, and cannot make ends meet.

There is a category of workers on financial assistance, and those are called low-wage earners. And they qualify as being in the low-wage earners category after the department takes into consideration what they make, based on their full-time jobs and what the reasonable expenses are. The list in the document for a living wage is not exhaustive. Different families will have different factors in terms of what comprises what is required for their living wage calculation. But what we need to do is have a suite of things done to ease the burden of living for persons in Bermuda. Taxation, progressive taxation is one. More intervention into the markets regarding the cost of living commission is another. Working to ensure that we have some sort of health care system that is affordable and accessible, increased intervention regarding the rate of rents in this country . . . and so, there are a number of things that we have to do so that persons working have decent lives in Bermuda.

But this is an absolutely necessary first step. It is the best practiced step in terms of moving forward. And this will . . . the results of the commission will undoubtedly have a positive effect on the lives of many workers in this country. And so, with that, Madam President, I will conclude.

And I would like to move that the Employment (Wage Commission) Act 2019 be now read a second time.

The President: Is there any objection to that motion?
No objection.

SUSPENSION OF STANDING ORDER 26

Sen. Jason Hayward: Madam President, I would like to suspend Standing Order 26 in relation to this Bill.

The President: Is there any objection to that motion?
No objection.
Carry on.

[Motion carried: Standing Order 26 suspended.]

Sen. Jason Hayward: Madam President, I now move that the Employment (Wage Commission) Act 2019 be now read a third time.

The President: Is there any objection to the third reading?
No objection.

BILL

THIRD READING

EMPLOYMENT (WAGE COMMISSION) ACT 2019

Sen. Vance Campbell: With there being none, Madam President, I move that this Bill do now pass.

The President: It has been moved that the Bill entitled the Employment (Wage Commission) Act 2019 do now pass.

Is there any objection to that motion?
No objection. The Bill is passed.

[Motion carried: The Employment (Wage Commission) Act 2019 was given a third reading and passed.]

The President: Thank you, Senator Hayward.

And, Senators, it is 12:30. We will break for lunch. And we will resume at 2:15.

Thank you all.

Proceedings suspended at 12:33 pm

Proceedings resumed at 2:17 pm

[Sen. the Hon. Joan E. Dillas-Wright, President, presiding]

The President: Good afternoon, Senators. I hope you enjoyed your lunch. And for the listening public, we are continuing with the Senate, the Orders of the Day.

And the next Order of the Day is the second reading of the Dental Practitioners Amendment (No. 2) Act 2019.

And, Senator Hayward, this is your Bill. You have the floor.

Sen. Jason Hayward: Madam President, I move that the Bill entitled the Dental Practitioners Amendment (No. 2) Act 2019 be now read a second time.

The President: Is there any objection to that motion?
No objection.
Carry on, Senator Hayward.

BILL

SECOND READING

DENTAL PRACTITIONERS AMENDMENT (NO. 2) ACT 2019

Sen. Jason Hayward: Madam President, today I present the Bill entitled the [Dental Practitioners Amendment \(No. 2\) Act 2019](#).

Madam President, the Ministry of Health is responsible for the legislation that provides the framework for the regulation of health care professionals. The [Dental Practitioners Act of 1950](#) [the Act] is the legislation that establishes the Bermuda Dental Board [the Board] and the Dental Professions Complaints Committee, and guides the regulations of dentists, dental hygienists and dental technicians.

The Board is the regulatory Authority charged with ensuring high standards of professional competence and conduct for the dental profession and to

advise the Ministry on issues pertaining to them. Accordingly, the Board's and the Ministry's efforts to advance standards for professional practise are ongoing. The committee is responsible for receiving and investigating complaints against any dentist, dental hygienist or dental technician registered with the Board in order to determine whether a complaint should be referred to the Board for possible disciplinary action.

Madam President, the Bill entitled the Dental Practitioners Amendment (No. 2) Act 2019 proposes to improve the administrative handling of complaints made against dentists, dental hygienists and dental technicians by increasing the number of alternate members available for both the Board and the committee.

Additionally, the Bill proposes a provision for an auxiliary committee to be constituted when the committee is unable to deal with all of the complaints before it. It is important to note that the reasons for constituting an auxiliary committee can be due to the volume of complaints received, time constraints and conflicts of interest. The proposed amendments for auxiliary committees make provisions for decisions of such committees to be decisions of the committee.

Madam President, currently the Act allows for seven members of the Board, with one alternate each. It also provides for the committee to be comprised of three members and three alternates. This number of alternates has proved unworkable due to the intensity of work involved in investigating complaints and conducting disciplinary hearings.

Madam President, both the Board and the committee comprise members with full-time commitments within their respective professions, and securing their engagement for complaints is unreasonably onerous and unworkable. On average, the committee receives about three complaints per year. Each complaint is investigated in order to determine whether an allegation sets out grounds for disciplinary action. The investigation of a complaint can be a lengthy process and require intensive consultation, coordination and research. It is also important to note that during an investigation, committee members are coordinating and balancing their professional and personal schedules in order to ensure a thorough investigation.

Madam President, in our small community, persons are often conflicted, and establishing a committee that can meet the particulars of a complaint is challenging with the current membership structure. The changes proposed today are small, but necessary to improve the timeliness and efficiency of complaint handling for both the person making the complaint as well as the registered person who is the subject of the complaint.

Overall, Madam President, the Bill entitled the Dental Practitioners Amendment (No. 2) Act 2019 will improve complaint handling so that the Board and the committee can continue to uphold the high standards

of professional competence and conduct essential services and safeguarding of the public health.

Thank you, Madam President.

The President: Thank you, Senator Hayward.

Would any other Senator care to speak on the Bill?

Senator Kempe, you have the floor.

Sen. Nicholas Kempe: Thank you, Madam President.

This Bill effectively looks to mimic what was done with the Medical Practitioners Act, and we do not have any further comments beyond those raised at that time.

The President: Thank you, Senator Kempe.

Would any other Senator care to speak on this Bill?

No. Then, Senator Hayward, over to you.

Sen. Jason Hayward: Madam President, I now move that the Dental Practitioners Amendment (No. 2) Act 2019 be now read a second time.

The President: Is there any objection to that motion?

No objection.

Carry on, Senator.

SUSPENSION OF STANDING ORDER 26

Sen. Jason Hayward: Madam President, I move to suspend Standing Order 26 in relation to this Bill.

The President: Is there any objection to that motion?

No objection.

[Motion carried: Standing Order 26 suspended.]

Sen. Jason Hayward: Madam President, I now move that the Dental Practitioners Amendment (No. 2) Act 2019 be now read a third time.

The President: Is there any objection to that motion?

No objection.

BILL

THIRD READING

DENTAL PRACTITIONERS AMENDMENT (NO. 2) ACT 2019

Sen. Jason Hayward: Madam President, there being no objection, I move that the Bill do now pass.

The President: It has been moved that the Bill entitled the Dental Practitioners Amendment (No. 2) Act 2019 do now pass.

Is there any objection to that motion?

No objection.

The Bill is passed.

[Motion carried: The Dental Practitioners Amendment (No. 2) Act 2019 was given a third reading and passed.]

The President: Thank you, Senator Hayward.

[Order] (5) [under] the Orders of the Day is the consideration of the draft Regulations entitled the Merchant Shipping (Fees) Amendment Regulations 2019.

And Senator Caesar, I believe this is your Bill.

Sen. Crystal Caesar: Yes.

The President: You have the floor.

Sen. Crystal Caesar: Thank you, Madam President.

Madam President, I move that the Senate do now take under consideration the draft Regulations entitled the Merchant Shipping (Fees) Amendment Regulations 2019.

The President: Is there any objection to that motion?

No objection, Senator Caesar.

REGULATIONS

MERCHANT SHIPPING (FEES) AMENDMENT REGULATIONS 2019

Sen. Crystal Caesar: Madam President, the purpose of the [amendment regulations](#) before the Senate today is to implement a new scale of charges for the registration of ships with the Bermuda Ship Registry, to introduce registration incentive programmes and to provide the appropriate powers for the Bermuda Shipping and Maritime Authority (or BSMA) to reduce or waive fees under certain specific circumstances.

Madam President, Bermuda is a member of Red Ensign Group (or REG), category 1 shipping registries, and is privileged to register ships of any type, age or size. The registry must ensure ships on its register comply with Bermuda's international obligations. In order to maintain the required standards, the BSMA must undertake regular technical surveys, audits and safety inspections of registered ships, and issue statutory certificates. Shipowners are required to pay a registration fee, annual tonnage and service fees, and additional fees are levied for certain technical services.

Madam President, the ship registration is a lucrative and competitive international business. And shipowners have many options available when considering a jurisdiction to register their ships. Therefore, competing international ship registries have introduced various incentive programmes as a method of

encouraging shipowners to register their ships with the respective registry's jurisdiction. To enhance Bermuda's commercial competitiveness and to support marketing efforts to grow the ship registry, the BSMA is proposing to implement a new scale of fees for the one-off initial registration of vessels joining the registry and introduce an incentive programme. The details of the proposed programmes are as follows:

- New scale of fees for initial registration of new vessels, a one-off fee, which is a discount of 30 per cent off the initial registration fee will be available in the following circumstances:
 1. registration of a vessel that is five years of age or less from the date of first construction or that has undergone a major conversion within the past five years;
 2. registration of three or more vessels at the same time that are 15 years of age or less, or at least an irrevocable written commitment to register three or more such vessels within a calendar year;
 3. This discount will be increased to 50 per cent for an owner registering 10 or more vessels that are 15 years of age or less at the time [of] submitting an irrevocable written commitment to register 10 or more such vessels within a calendar year.

Maritime incentive programme. Currently, there are a number of shipping companies that are registered Bermuda companies, but their ships are registered in other jurisdictions. It is proposed to provide a reduction in the initial registration fees for owners who have their shipping company based in Bermuda and who register their ships with the Bermuda Ship Registry. A similar reduction in the initial registration fees can be provided for shipping companies that comply with the economic substance requirements once the scope of adequate requirements is finalised.

Madam President, it has become custom and standard practice for open shipping registries to waive or reduce fees and the cost of services for specific shipowners and clients as a form of incentive to attract new business, particularly with ships that are under construction. It is often the case where open ship registries will negotiate and enter into agreements with shipbuilders in Korea, Japan, Italy, Germany and China to provide a ship registration financial package, which the shipbuilder in turn markets and offers to owners and financiers to secure construction orders. Therefore, it is proposed to provide the BSMA the appropriate powers to waive or reduce fees for the new construction vessels and with the registration of a fleet of vessels and in other specific circumstances.

Madam President, other amendments to the regulations include provisions for the issuance of specific insurance certificates as a result of recent amendments to the enabling legislation to the Merchant Shipping Act 2002, and provisions for the issu-

ance of ship radio licences. Thank you, Madam President.

The President: Thank you, Senator Caesar.

Would any Senator care to speak on these [draft regulations]?

Senator Jardine, you have the floor.

Sen. James S. Jardine: Thank you, Madam President.

I just had one question for the Senator. I do not know if you can answer this. I mean, I know that the Shipping Authority, one of the reasons (and you say it in your statements) was to create or increase our shipping register. And do you have, or does the Ministry have any idea what revenues, additional revenues they are hoping to generate as a result of this change? Or will, in fact, revenues be reduced? I see it as a revenue-generation exercise, and I just wondered if they had any sort of thoughts as to what they thought they could bring in by way of additional revenue.

The President: Thank you, Senator Jardine.

Would any other Senator care to speak on these [draft regulations]?

No? Then, Senator Caesar, you have one question.

Sen. Crystal Caesar: Yes. Thank you, Madam President. If you just bear with me, I am going to see . . . my technical people are listening in, and see if they can provide an answer for that.

[Laughter]

Sen. Crystal Caesar: If not, I will have to take it under advisement and give you the answer later.

Sen. James S. Jardine: That is fine. That is fine, Madam President.

The President: You can take it under advisement.

Sen. Crystal Caesar: Okay. Thank you.

The President: Thank you, Senator Caesar.

Sen. Crystal Caesar: Thank you.

Madam President, I move that the said draft regulations be approved, and that the following message be sent to His Excellency, the Governor:

May it please your Excellency, the Senate, having had under consideration the draft Regulations entitled the Merchant Shipping (Fees) Amendment Regulations 2019, proposed to be made by the Minister responsible for maritime administration under the provisions of section 250 of the Merchant Shipping Act 2002, has the honour to inform your Excellency

that the Senate has approved the said draft regulations.

The President: Thank you, Senator Caesar.

Is that any objection to that message?

No. Then, thank you, Senator Caesar. A suitable message will be sent to the Governor as indicated.

[Motion carried: The Merchant Shipping (Fees) Amendment Regulations 2019 were approved.]

The President: Moving on now to the next item on the agenda, which is [Order] number (6), consideration of the draft Order entitled the Pensions (War Service) Order 2019.

And Senator Caesar, I believe this is your Order, as well.

Sen. Crystal Caesar: Yes, it is, Madam President.

The President: You have the floor.

SUSPENSION OF STANDING ORDER 71(2)

Sen. Crystal Caesar: Thank you.

Madam President, I move that Standing Order 71(2) be suspended so that Senate may now proceed with consideration of the draft regulation Order notice rules entitled the Pensions (War Service) Order 2019.

The President: Is there any objection to that motion?

No objection.

Carry on, Senator Caesar.

[Motion carried: Standing Order 71(2) suspended.]

Sen. Crystal Caesar: Thank you, Madam President.

Madam President, I move that the Senate do now take under consideration the draft Order entitled the Pensions (War Service) Order 2019.

The President: Is there any objection to that motion?

No objection.

Carry on, Senator Caesar.

ORDER

PENSIONS (WAR SERVICE) ORDER 2019

Sen. Crystal Caesar: Thank you, Madam President.

Madam President, I am pleased to present the [Pensions \(War Service\) Order 2019](#) for Members of the Senate to consider. The purpose of this Order is to prescribe the rate of pensions for war veterans in accordance with section 16A of the [Pensions and Gratuities War Service Act 1947](#).

Madam President, Members will be aware that qualifying war veterans are afforded a monthly

pension payment administered by the Department of Social Insurance. This Order seeks to increase the payment by \$200, from \$800 to \$1,000 per month.

Madam President, the cost of this increase to the Government is approximately \$162,000 in fiscal year 2019/20. A partial budgetary provision has already been made within the budget allocation for the War Vets programme administered by the Department of Social Insurance. The additional cost will be funded from savings from within the current Ministry of Finance budget allocation.

Madam President, to be clear, in addition to the pension benefit, war veterans also receive various medical benefits which include: all expenses for treatment at the King Edward Memorial Hospital [KEMH], including vision care, unlimited prescription drugs, medical office visits to general practitioners [GPs] and specialists, and limited denture [coverage]; also funeral expenses up to \$5,000 are also covered under the Act.

Madam President, war veterans enrolled in the Government's war veteran's pension scheme are afforded the benefits of FutureCare insurance plus additional benefits only available on the basis of their status as a war veteran.

All expenses for hospitalisation and tests at the KEMH, inclusive of vision care at KEMH, are fully covered.

Medical and surgical services received overseas are covered at 75 per cent under FutureCare with the balance being covered under the War Veterans Insurance programme at the discretion of the War Pension Commissioners.

Prescription drugs are covered at 80 per cent up to a maximum of \$2,000 under FutureCare. Once that \$2,000 is reached the cost of the prescriptions are covered in accordance with the War Veterans Benefit Schedule.

Madam President, under FutureCare medical visits to a GP are paid at \$46 per visit. Visits to specialists are covered at \$131 per initial visit and \$55 for follow-ups. War veterans receive additional coverage of up to \$128 to cover the balance of a specialist follow-up visits.

Basic dental care is provided under FutureCare and additional benefits of up to \$1,000 per annum for dentures is afforded to war veterans.

Madam President, long-term care at the extended care unit and at the palliative respite care is covered for war veterans up to \$7,000. There is also provision for coverage up to \$5,000 for funeral expenses.

New benefits of FutureCare available to war veterans include: partial coverage of psychotherapy sessions; visits to clinic psychologists, psychiatrists and chiropodists. Full benefit information for war veterans can be obtained from the Department of Social Insurance.

Madam President, in an earlier statement covered in another House on this matter, in reference to Bermuda soldiers, those who served as essential support staff in Italy and Egypt during the First World War are covered. This reference should have been made to World War II. Additionally, the statement erroneously suggested (in another place) that soldiers with families were not allowed to serve . . . sorry, that all soldiers with families were not allowed to serve overseas. In fact, only those soldiers who were the sole remaining sons of a widow remained on Island as the Government did not wish to [unduly] burden the dependants.

Madam President, Bermuda's war veterans are only a small number in our community, but their stories are a voluminous chapter in Bermuda's history. The Minister and the Ministry will continue to take every opportunity to support the widows and their families for their service.

We would also like to thank the Honourable Member Mr. Derrick Burgess JP, MP, and Ms. Carol Everson MBE, LRAM, welfare casemaker with the Bermuda Legion. Ms. Everson was at the forefront of veterans' affairs for several years. And both of the individuals have worked tirelessly to ensure that the stories of war veterans continue to be told and their rights and earned privileges upheld. Without their tenacity in this matter, these benefits would not have been realised and they are to be lauded for their efforts.

Madam President, with these brief remarks I welcome discussion by my honourable colleagues.

The President: Thank you, Senator Caesar.

Would any Senator care to speak on this Bill? Senator Kempe, you have the floor.

Sen. Nicholas Kempe: Thank you, Madam President.

Certainly, people in my generation have not had to live through a time where our country has been involved in an active war, in a sense. And a lot of the stability that countries in the North Atlantic have benefited through over the last 50-plus years has been because of the sacrifices made by those during the two World Wars. And, certainly, we think this is right that it be aligned with other pension increases that have been passed. Thank you.

The President: Thank you, Senator Kempe.

Would any other Senator care to speak on this Bill?

No? Then, Senator Caesar, it is over to you.

Sen. Crystal Caesar: Thank you, Madam President.

I move that the said draft Order be approved and that the following message be sent to His Excellency, the Governor:

May it please your Excellency, the Senate, having had under consideration the draft Order entitled the Pensions (War Service) Order 2019, proposed to be made by the Minister responsible for defence under the provisions of section 16A of the Pensions and Gratuities (War Service) Act 1947, has the honour to inform your Excellency that the Senate has approved the said draft Order.

The President: Is that any objection to that motion?

No objection.

Senator Caesar, a suitable message will be sent, and thank you.

Sen. Crystal Caesar: Thank you, Madam President.

[Motion carried: The Pensions (War Service) Order 2019 was approved.]

The President: The next few are Senator Campbell. We will have to wait until he comes.

[Inaudible interjection]

The President: We will proceed now with item number 7 on our agenda, which is—

[Crosstalk]

The President: Oh, the last one. Okay.

We will proceed then with [Order number (11),] the second reading of the Chartered Professional Accountants Amendment Act 2019.

[Crosstalk]

The President: Well, Senator Hayward is . . .

[Inaudible interjections]

The President: He is going to be very quick.

An Hon. Member: Yes.

The President: We are doing item number 11 on the agenda.

Senator Hayward, it is your Bill.

STANDING ORDER 25

Sen. Jason Hayward: Madam President, I move that the provision of Standing Order 25 be granted so that the Senate may now proceed with the second reading of the Bill entitled the Chartered Professional Accountants Amendment Act 2019.

The President: Is there any objection to that motion?

No objection.

Carry on, Senator Hayward.

[Motion carried: Leave granted for the Chartered Professional Accountants Amendment Act 2019 to be read a second time on the same day as its first reading.]

Sen. Jason Hayward: Madam President, I now move that the Bill entitled the Chartered Professional Accountants Amendment Act 2019 be now read a second time.

The President: Is there any objection to the second reading?

No.

Carry on, Senator Hayward.

BILL

SECOND READING

CHARTERED PROFESSIONAL ACCOUNTANTS AMENDMENT ACT 2019

Sen. Jason Hayward: Madam President, today I introduce the Bill entitled the [Chartered Professional Accountants Amendment Act 2019](#).

Madam President, in summary, this Bill makes amendments to sections 9 and 10 of the [Chartered Professional Accountants Act 1973](#) to provide for the statutory recognition of the designation “Association of Chartered Certified Accountants,” which is known internationally by the initials ACCA. This statutory recognition of the designation, ACCA, will enable members of CPA Bermuda who qualify to hold the designation, to now have the right to use the designation in Bermuda.

Madam President, CPA Bermuda is directly affiliated with the Chartered Professional Accountants of Canada (or CPA Canada). Its mission is to foster public confidence in the accountant profession by acting in the public interest and helping its members excel. The key objectives of CPA Bermuda are to promote and increase the knowledge, skill, and proficiency of its members and students; to regulate the discipline and professional conduct of its members and students; to promote the best standards of practice in financial reporting; and to promote the welfare and interests of CPA Bermuda and the accountant profession.

The Chartered Professional Accountants Act 1973 and its bylaws govern the standards of operations upon which CPA Bermuda functions.

Madam President, the amendments to the CPA Bermuda Act 1973 will allow for the first time persons resident in Bermuda who hold the Association of Chartered Certified Accountants [ACCA] designation to become members of CPA Bermuda. As a result, persons holding the ACCA designation will then be able to practice in Bermuda with the same rights

and privileges as any other professional accountant currently recognised in Bermuda.

Madam President, as a backdrop, ACCA Caribbean has been engaged in discussions with key stakeholders in Bermuda since 2009, primarily to address recognition issues and to promote ACCA qualifications as a viable and alternative career pathway to becoming a chartered accountant. In 2012, Bermuda College, through its division of Professional and Career Education (PACE), began offering the ACCA qualification and became a licensed computer-based testing centre for ACCA examinations.

Madam President, the ACCA Certified Accountant Technician [CAT] programme was deemed to be attractive for our two public senior schools. There was an [interest] in incorporating the programme into the senior school curriculum as an option under the Career Pathways programme. However, the lack of market recognition of the ACCA accountant qualification was a significant drawback.

Madam President, unlike many of the other accounting designations, students do not need a bachelor's degree to enrol in ACCA programmes. They can [attend] the ACCA programme and earn their bachelor's and master's degrees as they progress through the coursework with three years of relevant work experience.

Therefore, Madam President, with a high number of non-Bermudian accountants on work permits on the Island, the ACCA accounting designation provides an avenue for Bermudians to earn an internationally recognised professional accounting designation without having to leave the Island to earn a bachelor's degree.

Madam President, the ACCA qualification upholds the global accounting education standards set by the International Federation of Accountants and the qualification has been officially benchmarked to the master's degree level by Oxford Brookes University in the United Kingdom. After several years of advocacy and dialogue with a number of Government Ministers and officials promoting the values and benefits of the ACCA qualification, in 2018, CPA Bermuda agreed to support the amendment of the Act so that ACCA members could become members of CPA Bermuda, having the same rights to practice in Bermuda as other chartered accountants.

Madam President, the amendments to the CPA Bermuda Act and the subsequent bylaws by negative resolution will recognise all qualified accountants whose designations are listed in the new scheduled section 9(3) under clause 2 of the Bill on an equal footing. The amended Act will also introduce competition in the market, thus facilitating choice, driving standards and ultimately growing the economy. The amendment will allow for the Act and the bylaws to take into account those accountants entering into Bermuda on a temporary basis, thus strengthening

the regulatory arm of the accountant profession and protecting the public.

Thank you, Madam President.

The President: Thank you, Senator Hayward.

Would any Senator care to speak on this Bill?

No . . . Oh, Senator Richardson, you have the floor.

Sen. Anthony Richardson: Madam President, [I have] very few brief comments. I think I know that around the table the intended change will impact the professional body for at least 1, 2, 3, 4 of us that sit around the table. And I just want to, I guess, further emphasise the impact of what has been done today.

As you know, we are all members of the community and once it was known that this was going to be coming to this table for a discussion and debate, others have actually said to me that this a good thing for us because there are many persons who were in Bermuda previously that did qualify under the ACCA guidelines and were not able to really fully practice in Bermuda.

By way of brief history, Bermuda has always had a very strong demand for accountants. And I know, probably around 2002 (give or take) even the government had some challenges in finding staff. I was part of the process whereby we actually went to broaden our catch (if that is the right way to put it) and went to the Caribbean, and we were able to identify several qualified professionals to come to Bermuda and some of them are still here. And so now they will be able to have a better opportunity to practice as professional accountants as we move forward.

And as Senator Hayward mentioned, I was pleasantly surprised in preparing for today's discussion to contact CPA Bermuda and to understand that one of the advantages of this legislation is that now there will be one body that actually is able to govern all persons who qualify or practice as accountants, which will have a positive impact on the AML/ATF guidelines. And so going forward it will be easier for Bermuda to manage all those persons who identify themselves as accountants.

And for the general public to understand that, to put myself, or to put yourself forward as an accountant, it does not happen by osmosis. There is a full process that you have to go through. And in terms of those who are purchasing accounting services, it will be interesting for them to make sure that if the person is providing professional services, that they should be registered in Bermuda, which means to come under the CPA guidelines, and that will assist us overall in ensuring that there is a consistent level of professionalism as persons provide those services.

Thank you, Madam President.

The President: Thank you, Senator Richardson.

ANNOUNCEMENT BY THE PRESIDENT

SENATE VISITOR

The President: I would just like to acknowledge the presence of the Parliamentary Counsel, Gwen Johnson, in the Chamber. And welcome to you.

[Chartered Professional Accountants Amendment Act 2019, second reading debate, continuing]

The President: Would any other Senator care to speak?

Oh, Senator Kempe. You have the floor.

Sen. Nicholas Kempe: Yes, thank you, Madam President.

We know the industry has been asking for this for a while and it has been a long time coming. We support this legislation.

The President: Thank you, Senator Kempe.
Senator Hayward, over to you.

Sen. Jason Hayward: Madam President, I now move that the Bill entitled the Chartered Professional Accountants Amendment Act 2019 be now read a second time.

The President: Is there any objection to that motion?
No objection. Carry on, Senator Hayward.

SUSPENSION OF STANDING ORDER 26

Sen. Jason Hayward: Madam President, I now move that we suspend Standing Order 26 in relation to this Bill.

The President: Is there any objection to that motion?
No objection.

[Motion carried: Standing Order 26 suspended.]

BILL

THIRD READING

CHARTERED PROFESSIONAL ACCOUNTANTS AMENDMENT ACT 2019

Jason Hayward: Madam President, I now move that the Bill entitled the Chartered Professional Accountants Amendment Act 2019 be now read a third time.

The President: Is there any objection to the third reading?

No objection.

Sen. Jason Hayward: Madam President, with no objections, I now move that the Bill do now pass.

The President: It has been moved that the Bill entitled the Chartered Professional Accountants Amendment Act 2019 do now pass.

Is there any objection to that motion?

No objection. The Bill is passed.

Thank you, Senator Hayward.

[Motion carried: The Chartered Professional Accountants Amendment Act 2019 was given a third reading and passed.]

The President: We will now go back to our [Order number] (7), the second reading of the Corporate Service Provider Business Amendment Act 2019.

Senator Campbell, this is your Bill. You have the floor.

STANDING ORDER 25

Sen. Vance Campbell: Thank you, Madam President.

Madam President, I move that the provisions of Standing Order 25 be granted so that the Senate may now proceed with second reading of the Bill entitled the Corporate Service Provider Business Amendment Act 2019.

The Clerk: Do the other two titles as well, at the same time.

Sen. Vance Campbell: [At] the same time?

The President: Mm-hmm.

The Clerk: Yes, do the others.

Sen. Vance Campbell: Also, Madam President, I move that provisions of Standing Order 25 be granted so that the Senate may now proceed with second reading of the Bills entitled the Trusts (Regulation of Trust Business) Amendment Act 2019 and the Insurance Amendment Act 2019.

The President: Any objection to that motion?
No objection.

[Motion carried: Leave granted for the Corporate Service Provider Business Amendment Act 2019, Trusts (Regulation of Trust Business) Amendment Act 2019, and the Insurance Amendment Act 2019 to be read a second time on the same day as their first reading.]

Sen. Vance Campbell: Thank you, Madam President.

The President: Carry on, Senator Campbell.

BILL**SECOND READING****CORPORATE SERVICE PROVIDER BUSINESS
AMENDMENT ACT 2019**

Sen. Vance Campbell: Madam President, the Government wishes the Senate now to give consideration to the Bill entitled [Corporate Service Provider Business Amendment Act 2019](#), the Act.

The purpose of the proposed amendments to the Act is to enhance the Bermuda Monetary Authority's [BMA] regulation of licensed corporate service providers [CSP] and to align Bermuda's regime with evolving international best practice and regulatory standards for the oversight of corporate service provider businesses.

Madam President, the Ministry of Finance has been advised by the BMA that the regulatory framework for the corporate service provider sector will be assessed by The Group of International Financial Centre Supervisors (GIFCS) in 2020. Accordingly, key amendments to the Act are required to further comply with the GIFCS standard on the regulation of corporate service provider and are as follows:

1. To require licensed corporate service providers to maintain a physical presence in Bermuda. Senators are advised that the objective of this requirement is to ensure that the Bermuda Monetary Authority is capable of exercising the appropriate regulatory influence over corporate service providers.
2. To remove the fee prescribed for the inspection of the register of licensed corporate service provider businesses. Senators are advised that such a fee is no longer payable as the list of licensed CSPs is available to the public on the BMA's website.
3. To require that the BMA must approve the surrender of a licence prior to the surrender coming into effect. Senators are advised that this measure is to protect clients' interests and ensure that the corporate service provider business is wound down or transferred appropriately.
4. To insert a provision requiring client money to be segregated from the licensed businesses own funds and maintaining accounting records to readily identify such client money. Senators are advised that this measure is intended to avoid the comingling of funds to protect clients' interests in the event a corporate service provider fails.
5. To add a power for the Authority to exempt or modify prudential standards or

requirements. Senators are advised that this provision will allow the BMA to exempt a CSP from the necessity to comply with the prudential requirement following an assessment of the CSP's nature and scale. Avoiding a one-size-fits-all approach is the cornerstone of the BMA's risk-based approach to regulation.

Madam President, the Senate is advised the BMA has met with members of the corporate service provider sector to discuss the amendments. In addition, as per the BMA's normal custom and practice, published a consultation paper together in June 2019 to advise industry of the proposed changes. The consultation results were published by the BMA on its website on the 24th of July 2019. Madam President, there were 94 corporate service providers licensed by the BMA.

With that, Madam President, I conclude my initial presentation. Thank you, Madam President.

The President: Thank you, Senator Campbell.

ANNOUNCEMENT BY THE PRESIDENT**SENATE VISITOR**

The President: I would just like to take this opportunity to acknowledge the presence of Elizabeth Copeland from the Policy Department of the BMA.

Welcome to you, Madam.

[Corporate Service Provider Business Amendment Act 2019, second reading debate, continuing]

The President: Would any Senator care to speak on this Bill?

Senator Kempe?

Sen. Nicholas Kempe: No.

The President: I'm sorry. I thought you were reaching for your microphone.

Sen. Nicholas Kempe: No, Madam President, we understand these are housekeeping from BMA and we support the progression of these laws.

The President: Thank you.

Would any other Senator care to speak on this Bill?

No? Then, Senator Campbell, it is over to you.

Sen. Vance Campbell: Thank you, Madam President. And thank you, fellow Senators.

Madam President, I move that the Bill entitled the Corporate Service Provider Business Amendment Act 2019, be now read a second time.

The President: Is there any objection to the second reading?

No objection.

SUSPENSION OF STANDING ORDER 26

Sen. Vance Campbell: Madam President, I move to that Standing Order 26 be suspended in respect of this Bill.

The President: Is there any objection to that motion?

No objection.

[Motion carried: Standing Order 26 suspended.]

BILL

THIRD READING

CORPORATE SERVICE PROVIDER BUSINESS AMENDMENT ACT 2019

Sen. Vance Campbell: Madam President, I move that the Bill entitled the Corporate Service Provider Business Amendment Act 2019, be now read a third time.

The President: Is there any objection to the third reading?

No objection, Senator Campbell.

Sen. Vance Campbell: Madam President, I move that the Bill do now pass.

The President: It has been moved that the Bill entitled the Corporate Service Provider Business Amendment Act 2019 do now pass.

Is there any objection to that motion?

No objection. The Bill has passed.

Thank you, Senator Campbell.

Sen. Vance Campbell: Thank you, Madam President.

[Motion carried: The Corporate Service Provider Business Amendment Act 2019 was given a third reading and passed.]

The President: You will go on now to your—

Sen. Vance Campbell: Next one.

The President: —the next one, the Trusts (Regulation of Trust Business) Amendment Act 2019.

You have the floor.

Sen. Vance Campbell: Madam President, I move that the Bill entitled the Trusts (Regulation of Trust Business) Amendment Act 2019 be now read a second time.

The President: Is there any objection to that motion?

No objection.

Carry on.

BILL

SECOND READING

TRUSTS (REGULATION OF TRUST BUSINESS) AMENDMENT ACT 2019

Sen. Vance Campbell: Thank you, Madam President.

Madam President, Government wishes the Senate now to give consideration to the Bill entitled the [Trusts \(Regulation of Trust Business\) Amendment Act 2019](#). The purpose of the proposed amendments to the [Trusts \(Regulation of Trust Business\) Act 2001](#) is to enhance the Bermuda Monetary Authority's regulation of licensed trust businesses and to align Bermuda's regime with evolving international best practice and regulatory standards for the oversight of trust businesses.

Madam President, the Ministry of Finance has been advised by the BMA that the regulatory framework for the trust sector will be assessed by the Group of International Financial Centre Supervisors (GIFCS) in 2020. Accordingly, the key amendments to the Act are required to further comply with the GIFCS's standard on the regulation of trust service providers and are as follows (and these are identical to the Bill that we just dealt with, Madam President, so I will just go through them quickly):

1. To require licensed trust businesses to maintain a physical presence in Bermuda.
2. To remove the fee prescribed for the inspection of the register of licensed trust businesses, because they can be found on the website.
3. To require that the BMA must approve the surrender of a licence prior to the surrender coming into effect.
4. To insert a provision requiring client money to be segregated from the licensed trust businesses own funds and maintaining accounting records to readily identify such client money.
5. To add a power for the Authority to make rules prescribing annual returns and adding a power for the Authority to exempt or modify prudential standards or requirements.
6. To enhance the minimum criteria for licensing to impose an obligation to maintain adequate liquidity in order to be deemed to be conducting business in a prudent manner.

Madam President, the BMA has met with members of the Bermuda Association of Licensed Trustees to discuss the amendments. Senators are

advised that concerns were raised by industry regarding the proposed amendments to the Act to facilitate physical presence requirements.

Madam President, the Authority has now determined that they will use a combination of desk-based reviews, prudential meetings, and onsite visits to make a determination of the suitability of a trust business's ongoing physical presence. Accordingly, the consultation results were published online by the BMA on the 24th of July 2019.

Madam President, in addition to the above, as per the Authority's normal custom and practice, a consultation paper, together with a draft Bill were published in June 2019 to advise the industry of the proposed changes. Madam President, presently there are 28 licensed trust companies supervised by the BMA.

With that, Madam President, I conclude my initial presentation. Thank you, Madam President.

The President: Thank you, Senator Campbell.

Would any Senator care to speak on this Bill?
No. Senator Campbell, it is back over to you.

Sen. Vance Campbell: Thank you, Madam President.

Thank you, Senators, for your support.

Madam President, I move that the Bill entitled the Trusts (Regulation of Trust Business) Amendment Act 2019 be now read a second time.

The President: Is there any objection to the second reading?

No objection.

SUSPENSION OF STANDING ORDER 26

Sen. Vance Campbell: Madam President, I move that Standing Order 26 be suspended in respect of the Bill.

The President: Is there any objection to that motion?

No objection.

[Motion carried: Standing Order 26 suspended.]

BILL

THIRD READING

TRUSTS (REGULATION OF TRUST BUSINESS) AMENDMENT ACT 2019

Sen. Vance Campbell: Madam President, I move that the Bill entitled the Trusts (Regulation of Trust Business) Amendment Act 2019, be now read a third time.

The President: Is there any objection to the third reading?

No objection.

Sen. Vance Campbell: Madam President, I move that the Bill do now pass.

The President: It has been moved that the Bill entitled the Trusts (Regulation of Trust Business) Amendment Act 2019 do now pass.

Is there any objection to that motion?

No objection.

The Bill has passed.

Thank you, Senator Campbell.

Sen. Vance Campbell: Thank you, Madam President.

[Motion carried: The Trusts (Regulation of Trust Business) Amendment Act 2019 was given a third reading and passed.]

The President: We will now move on to [Order] number (9), the second reading of the Insurance Amendment Act 2019.

Sen. Vance Campbell: Madam President, it is me again.

[Crosstalk]

ANNOUNCEMENT BY THE PRESIDENT

SENATE VISITOR

The President: While you are getting yourself together, can I just acknowledge the presence of the Minister of Education, Minister Rabain, who is in the Gallery.

Welcome to you, Minister.

[Insurance Amendment Act 2019, second reading debate, continuing]

The President: Senator Campbell, you have the floor.

Sen. Vance Campbell: Thank you, Madam President.

I move that the Bill entitled the Insurance Amendment Act 2019 be now read a second time.

The President: Is there any objection to that motion?

No objection.

BILL

SECOND READING

INSURANCE AMENDMENT ACT 2019

Sen. Vance Campbell: Madam President, I am pleased to present to the Senate the Bill entitled the [Insurance Amendment Act 2019](#).

This Bill seeks to amend the [Insurance Act 1978](#) by making a number of changes to the Act to introduce and establish two new classes of limited purpose insurers and a new category of intermediary, to be known as “insurance marketplace providers.”

Madam President, the Bermuda Monetary Authority is, and has always been, committed to the enhancement of the viability of the Bermuda insurance market. Over the years, the Authority has been recognised as a centre of excellence for innovation and for providing a regulatory environment that appropriately regulates and supervises the insurance industry, while remaining conducive to product and technological innovation. It is toward this end that the Authority proposes to introduce new classes of LPIs, a fully collateralized insurer class to be known as “collateralized insurers,” and an innovation class to be known as “general business innovative insurers” or Class IIGB.

Madam President, the collateralized insurance class will be available to those insurers with complex collateralized structures as well as insurers with deals that are not an ideal fit for the existing special purpose insurer, or other insurance classes’ regulatory frameworks.

Madam President, the special purpose insurance [SPI] framework was established for less complex, limited duration, catastrophe bonds, or similar transactions. However, Madam President, over time these structures have grown to include more complex structures and deals. The collateralized insurer framework is specifically tailored to cater for the innovations and continuing transformation of the insurance link security structures.

Madam President, the Authority in 2018 established an insurance regulatory sandbox and an insurance innovation hub. There is now a need for a post sandbox innovation class where some of these companies can graduate into following a successful testing period. While the existing and proposed classes are still available for the sandbox graduating companies, as long as they appropriately fit into the respective class definition, the proposed IIGB class will primarily cater specifically to companies that seek to utilise digital assets in their insurance operation. For example, accepting premiums and paying indemnity coverage in digital assets.

Madam President, the Authority has also noted growing interest in the establishment of InsurTech-related platforms, established for the purpose of bringing insurance buyers and sellers together to buy and sell insurance coverage via auction, or other arrangements, or for trading insurance contracts, generally referred to as “insurance marketplace providers.” This has been noted from the Authority’s engagement with market participants in relation to the insurance sandbox, and innovation hub-related applications and inquiries. The Authority is therefore proposing to introduce a new intermediary class to be

called “insurance marketplace providers.” Correspondingly, a sandbox licence will be introduced for this new intermediary which will be called “IMPs.”

Madam President, the Authority is proposing changes to the Act to add these new classes and to enhance the existing rules, regulations, and codes that support and form the regulatory framework for these new classes. The rules related to regulatory reporting and capital requirements will be drafted by the Authority and consulted upon later this year.

Madam President, while the proposed insurer regimes are being designed to meet the international insurance regulatory standards adopted by the International Association of Insurance Supervisors [the IAIS], they do not fall within the commercial framework that are Solvency II equivalent.

Madam President, the proposed regulatory regime for insurance marketplaces will be similar to that for insurance agents. A draft code of conduct for insurance marketplace was published on the 14th of May 2019, along with a consultation paper, to address the additional components of the framework. Madam President, the Senate is advised that the Authority has given due consideration to all the feedback prior to finalisation of the new regulatory regime.

Madam President, the amendments represent a collaborative effort between the Authority and various industry stakeholders. I would like to thank all of those persons within the Bermuda Monetary Authority, the Attorney General’s Chambers, the Ministry of Finance, and the private sector who have assisted with the development of this Bill.

Madam President, under the present InsurTech framework, the Authority has received six applications from insurers and insurance intermediaries, of which three have registered to date. With that, Madam President, I now conclude my introductory remarks.

The President: Thank you, Senator Campbell.

Sen. Vance Campbell: Thank you, Madam President.

The President: Would any Senator care to speak on this Bill?

Senator Kempe, you have the floor.

Sen. Nicholas Kempe: Thank you, Madam President. And thank you, Senator Campbell, for your summary.

Obviously, with insurance being such a main driver of our economy in Bermuda and we have seen past evolutions of how this industry provides value and efficiencies through ILSs before this, so we support the legislation catching up to and allowing stability for the industry through the collateralized insurance class and the IIGBs.

The President: Thank you, Senator Kempe.

Would any other Senator care to speak on this Bill?

No. Then, Senator Campbell, it is over to you.

Sen. Vance Campbell: Madam President, I move that the Bill entitled the Insurance Amendment Act 2019 be now read a second time.

The President: Is there any objection to the second reading?

No objection.

SUSPENSION OF STANDING ORDER 26

Sen. Vance Campbell: Madam President, I move that that Standing Order 26 be suspended in respect of this Bill.

The President: Is there any objection to that motion?

No objection.

[Motion carried: Standing Order 26 suspended.]

BILL

THIRD READING

INSURANCE AMENDMENT ACT 2019

Sen. Vance Campbell: Madam President, I move that the Bill entitled the Insurance Amendment Act 2019 be now read a third time.

The President: Is there any objection to the third reading?

No objection.

Sen. Vance Campbell: Madam President, I move that the Bill do now pass.

The President: It has been moved that the Bill entitled the Insurance Amendment Act 2019 do now pass.

Is there any objection to that motion?

No objection.

The Bill has passed.

Thank you, Senator Campbell.

Sen. Vance Campbell: Thank you, Madam President.

[Motion carried: The Insurance Amendment Act 2019 was given a third reading and passed.]

The President: I believe your last Bill is the consideration of the draft Order entitled Money Service Business Order 2019?

Sen. Vance Campbell: That is correct.

The President: You have the floor, Senator Campbell.

Sen. Vance Campbell: Thank you, Madam President.

SUSPENSION OF STANDING ORDER 71(2)

Sen. Vance Campbell: Madam President, I move that Standing Order 71(2) to be suspended so that Senate may now proceed with consideration of the draft Order entitled the . . .

The President: The Money—

Sen. Vance Campbell: The Money Service Business Order 2019.

[Motion carried: Standing Order 71(2) suspended.]

The President: Carry on, Senator Campbell.

Sen. Vance Campbell: It is right in front of me, Madam President.

The President: That's all right. You have had a full agenda here.

You have the floor.

ORDER

MONEY SERVICE BUSINESS ORDER 2019

Sen. Vance Campbell: Yes, thank you, Madam President.

Madam President, I move that the Senate do now take under consideration the draft Order entitled the [Money Service Business Order 2019](#).

The President: Is there an objection to that motion?

No objection.

Carry on, Senator Campbell.

Sen. Vance Campbell: Thank you, Madam President.

Madam President, the purpose of the Money Service Business Order 2019 is to amend the [Money Service Business Act 2016](#) by including a requirement for money service business providers to maintain insurance cover for their operations.

Madam President, section 11(7) of the Act gives the Minister of Finance the power to amend the minimum licensing criteria by way of an order. It is proposed to amend Schedule 1 of the Act by making it mandatory for licensed money service providers to maintain insurance cover that is appropriate to the nature and scale of their businesses.

Madam President, this amendment will harmonise the Authority's oversight of this sector with similar obligations imposed on other financial institutions.

With those brief introductory remarks, I now welcome Honourable Members' comments on this order.

Thank you, Madam President.

The President: Thank you, Senator Campbell.

Would any Senator care to speak on this Bill? Senator Jardine, you have the floor.

Sen. James. S. Jardine: Thank you, Madam President, I will be very brief.

I certainly welcome this legislation. I assume by "maintain insurance" we are talking about fidelity insurance, this would be coverage for theft, fraud and that sort of thing that occurs within perhaps the company itself. So, if that is the intention then I certainly wholeheartedly support this change to the legislation.

Thank you, Madam President.

The President: Thank you, Senator Jardine.

Would any other Senator care to speak on this Bill?

No. Then, Senator Campbell, it is over to you.

Sen. Vance Campbell: Thank you, Madam President.

It would appear that my support team has abandoned me.

The President: You had full support.

[Laughter]

Sen. Nicholas Kempe: I have a question, Madam President.

[Laughter]

The President: Senator Kempe, are you serious? No?

Sen. Vance Campbell: I have an answer for that question.

[Laughter]

The President: You do . . .

[Laughter]

The President: Senator Campbell, you have the floor. It appears you have full support from the Senators.

Sen. Vance Campbell: Thank you, Madam President. Yes, I appreciate that support, Madam President.

And I will confirm for Senator Jardine that that relates completely to the fidelity insurance, as well.

The President: Mm-hmm.

Sen. Vance Campbell: So, with that, Madam President, I move that the said draft Order be approved and that the following message be sent to His Excellency, the Governor:

May it please your Excellency, the Senate, having had under consideration the draft Order entitled the Money Service Business Order 2019, proposed to be made by the Minister of Finance under the provisions of section 11(7) of the Money Service Business Act 2016 has the honour to inform your Excellency that the Senate has approved the said draft Order.

The President: Is there any objection to that motion?

No objection.

Thank you, Senator Campbell, a suitable message will be sent to the Governor.

Sen. Vance Campbell: Thank you, Madam President.

[Motion carried: The Money Service Business Order 2019 was approved.]

The President: Senators, that concludes our Orders of the Day. We have dealt with 11 items very well. Thank you all.

Moving on to item number 14 on our agenda.

MOTIONS

The President: There are none.

CONGRATULATORY AND/OR OBITUARY SPEECHES

The President: Would any Senator care to speak on this?

No? No one wants to speak so we will move on to item number 16.

Senator Kathy Lynn Simmons, Attorney General and Government Leader in the Senate.

ADJOURNMENT

Sen. the Hon. Kathy Lynn Simmons: Thank you, Madam President.

I move that the Senate do now adjourn until Wednesday, August 7th.

The President: August or September? August?

[Crosstalk]

The Clerk: August.

The President: Any objections to August 7th?

An Hon. Senator: Yes.

[Laughter]

The President: With that, Senators, we adjourn to August the 7th.

The Clerk: No, no.

The President: We have adjourned. Yes.

[Crosstalk]

The President: Oh, yes. Sorry.

Yes, everybody is rushing out of here. Senator Michelle Simmons, you have indicated that you would like to speak on the motion to adjourn. You have the floor.

CUP MATCH CLASSIC

Sen. Michelle Simmons: Thank you, Madam President. And thanks to my colleagues for giving me this moment.

I will be brief, but I have some very important information to share. First of all, at the end of this week we will be observing a two-day holiday.

The President: Mm-hmm.

Sen. Michelle Simmons: And the great news is we have two excellent teams which will be participating in the annual Cup Match Classic. And in my humble opinion either team can win. Of course, I expect the one from the East to prevail—

[Laughter]

Sen. Michelle Simmons: —but either team can win.

I would like to name all of those people who have been selected for the teams. First of all, for the defenders of the Cup (i.e., Somerset) we have Captain Jordan DeSilva; Vice Captain Terryn Fray; Stephen Outerbridge; Chris Douglas; Greg Maybury; Malachi Jones; Dion Stovell; Kwasi James; Steven Bremar; Derrick Brangman; and Alje Richardson (who is a colt).

The reserves for Somerset are Dalin Richardson; Isaiah Richardson; Nyrobi Mills; and Jermal Proctor (who is listed as a junior reserve).

The team from the East (aka, St. George's) captained by Lionel Cann; Onias Bascome, as Vice Captain; Treadwell Gibbons, Jr.; Temiko Wilson; Micali Simmons; Allan Douglas, Jr.; Zeko Burgess; Oliver Pitcher, Jr.; Justin Pitcher; Rodney Trott; and Mackih McGowan. And in reserve we have Nzari Paynter; Isaiah Greaves; and Oyinde Bascome.

I would like to thank all of those players for stepping up and for participating in the Classic. And I

would like to wish both teams the best success possible, which will be a wonderful match for all of us to enjoy.

I would also like to say that I pray that this holiday will be a peaceful, happy, jovial one for everyone.

TRAGIC LOSS OF LIFE

Sen. Michelle Simmons: I cannot end without saying how deeply sad I am that a young man has lost his life, just over the weekend. It is someone who is very close to home for me; a former neighbour of mine. And the family will be remembered in my prayers and I would ask the whole country to uphold them as they deal with this tragedy. A fine upstanding young man has lost his life.

So, let's be safe. Let's look out for each other during this holiday and let's enjoy this time of family, fellowship, friendship and everything else that is good in Bermuda.

Thank you, Madam President.

The President: Thank you, Senator Michelle Simmons. I am sure all Senators join you in your comments, and particularly with reference to the safety and the enjoyment of the holiday, and the significance of what it means for everyone on this Island. And also that it would be a safe and happy one.

Did someone else want to speak?

Oh, Senator Kemp, did you want to speak on the motion to adjourn?

You certainly can have the floor.

CUP MATCH CLASSIC

Sen. Nicholas Kempe: Thank you, Madam President, and certainly Senator Simmons took a lot of the sentiment that I was hoping to share . . . on behalf of the OBA Senate team, I would like to wish my colleagues in this Chamber and those listening to have a safe, particularly, and enjoyable holiday.

The President: Absolutely. We all agree with you.

With no other sentiments from the Senators, then I thank you all for your time today and for the manner in which you continue to do business.

So, the Senate is adjourned until August the 7th. The Senate stands adjourned. Thank you all.

*[At 3:04 pm, the Senate stood adjourned until 10:00 am, Wednesday, *7 August 2019.]*

[The Senate did not resume on 7 August 2019.]