

PRAYER

Almighty God we humbly beseech Thee to vouchsafe Thy blessing upon this House, direct and prosper our deliberations to the advancement of Thy glory and the true welfare of the people of Norfolk Island, Amen

SUSPENSION OF STANDING ORDERS

MR GARDNER Mr Speaker, I move that so much of Standing Orders be suspended as would prevent the House from only dealing with the matters listed on the Programme

SPEAKER Thank you. Is there any debate on the Chief Minister's proposal? There being no further debate Honourable Members, I put the question

QUESTION PUT
AGREED

Suspension of Standing Orders is agreed amongst all members.

LEAVE – HON GRAEME DONALDSON MLA

Honourable Members leave is sought for Mr Donaldson. Is leave granted? Leave is granted thank you. We move on to the one matter on the Notice Paper

CRIMES (FORENSIC PROCEDURES) BILL

MR GARDNER Thank you Mr Speaker, I present the Crimes (Forensic Procedures) Bill 2002 and move that the Bill be agreed to in principal. Mr Speaker I table the Explanatory Memorandum to the Bill and read it into the Hansard. The Crimes (Forensic Procedures) Bill 2002. This Bill adopts the Crimes (Forensic Procedures) Act 2000 of the Australian Capital Territory which is based on the model Forensic Procedures Bill which was developed by the model Criminal Code Officers Committee of the Standing Committee of Attorney's General. Attached is that Act and the explanatory memorandum which accompanied it. The Australian Federal Police has advised that the Crimes Forensic Procedures Act 2000 be adopted by the Norfolk Island Legislative Assembly in order to provide for the taking and using of forensic material including DNA material for criminal investigations. Clause 5 provides that for the removal of any doubt, the Act will apply to offences committed before or after the commencement of this Act. Complementary regulations have been drafted and will be considered by the Executive Council if the Legislative Assembly pass this Bill. These regulations are also based on the Crimes Forensic Procedures Regulations 2000 of the Australian Capital Territory and I table that explanatory memorandum Mr Speaker. I'm never wholly comfortable with the urgent introduction and passage of legislation through this House. In normal circumstances I would be hesitant to progress a matter such as this, this morning, however Mr Speaker we are not faced with normal circumstance. We are faced with taking albeit at short notice a responsible approach to facilitating an environment that may well lead to the apprehension of an offender. An offender responsible for the most unexpected tragic event that befell this community on Easter Sunday 31st March 2002. The most appropriate response to this situation led to today's consideration of adopting with minor amendment the Australia Territory legislation. This course of action is not dissimilar to previous precedent when dealing with development

of criminal law on Norfolk Island. The case in point is our adoption with amendment those parts of the New South Wales Crimes Act which form the basis of our Criminal Law Act 1960. The other advantage is the Norfolk Island Police and investigating officers x

From the police in the Australian Capital Territory. The question of the need for urgency has been raised with me. As I will explain in further detail the matter of urgency was discussed between members of the Norfolk Island Government and investigating officers late last Wednesday evening. Further enquiries last night confirmed with the Norfolk Island Police and investigating officers the urgent need for this legislation, particularly in light of developments in the investigation. I accept that advise. Thankfully, serious offences are seldom witnessed in this community. When they are they often have damaging flow on consequences. I accept that the primary areas of concern raised with me by this Bill relate to the provisions for the collection, handling and use of DNA otherwise known as deoxyribonucleic acid and the samples of DNA. I need to strongly emphasize Mr Speaker that those provisions only become operable in the case of serious offence. An indictable offence and include serious property offences; serious assault; sexual assault and our most recent tragic even Mr Speaker, murder. As members would be aware, this Government is reviewing criminal law in this jurisdiction as part of the Justice Package review. A full and comprehensive review is long overdue and I am eager to continue progressing this objective. In the meantime a terrible tragedy has befallen the Island. The community has been shaken by the murder of a young woman. Upon the discovery of her body, Police including specialists from the Australian Federal Police in Canberra, were rapidly deployed to investigate and find the perpetrator or perpetrators. A thorough investigation remains underway and the Government is determined to remain fully committed to assisting the Police in this investigation. As part of this commitment, Government officers met with the Police to ascertain whether the legal framework was adequate to fully support their investigation. The Police identified the concern that the existing provisions of law in Norfolk Island relating to DNA testing were inadequate. It was agreed that the situation would be reviewed to ensure that the best possible legislative regime was in place to assist the police in investigating this terrible crime. Following discussions between our Legal Services Unit he investigating Police, a recommendation has been made for the urgent passage of comprehensive DNA legislation. In Norfolk Island, the laws governing indictable offences are contained in the Criminal Law Act 1960 which adopts, with considerable modification the New South Wales Crimes Act as it was in December 1936. Since 1960, the Norfolk Island Legislative Assembly has from time to time made a number of amendments, usually in response to urgent need. Relevantly, in 1996 the Norfolk Island Assembly amended the legislation to enable the taking of blood, saliva and hair from a person in custody by a legally qualified medical practitioner at the request of a member of the Norfolk Island Police Force. The loose procedure described in this amendment has not been tested in an investigation of a serious indictable offence. There is real concern that it is inadequate for a number of reasons. These include, It only allows for testing of persons in custody, It only allows for testing to be undertaken by a medical practitioner, The type of DNA testing open to the investigation would be limited, The person being tested is not provided with any rights in relation to that testing. In other words there's no protection for volunteers, suspects or those indeed undertaking the forensic procedures. The inadequacy of that amendment does not provide for reciprocal arrangements in relation to DNA testing in other jurisdictions and the procedures provided are vague and open to considerable uncertainty which undoubtedly has the potential to be challenged due to the lack of detail contained in that amendment. Over the past few years, jurisdictions all over the world have given serious consideration to developments in forensic testing particularly in the area of DNA. I believe that the community in Norfolk Island deserves the best framework it can have to enable the investigation of this tragic crime. I will not ignore the Police request in this regard. If it means adopting legislation that has been passed and implemented elsewhere, I will argue strongly for that to occur. While urgency is required, the issue should not be approached in a piecemeal fashion. Before

the Assembly today is a proposal to adopt the ACT Crime (Forensic Procedures) Act 2000 subject to modifications contained in the Bill. There are some four jurisdictions in Australia that presently have such legislation. These jurisdictions include: NSW, Victoria, Tasmania and the ACT. In these four jurisdictions the law is relatively new but it is based on a model that took some years of consideration and in the case of the ACT, the legislation has now been in operation, and subject to considerable scrutiny and amendment, for nearly two years. At the turn of the last century, the discovery that a person's fingerprints are a unique identifier led to revolution in techniques to identify perpetrators of crimes. The exponential increase in scientific understanding of genetics since the 1960's and technological improvements in extrapolating viable samples of DNA from the most minute particles of bodily materials has the potential to create a similar revolution in forensic investigation techniques. The Bill establishes a new legislative framework for taking a wide range of forensic samples for the purposes of criminal investigations. The range of forensic samples to which it applies includes the taking of fingerprints and other prints from body parts, dental casts, photographs, wound impressions and swabs. The Bill adopts an Act which contains key concepts which are central to understanding the operation of its provisions. Perhaps the most significant concepts are that of "intimate forensic procedure" and "non-intimate forensic procedure". Different rules apply to the circumstances in which these two types of forensic procedure may be carried out. In the ACT the Government decided that it was appropriate to categorize the taking of a buccal swab as a non-intimate forensic procedure and in this way the ACT Act departs from the Model Bill. As Members may be aware, a buccal swab is a simple procedure in which cells from the inside of the cheek are collected using a swab similar to a large cotton bud. It is a simple and basically painless procedure which can be performed by the person being tested if that person wishes - none of the persons clothing needs to be removed. The ACT Government believed that it would be needlessly time consuming and expensive to obtain a court order to authorise the carrying out of the procedure should consent to the procedure be refused. I support this reasoning. Other non-intimate forensic procedures which can be authorised by the Bill include the taking of a hair sample from a non-pubic region and the taking of fingerprints and other procedures that do not involve the anal or genital areas, the buttocks or the breast of women and transgender persons identifying as women. The Bill adopts specific provisions dealing with the taking of forensic samples from different categories of persons. Parts 2.2 to 2.5 of the ACT Act deal with the way in which samples may be taken from suspects. These parts do not apply to suspects who are children or who are incapable of either giving consent or understanding the nature and purpose of a proposed forensic procedure. The first step in the process is to request the suspect to give consent to the forensic procedure. The ACT Act requires that a suspect may only be requested to provide a forensic sample after the police officer making the request has considered specified matters and reached the view that the proposed sampling is justified. The suspect must also be given information about the procedure itself and the potential use of any information generated by analysis of the sample. If the suspect refuses consent and is in custody, a police officer may order the carrying out of a non-intimate forensic procedure on that suspect. The police officer must, however, be satisfied about specified matters before making the order. If the suspect refuses consent to an intimate forensic procedure, or the suspect is not in custody and the procedure is either an intimate or a non-intimate forensic procedure, it will be necessary for a magistrate's order to be obtained before the forensic procedure may lawfully be carried out. The ACT Act details the procedure for obtaining an order from a magistrate for a forensic procedure, including the matters about which a magistrate must be satisfied before making the order. There are provisions for obtaining interim orders in cases where there is a danger that a forensic sample may be irretrievably damaged or destroyed before a full hearing of the application can be held. The ACT Act also contains provisions to ensure that if an interim order is later set aside, any information obtained from a forensic sample obtained under that interim order is destroyed. Part 2.6 explains in detail the way in which a forensic procedure is to be carried out. The provisions in this

part are intended to ensure that, as far as practicable, the privacy and dignity of the person who is subject to the forensic procedure are respected. For example, section 51 specifies that a forensic procedure is not to be carried out in a cruel, inhuman or degrading way. Section 52 requires that where the forensic procedure involves taking hair, the person taking the sample must do so using the least painful technique available to that person. There are restrictions on the numbers of persons who may be present and requirements that, where practicable, procedures be carried out by a person of the same sex as the person on whom the forensic procedure is carried out. Part 2.7 details the circumstances in which forensic samples may be taken from serious offenders. As the purpose of obtaining the samples is to include the results in the national DNA database and the national fingerprint database, this part only applies to certain types of forensic procedures. These are the taking of a blood sample, a non-pubic hair sample, a buccal swab and fingerprints-in essence, samples of material suitable for DNA analysis and fingerprinting. The offender must be given an opportunity to give informed consent to the proposed procedure and the police officer requesting consent must be satisfied that the request for consent is justified. If the serious offender refuses consent to a non-intimate forensic procedure a police officer may order that the procedure be carried out. A magistrate's order will be necessary to authorise the carrying out of an intimate forensic procedure on a serious offender who refuses consent to that procedure. Clause 116 of the ACT Act enables persons convicted prior to the commencement of the ACT to be tested under Part 2.7. This is reinforced by clause 5 of the Bill. The ACT Act envisages that during the course of an investigation, persons may wish to volunteer to give a forensic sample. The ACT Act therefore contains provisions dealing with the way in which samples may be taken from volunteers. It should be noted that there are no provisions in the ACT Act which allow the police to ask a person to volunteer a sample - the offer to be tested must be genuinely voluntary. Before the sample can be taken, the volunteer must be advised of certain matters so that it can be established that their consent to the procedure is fully informed. The volunteer can specify the purposes for which the sample may be used and once analysed, the results of the sample must be included only in the relevant index of the DNA database system. A volunteer may withdraw consent at any time, however, in certain limited circumstances an application may be made by law enforcement authorities to the court to permit the retention and use of a sample from a volunteer where consent was withdrawn. The Bill enables the taking of forensic samples from children and people who are categorised under the ACT Act as "incapable persons" but only in very limited circumstances. In brief, the child or incapable person's parent or guardian may give consent on behalf of the child or incapable person. Nevertheless, if the child or incapable person objects or resists, the procedure cannot lawfully be carried out. Where the parent or guardian refuses to give consent on behalf of the child or incapable person, an application may be made to a magistrate for an order that the forensic be carried out. Having briefly outlined the processes for taking forensic samples, I will briefly outline the provisions in the ACT Act which explain how material and information generated from forensic samples is to be used and protected. There are strict penalties for unlawful use or disclosure of material or information derived from forensic procedures. Part 2.9 deals with the admissibility of evidence relating to forensic procedures carried out under the ACT Act. It contains provisions which safeguard the integrity of the processes set down in the Act by rendering inadmissible improperly collected or improperly retained information. The intention is to ensure that law enforcement authorities are made aware that improperly obtained evidence is not used to prejudice the interests of the person from whom it was obtained. The destruction of forensic material obtained under the Act is required in certain circumstances which are set out in Part 2.10. The purpose of these provisions is to ensure that information obtained from forensic procedures cannot be used inappropriately. Destruction is required if a court order for a forensic procedure is overturned and if the conviction of a serious offender is overturned or quashed. For suspects, the forensic material must be destroyed if they are acquitted or if no proceedings are instituted against them within 1 year or no warrant for apprehension of the suspect is issued within 1 year. There is a

limited capacity to obtain an extension of the retention period by court order. Forensic material must also be destroyed if a court rules that evidence relating to that material is inadmissible. There are strict penalties for failing to destroy forensic material which is required to be destroyed by law. The ACT Act enables the establishment of the DNA database system under Part 2.11. The database system is to comprise a number of indexes, in which DNA profiles derived from DNA samples will be recorded. For some years now, throughout the world, police and prosecution authorities have made use of DNA evidence to establish in the Courts a link between a known suspect and a crime scene. The use of DNA evidence, however, has generally been limited to cases where there is a known suspect from whom a sample has been taken and compared with the relevant crime scene. The recent rapid expansion in the capacity of information technology to process large volumes of data within seconds and the development of cheaper, faster and more accurate sampling and analysis processes has now made it possible to use DNA profiles more widely as an investigative tool. National DNA databases analogous to fingerprint databases have been established in several overseas jurisdictions including the United Kingdom and the United States of America. These databases have been used to compare DNA profiles from scenes with DNA profiles from known offenders and suspects. In those countries, DNA databases have produced a very significant number of matches, resulting in improved clear-up rates for a range of offences, including murder, sexual assault, serious robberies and burglaries. DNA evidence has also been vital in clearing many innocent people wrongly suspected, and in some cases wrongly convicted, of committing violent crimes. In 1995, in recognition of the very promising results from overseas experience with DNA databases, the Standing Committee of Attorneys General of which Norfolk Island participates, requested the Model Criminal Code Officers Committee to consider the development of model legislation for the establishment and operation in Australia of a national DNA database, when such a database became logistically possible. In 1998, the Standing Committee decided to ask the Model Criminal Code Officers Committee to prepare a discussion paper on the proposed legislation for public consultation. This decision by the Standing Committee coincided with significant progress in national policing initiatives resulting from the Commonwealth Government's commitment to the establishment of CrimTrac, a national law enforcement intelligence database system. The national DNA database is to form a major component of the CrimTrac system, which will also include the national fingerprint database as well as firearms, protection order and warrants registries. The discussion paper on the Model Forensic Procedures Bill DNA database provisions was released in May 1999. Following revisions to the proposed legislation to take account of comments received, a revised Model Forensic Procedures Bill was released early in the year 2000. A number of jurisdictions throughout Australia, including the ACT, signaled their intention to enact legislation to facilitate the establishment of the national DNA database envisaged by the revised Model Forensic Procedures Bill. Mr Speaker, the Crimes (Forensic Procedures) Bill will enable Norfolk Island to participate in the proposed national DNA database to be established as part of the CrimTrac initiative. The proposed national DNA database is to include an index consisting of DNA profiles derived from persons convicted of serious offences. The establishment of this index necessitates the inclusion of provisions to enable such samples to be taken from serious offenders. In Norfolk Island, a serious offender is a person convicted of an indictable offence. In practice, the Bill will enable samples to be collected from all Norfolk Island offenders who are convicted of offences for which the maximum penalty is imprisonment for 2 or more years. The indexes reflect the sources from which the DNA profiles were obtained. The indexes will include a crime scene index, a suspects index and a statistical index. There will be two indexes for volunteers - one will contain profiles from samples provided for limited purposes only, while the other will contain profiles from samples provided for unlimited purposes. Members should note that a DNA profile does not consist of the whole DNA sequence for a person-the profile is a computer-gene rated sequence based on certain loci of the DNA within a cell and relates only to what is known as "junk DNA". The data base will enable the profiles contained in an index to be

compared with the profiles in other indexes, subject to the rules about "permissible matching" set out in proposed section 97. Impermissible matching is an offence. The remaining provisions of the ACT Act deal with technical and operational matters, many of which are intended to resolve disputes between the persons being tested and law enforcement agencies and to ensure that the rights of those persons are protected from abuse or coercion. The safeguards in the ACT Act include extensive requirements for recording the giving of information, the giving of informed consent and the carrying out of procedures. The Act makes it clear that if the police are required to do something "where practicable", the prosecution bears the responsibility of establishing that it was not practicable to do that thing. There are also rights to have a lawyer or other person present at various stages of the process and rights to be given a portion or copy of a sample taken by a forensic procedure, which could be used for independent analysis. Many opponents of the concept of the DNA database are unaware of the numerous safeguards which have been incorporated to protect the privacy of the data it will contain. Similarly, there are misconceptions that the proposed legislation will compel large numbers of innocent members of the community to be tested and to have their genetic information recorded for all time. A detailed examination of the ACT Act reveals that those fears are unfounded. What the Bill before the Assembly today does offer the community is a valuable investigative tool which will greatly assist police in clearing the innocent and bringing the perpetrators of violent crimes such as murder and sexual assault to justice.

Mr Speaker to allow other members to contribute in this important matter I will seek your concurrence at the appropriate time to move some detail stage amendments, basically that will tidy up references to ACT legislation and more properly provide for reference to existing Norfolk Island legislation, thank you

MS NICHOLAS Thank you Mr Speaker. As members around this table will know I'm deeply troubled by this legislation. I'm troubled by the urgency with which we are asked – apparently by the Australian Federal Police - to pass into our book of laws a piece of legislation which provides for some pretty significant invasions.

My concerns may be brushed aside by those who claim that the forensic material collected under this legislation will be destroyed. The legislation however very carefully spells out the conditions for the so called destruction of the forensic material – the said destruction involves the removal of names from the samples – not the destruction of the material itself – that's not good enough for me – especially when it may be material voluntarily offered, in good faith, by members of this community. At the risk of repeating some of the things that the Chief Minister has already told us, essentially, this legislation brings in a scheme for taking and using forensic material, including DNA material, for criminal investigations. There are two types of forensic material – the procedures are known as intimate and non-intimate and he's detailed those. He also said, the intimate procedures are ones which involve the external anal and genital regions, and buttocks and the breasts of women. It also covers taking blood samples, dental impressions and samples of pubic hair. A non-intimate procedure covers things like fingerprints and other prints, photographs, samples of saliva and inner cheek swabs and taking samples of non-pubic hair. There are good things about this legislation, and bad. Under this legislation people cannot be asked by police to consent to a procedure unless they are suspects or serious offenders, but people may come forward at their own initiative. This happened in a country town in New South Wales not too long ago. There is a part of the legislation which ensures that persons who volunteer – and certain others – can be certain of how that material can be taken, how it can be used and what safeguards are in place to ensure that it is used only as intended. Now all that sounds safe and perhaps one can be comfortable with it – until one learns that as recently as the 22nd March – less than three weeks ago – the High Court of England upheld the rights of police to retain DNA samples and fingerprints taken from suspects who had been acquitted. Not people who had been found guilty of an offence – but two people, from separate incidents, who had been acquitted. Not people who had been found guilty of an offence,

but two people who had been acquitted. Should any police officer or magistrate order a forensic procedure to be carried out they must balance a range of matters set out in this legislation before deciding whether to make the order. These factors to be considered include a weighing of the public interest in obtaining relevant evidence - versus the public interest in upholding a person's physical integrity. Suspects must be given an opportunity to consent to the forensic procedure before it is carried out – this must not be done as a matter of routine but only when there is a better than reasonable chance that evidence of the committing an offence will be found. As the Chief Minister has told us, the Police may order non intimate procedures on persons who do not consent but this can only be done if the suspect is already being held in lawful custody. There is also provision for a Magistrate to order forensic procedures. Again, the intention is that unless there is a reasonable chance that a procedure will produce relevant probative evidence of the commission of an offence, it should not be authorised. The Magistrate is required to give reasons for making an order. The Magistrate has the power to make an interim order so that things can happen quickly, so that evidence cannot be “disappeared” before a final order can be made. The Magistrate must tell the suspect that reasonable force can be used to implement the order, and must also state when, where and how the order is to be implemented. There is also provision in the legislation for the suspect to be detained so the forensic procedure can be carried out. It is undeniable that some forensic procedures, particularly intimate forensic procedures, are intrinsically personal and that some suspects may find them humiliating. There are provisions here to establish clear rules about what can and cannot be done to a person who is subjected to a forensic procedure, to ensure that as far as possible that person's dignity and human rights are respected during the procedure. There is provision for the suspect to have access to material resulting from a procedure, and there is provision for videotaping or photographing the procedure so that there can be no dispute about the way in which it was carried out. There's a clause about obtaining forensic material from serious offenders and this would apply particularly to any material destined for the database concept. There's a clause which requires material taken from a suspect to be destroyed after one year if no proceedings have been instituted – however the holding period can be extended under certain circumstances. There is another aspect which troubles me. There are less stringent measures for the destruction of material which has been voluntarily given. Our own Counsel agree with my reservations and have provided me with an amendment which would clarify this issue and ensure that the materials volunteered would be dealt with in the same way as those obtained by demand of police or courts. The Chief Minister has mentioned the data base which is planned. It is called CrimTrac. There are safeguards to prevent the misuse of the database. Any data taken from volunteers can only be used for the purposes for which it was taken and must be destroyed. But there are traps for the unwary here too – remember that “Destroying” means to remove any means of identifying the forensic material or information which could link it to a particular person. This does not mean destroying the sample of material itself, or the DNA extracted, it is a matter of destroying the “identification” from the material – the name tag is it were - I've already said that I don't believe that is good enough. There will – in due course, should Norfolk Island choose to be part of the CrimTrac system – costs associated, and I believe this legislation will eventually lock us into that. Do we really want that? There's a quote here from the CrimTrac website. “In some circumstances control by legislation profiles from suspects and volunteers may be compared with profiles on the database. I have some problems with the retention of samples on the national database, particularly those who may volunteer. There are a bundle of uncertainties for me in this proposed Bill. I am extremely hesitant about passing it at this sitting without Members and others having greater opportunity to weigh the good against what could be seen as the bad in the legislation. I hear what the Chief Minister has said about urgency. This legislation overturns the age old belief in “innocent until proven guilty” - turning it into a matter of necessity for a suspect to prove innocence by offering or submitting to the taking of forensic material. I've agonised over this bill for close to two days because it overturns that belief. But one argument, and

only one, enables me to support this legislation here and now – it is this: Should this community find itself in such a position that it is desirable for all to come forward to volunteer samples for DNA analysis there will be provision within the legislation for those samples to be dealt with properly and the taking of the samples to be dealt with properly. It is indeed a day for Norfolk that we have come to this – in more ways than one it is a loss of innocence. Mr Speaker. I am not entirely convinced of the extreme urgency to see this through today - bearing in mind that most of us first saw the legislation late yesterday afternoon. However, if it is passed into legislation today the community must be prepared to wear the consequences, whatever they may be, frankly, I'd like to hear what they have to say about that. At the moment I shall listen to what others have to say.

MR BROWN

Mr Speaker, I noted that Ms Nicholas was one of the three members who requested this meeting to be convened and she obviously has had more knowledge than some of us in relation to the matter because she's obviously been involved for a little longer. What's before us today is a very simple matter and that is, we've got to decide what our duties are as Legislative Assembly members. Are our duties aligned to the common good or are they aligned to protecting each and every desire for privacy which may be held by any of our community because if someone wants to go out and be a criminal I have a little bit of difficulty in being told that I should protect the privacy of that person so that he or she can continue to go about his or her criminal ways. I don't see this as something that's come to the Legislative Assembly from the federal police. This is something that's come to the Legislative Assembly from the Government of Norfolk Island. The Government of Norfolk Island has asked us as the Legislative Assembly, now let me go back a moment Mr Speaker just to let me explain what I mean by that. I think a lot of people don't understand that the Government is our ministry. It's our four ministers. The Legislative Assembly is all nine of us. The four ministers just happen to be members of the Legislative Assembly because that's the way it works in this part of the world. So the nine of us are being asked by our four Ministers to facilitate the passage of this legislation. It's no shame that we don't already have similar legislation. Don't let anyone tell you that we're behind the times because we've already heard today, only four of the Australian mainland states and territories have similar legislation at this time. I have no doubt that the others will eventually introduce it, perhaps seeing little Norfolk Island do it will cause them to say, well maybe we should hurry up a bit. It is no shame that we are only looking at this today. Should it be passed. Well I think the common good says it should be passed. I can understand Ms Nicholas' concerns but on the other hand why should we put as our primary concern a desire to have material destroyed. Why shouldn't we have as our primary concern a desire to ensure that our community can enjoy the security of satisfactory law and order. We certainly shouldn't go to the stage of saying that unless you are blue eyed and blonde we'll put you in a different category and you'll only be allowed out every now and again, but I think it is quite valid for us to look at the question of introducing this legislation. As to whether or not we should participate in a national recording scheme, well I'm not sure about that. But I think we would be met with the question, well what are you trying to hide. An expensive scheme is being put together. All of the mainland states and territories I have no doubt will eventually participate in it. If we are given the benefit of being able to participate in it also, isn't that a protection for our community. Let's just assume for a moment that a crime occurs tomorrow. Let's assume it's breaking and entering and let's assume there's a bit of blood at the scene because the person broke a window to get in and let's assume that in this tracking system or registration system in whatever little room it sits in, in Australia there are records that could tell us that, that blood is the blood of such and such a person. Wouldn't it be a lot better for our community that that could happen than to say well we don't want to participate in that because we really don't want to know or we want to protect the rights of people to go and commit crimes while minimizing the possibility of being apprehended. I think we've got to be vigilant Mr Speaker but I don't think that I can vote

against this Bill. I think we are all obliged to support Government in this case and to support the introduction of the legislation. I think we are also bound to acknowledge that it is being dealt with quickly and there's a reason for that. We want to have the benefit of the legislation available as soon as possible. Nothing wrong with that reason. That doesn't take as I see it, rights away from any people other than the right to commit a crime but I think that the one thing that our Government need to do, is that after today on the assumption that the Bill will be passed, the Government need to go away and ensure that each and every part of the ACT legislation is indeed suitable for Norfolk Island. The Government needs to go away and ensure that the concerns expressed by Ms Nicholas are in fact catered as best they can be catered for and the Government needs to think carefully as to whether we wish to participate in the national tracking system but for the purposes of today I've given it a lot of thought and intend to support it

MR GARDNER Thank you Mr Speaker just some quick responses. I appreciate Mr Brown's sentiments and his participation in debate and his support for the Bill as it appears on the table today. I give my own personal assurance as the Minister responsible for this matter and this legislation that it is certainly my intent if this Bill is passed today to ensure that it provides all of the necessary safeguards and that those areas of concern that may remain as Ms Nicholas has justifiably raised will be addressed by my office and the Legislative Assembly at large to ensure that it delivers for Norfolk Island what we are expected to deliver. Just touching briefly on Ms Nicholas comments, I appreciate her raising those views and I had a lengthy discussion with her last night on these and it's always helpful to have open and honest debate particularly on very sensitive matters such as this and I appreciate the opportunity to have been able to do that. However, I guess it's the certainty that this legislation provides over what currently exists today which really sells it for me. The concerns raised by Ms Nicholas of DNA material being destroyed are concerns but the provisions of this Bill is far superior to the provisions of any current existing Norfolk Island legislation that we have. For example under Norfolk Island's current legislation of today if a DNA sample were collected there are no provisions over how those samples would be handled, no provisions allowing for the destruction of those samples whatsoever, no provisions that they can't be sold to the highest tenderers basically. I think that what we have today with this piece of legislation is a great deal of certainty for our criminal law system then what we've experienced in the past, thank you

MR NOBBS Thank you Mr Speaker we're sitting today as the result of a fairly horrendous crime and I would just like to extend my sympathies to the family and also to congratulate those, particularly the volunteers who took part in looking at the scene and the likes, immediately following that particular crime. I fully support this bill. I don't believe we should be looking anywhere else. It's designed to assist and I say assist, as it may not solve the crime completely or any crime, but it's designed to assist in bringing perpetrators to heel and it also allows for the protection of innocent persons who may have been caught in the trap in previous times and I think the Chief Minister alluded to that particular point and I think that is most important. It is my belief and it always has been that if you do the crime you do the time and this act will I believe, not only in this instance but in others, and as sure as the sun is going to come up tomorrow and night follows day, there will be other crimes of a similar nature on the Island here. This is unfortunate, it is extremely unfortunate that we've had a crime of this nature but I think it was coming and was only a matter of time in our changing circumstances because the Island has changed dramatically in the last thirty years as we all know and these sort of things seem to follow. As I said Mr Speaker I'm fully supportive of the Bill. I don't believe there is a need to change. I believe we need to get on with it. I don't believe it was a request of the Federal Police because I don't think people on the Island really understand that the Police that we have here, by a Memorandum of Understanding with the Commonwealth Government are responsible to the Norfolk Island Government. They are responsible to the Minister who is responsible

in the Norfolk Island Government. Too often we hear that the Administrator actually runs the coppers and that's completely wrong. He swears them in by some reason or other, I'm not too sure why, but the actual responsibility lies with the Norfolk Island Government and although the federal Government does contribute to policing on the Island this responsibility from my understanding of it, rests solely with the Norfolk Island Government and the responsible Minister therein. I would just like to add that it's now ten days or so since the crime was committed. It seems a long time. These things often take time, sometimes weeks or months or years before they are solved. I would hope, and I said right from the outset that as soon as the information was available that a crime of this nature had been committed that we should try and clear it up as quickly as possible. The feeling within the community of uncertainty and the like are largely as a result of being unable to solve the crime. If this helps in any way, or all the way, I would think that the sooner we pass this and get on with it the better. I am concerned that under the arrangements immediately after the crime was committed, that it took something like fifty hours for forensic people to arrive on the scene and even longer for specialist police. I don't want to be critical here but I think we have to face the fact that we need to smarten our act up in relation to this type of thing in the future and to ensure that we have a quickly response then this. I know it was a holiday period and the first case of this nature but I do believe we need to put in place some procedures that will click in immediately such a crime of this nature occurs in the future. That's all I have to say Mr Speaker, I fully support it and as I say the sooner we pass it the better

MR I BUFFETT

Thank you Mr Speaker , It is with a certain amount of sadness that I do two things. Firstly Mr Brown mentioned the fact that we as the executives have asked for this law to be supported and certainly that was the case. I think it needs to be known that when we as executives were first aware of this issue, one of the first things was, and to use Ms Nicholas words, that Norfolk Island lost its innocence to a great degree, so it was with an enormous amount of sadness that we need to, and not resiling from the fact that I was executive, that we need to support this and we need to do it fairly quickly. On the administrative side of court work I've worked in the system for some twenty years. If we look through some of the legislation that successive Assembly's have dealt with over those twenty years we have delayed some of the inevitable. We have amended our criminal law from time to time in a way to deal with what we believe would be the most horrendous or the most disappointing episodes that might happen within Norfolk Island. We amended the criminal law act in 1998, by going halfway up the track because we thought it was going to be sufficient and that we would never have to face some of these things. Unfortunately, with our loss of innocence, as Mr Brown says, we need to protect our community so we need to think ahead of the pack. This piece of legislation that we are adopting today subject to some of the reservations that members have and which the Chief Minister has undertaken to look at, to look at each of the sections in terms of the matters that we believe we may need to marginally adjust in the Norfolk Island scene and we need to do this to do two things to signal to this community that if we must be caught up in this loss of innocence, in the globalization and the movement of people and to be involved in all these things that we thought would never happen in Norfolk Island, we need to be proactive. I believe whilst this is not exactly proactive we have nonetheless acted fairly quickly and if it means a resolution of this so we can take away some of the stigma of this episode from this community then I think we need to do that. It also signals that the criminal justice package that has been on the Assembly's books for some considerable time really needs to receive some sort of elevated position. It's in that position already but we need to get on with it. It also signals that we need to look further and take a proactive stance in relation to these issues. As Mr Nobbs mentioned, this has now happened and as sure as the sun comes up tomorrow it will probably happen in the future, unfortunately. I intend supporting this particular piece of legislation and I do it with a very saddened heart but on the clear understanding that if we are to be responsible and send a signal to this community and to those people who perpetrate crime in this community that we are

serious. We cannot rest on the hope and the goodwill that it won't happen. It has been proven that it will happen. We attempted to deal with it in another way previously. I don't think we have any other option thank you

MR BROWN Mr Speaker I just wanted to comment on something that was said a few moments ago by Mr Nobbs. I'm sure that he didn't mean anyone to think that he was being critical of the efforts being made by the police or anybody else when he said we had been a bit slow in getting on with the job and I want to pay tribute to the Norfolk Island Hospital, to His Honour the Administrator and the Norfolk Island Government for the quite prompt way that they went about realizing that the very best way to make things happen quickly was to charter an aircraft to bring the police and forensic people over here. I happen to know that those arrangements were being spoken of at least as early as lunchtime on the Monday and it had been hoped that the aircraft would arrive early on the Tuesday morning. As it happened it arrive slightly later than that but it arrived here on the Tuesday. We are very fortunate that the Norfolk Island police as Mr Nobbs has correctly called them, have been able to draw on the expertise that has been made available to assist us. I would like to say thank you for that but I would also like to say that although it is very easy for us to criticize to have gotten to the stage by lunchtime Monday of knowing that the necessary people could be assembled and agreeing to charter an aircraft at the earliest possible time was not a bad sort of an effort

MR SMITH Thank you Mr Speaker. Usually I would be one of the first to say that we shouldn't be passing legislation in this fashion, particularly such a large piece even though it's the ACT part of it, I would usually be the first to say we should give the community time to consider however, in this case, I believe the community right now is looking for us to play our part in this terrible crime that was committed against Janelle. I think we owe it to her, and to her parents and to ourselves to provide whatever tools we can in this particular situation. I have read through this legislation and not being a lawyer I can't find things that I would disagree with at this point. I hear Mr Brown's words that the Government should continue to look through the Act to make sure that there isn't anything that we may regret further down the track. I see that this legislation does give people more rights than what we have in our current legislation. It doesn't only relate to DNA, it relates to other samples that can be taken. I believe it's been around for quite some time in the ACT and I would think that all the civil libertarian people would have had their say at the time of introduction and it would have been covered in the ACT but mainly I agree with what members are saying around the table that the community wants some answers and if this will help us find answers to what happened to Janelle I fully support it

MRS JACK Mr Speaker this Island has been buffeted by many external forces of late. Airline collapses, insurance company collapses and insurance rates are forcing change in our celebratory days which will have flow on effects that will continue throughout the years ahead unless this Government and insurers get together to work out a viable solution however, the residents will know doubt adapt to many of these changes with their usual flair and stalwartness. However last week brought about a change that has changed forever the basic fabric of the Island. It is this event that brings us here today. It is this event that has highlighted our inadequate crime law act and sees the Legislative Assembly debating the merits of taking on board Crimes Forensic Procedures Bill 2000 in its amended form. Yes we are being asked to do our bit expeditiously. Do I have trouble with that. Too right I do. I have problems with some of the areas covered in the proposed bill but I also have trouble in not doing anything that could assist the police in carrying out their duties. This island is hurting and the various people who have come to me over the past ten days telling me of their fears, concerns, troubles with relationships and so on. 147 years free of such an offence and this happens and it just smacks one in the face. The people have told me what they

want and it appears to be this bill. I am amazed however at the way people have told me that we should all be DNA tested. It is to me an emotive answer to a crime never seen here before and I have been surprised by the various people's willingness to give up their most intimate details and volunteer to do it. These people would no sooner tell you how much money they owe the bank, what they were doing last night and with whom but they would gladly give up their DNA data. If this bill is passed then we the Government need to ensure the education of the residents regarding various aspects of it. Better community policing has been voiced as an alternative. Well I'm sorry but I think this community is past that stage. It is indeed a sad day and stage in the life of Norfolk Island that we currently find ourselves. Just about all my concerns regarding this bill were quelled this morning and my thanks must go to Trish Cowles and Barry Yau for doing it. I, like Ms Nicholas am concerned over the destruction of forensic evidence. Definitions contained in the dictionary of the Act, the term "destroy" is omitted and does not apply to Norfolk Island. We could perhaps substitute the following definition that "destroy" means the actual destruction of forensic material including and ensuring that there is no means of identifying the forensic material or information with the person from whom it was taken or to whom it relates. Another concern left covers the transportation of evidence, keeping the integrity of evidence uppermost and who cares and carries the concerns of our DNA storage and data base. I see in other legislations and other areas that ideally it is an ombudsman. Well we don't have one, nor do we have reciprocal arrangements with the ACT whose bill we are asked to adopt. Also who would be responsible for the actual handling and storage of the data here on the Island, the police or Hospital. I would like assurances from this Legislative Assembly and especially that of the Chief Minister who was introducing the bill today that these concerns will be reviewed and dealt with and a positive action taken at the soonest and not at the most appropriate time. To many people in this community I often talk of the greater good and in this case it becomes pointed because I must say yes to this bill at the expense of the few and a few of my concerns for the greater good of the community as a whole, thank you

MR GARDNER Thank you Mr Speaker. Just a couple of comments on Mrs Jack's debate regarding our inability to have arrangements with the ACT. The bill does establish those reciprocal arrangements with other jurisdictions and I think that's pretty clear in the intent of the Bill and the assurances that she's looking for I've already given those this morning that I am prepared to ensure that the provisions of this bill are indeed those suited to Norfolk Island and won't cause us any undue concern. The revision of it will begin immediately

MR BROWN Mr Speaker last year I was fortunate enough to meet the scientist who actually discovered that there is an ability to do DNA testing and one of the things that he said to me was that although some people are upset that this is an invasive sort of thing, there is another side to it and that is that it can clear a lot of people because if your DNA doesn't match then you can't have done whatever it is that is being investigated. Let's not just focus on the fact that some baddie might get caught as a result of it. An innocent person is far more likely to have his innocence realised and to avoid having to go through the processes of being charged and going through the court system if DNA testing shows that he simply isn't the one. There's two sides to it

MR I BUFFETT Thank you Mr Speaker I think I just need to make one comment. I do not wish to give the impression to the community that DNA testing solves everything. It is a tool in part of any investigation as I understand it, that goes on. I believe one of the key elements in solving anything of the nature that we are talking about is whether the community itself is going to accept that that happens within that community or not, and the community obligations that this particular horrendous deed has placed on the shoulders of each and every one of us who lives in this community. I think the community needs to understand that. I do not pass this bill purely

or support this Act purely on the basis that the question of us giving the enforcement agencies the ability to take DNA is an automatic quick fix to the problem that we have. There is a far wider connotation involved in what we are doing here. We have not only lost innocence in terms of making the administrative arrangements in the forensic procedures that enable us to come to or resolve some of these issues, we are saying to the community out there as a community in a whole range of things that are going to affect us and may already have started to affect us in the past, with this incident being a catalyst and will effect us in the future, are we as a community going to say this can happen, are we as a community going to perhaps take the question of looking after ourselves and put that out of what might have been the ordinary meaning into being a thing that becomes a stigma within the community. I say that not lightly. I say that with a very heavy heart because what we are talking about is only one aspect of what we as a community will use to resolve this situation, thank you Mr Speaker

MR GARDNER Thank you Mr Speaker I move that so much of Standing Orders be suspended as would prevent the House from dealing with this bill to its conclusion today

SPEAKER Thank you Chief Minister. Honourable Members I put that question to you

QUESTION PUT
AGREED

That is agreed

MR GARDNER Thank you Mr Speaker as I alluded to in my earlier debate there were housekeeping provisions that I wish to move in the detail stage as detail stage amendments and I circulate those to members and then I think it is probably appropriate that those be read into Hansard

SPEAKER Chief Minister if you are at the stage of wanting to address the details we might conclude on the matter of the bill in principle and then move into that stage forthwith. Honourable Members the question that remains with us at this stage is that the bill be agreed to in principle and I am assuming that there is no final debate on that particular matter.

QUESTION PUT
AGREED

We come to the detail stage

MR GARDNER Thank you Mr Speaker I move that the detail stage amendments as circulated be agreed to. These amendments propose to modify certain sections in the ACT Crimes Forensic Procedures Act 2000 which refers specifically to ACT legislation. These sections will be modified to reflect Norfolk Island law. The detail stage amendment numbered one and two deal with subsection 1122 of that Act is omitted and does not apply to Norfolk Island; and "q" a reference in the dictionary of that act following defined words are amended, 1. infringement notice the reference to the Road Transport General Act 1999 shall be read as a reference to the Road Traffic Act 1982 2. prison the reference to the Removal of Prisoners Act 1968 shall be read as a reference to the Administration Act 1936 and the Periodic Detention Act 1996 3. prison medical officer the reference to Under the Remand Centres Act 1976 is omitted 4. remand centre the reference is omitted and substituted to with includes a jail or detention centre under the Administration Act 1936 and the Periodic Detention Act 1996 5. summary offence the reference to the Legislation Act 2001 section 136 shall be

read as a reference to a law of Norfolk Island 6. warrant the definition is omitted and substituted with for the apprehension of a person is a warrant issued under a law of Norfolk Island for the arrest or apprehension of that person. Mr Speaker these amendments modify various provisions in the Act legislation to reflect Norfolk Island law

SPEAKER Is there any debate in respect to the amendments that the Chief Minister has in front of us? Are you comfortable that you take them as a whole Honourable Members? If there is no further debate in terms of those amendments I will ask whether the amendments are agreed

**QUESTION PUT
AGREED**

The amendments are agreed

Honourable Members I just want to give some clarification to the amendments that have been circulated to you. I just need to make it abundantly clear that they are amendments to Schedule 1 of the legislation and I need to have your understanding that you understand that that is what the matter is. With that clarification Honourable Members I just reinforce that you have voted to agree those amendments as they were circulated being amendments to Schedule 1. May I ask if there are other amendments to be proposed

MS NICHOLAS Thank you Mr Speaker. I expressed in my debate the wish to see some amendment to the provisions which presently exist for the destruction of samples taken from volunteers and members will note that I have little red stickers instead of my finger. Section 80 of part 2(8) of the Bill presently says "if the police officer intends the information to be placed on the volunteer limited purposes index of that system, the purpose for which it is to be placed on the index and that the information may be used only for that purpose and (c) if the police officer intends the information to be placed on the volunteers unlimited purposes index of that system that the information may be used for a criminal investigation or for any other purpose for which the DNA database system may be used". Now the section that follows that (d) is the most significant one. The information placed on the DNA database system will be retained for such period as the Chief Police Officer and the volunteer or the volunteer who is a child or incapable person, a parent or guardian of the volunteer agree and must then be removed from the system". It's a matter virtually of negotiation between the police officer and the volunteer as to how long that sample is retained. In contradiction and interestingly under section 90(2) of the Bill which is page 68 part 210 of the Bill the destruction of forensic material after one year, this section applies if forensic material has been taken from a suspect by a forensic procedure and right through this section we are talking about a suspect. There is no provision for the destruction of the material by a volunteer except as a matter of negotiation when it is initially taken. I'm really not quite comfortable with that and I would like to propose some amendment, however I am mindful that Mr Brown has suggested that we really deal with this piece of legislation again very quickly, the Chief Minister has borne that out and if there's one less amendment that has to be done on the floor of this house but is acknowledged that a need arises I would be pleased for it to be delayed until that time

MR I BUFFETT Thank you Mr Speaker simply my observation that if we try to do on the run amendments at this stage of what is a rather lengthy and detailed piece of legislation we could end up falling for a rather old trap. We have a sitting of this House scheduled for the 24th, two weeks from today. Could I urge members who may have some concerns to list those so that we have them in a proper scheduled way and we might look at those prior to the sitting of the 24th which gives our legislative drafting area sufficient time to deal with those issues and deal with the

substantive matter in front of us this morning in order to do two things so we don't get ourselves confused and we get on with the intent of the sitting this morning because if the intention is to sit here and do amendments on the run I'm not too sure whether I want to be part of that at this particular time

MR BROWN Mr Speaker I agree with what Mr Buffett has just said. It would be a lot safer for us to sit down and deal with any amendments other than those proposed by the Chief Minister, with the benefit of time and with the benefit of advise and if we are going to do that could I ask that the reference to omitting subsection 112(2) of the ACT Act be looked at again. It makes reference to the Crimes Act 1900 and if my recollection is correct that's the Commonwealth Crimes Act and I'm not quite sure why it is that we are excluding something that says that the Act doesn't limit or exclude the provisions of the Commonwealth Crimes Act. Perhaps I've got the wrong Act and perhaps it's ACT legislation

SPEAKER Thank you. Further debate. If there is no further debate Honourable Members what we have done at this stage is we have made one amendment as proposed Chief Minister and that is agreed. I will now move to the balance of the legislation because we are now at the detail stage to gain your view about agreement or otherwise to the balance of the legislation. Is the balance of the legislation agreed

QUESTION PUT
AGREED

The balance of the legislation is agreed Honourable Members to the last stage of this particular piece of legislation, and that is to put the final question to you, to put the Bill with its schedules as amended be agreed. Is there any final debate

QUESTION PUT
AGREED

The Bill and its schedule as amended is agreed. We have concluded that matter Honourable Members

FIXING OF THE NEXT SITTING DAY

MR BROWN Mr Speaker I move that the House at its rising adjourn until Wednesday 24 April 2002 at 10 am

SPEAKER Thank you. Further debate. No further debate Honourable Members? Then I put the question

QUESTION PUT
AGREED

The motion is carried thank you

ADJOURNMENT

MR NOBBS Mr Speaker I move that the House do now adjourn

SPEAKER Is there any adjournment debate Honourable Members? There being no further debate I put the question to you that the House do now adjourn

QUESTION PUT
AGREED

Therefore Honourable Members this House stands adjourned until Wednesday 24th April 2002, at 10.00 in the morning

