

## **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

## **CONDOLENCES**

We move to condolences, are there any condolences this morning? Ms Nicholas

MS NICHOLAS

Mr Speaker, it is with regret that this House

Lilies Ellen Buffett

MR SPEAKER

Thank you Ms Nicholas. Honourable members as a mark of respect to the memory of the deceased, I invite you to stand for a period of silence please. Thank you Honourable members.

## **PRESENTATION OF PETITIONS**

Are there any petitions this morning?.

MR DONALDSON

Thank you Mr Speaker. At the last meeting of this Legislative Assembly I presented a Petition from certain electors of Norfolk Island requesting the Legislative Assembly Members to amend the Road Traffic (Amendment) Bill to – and there's three points. 1. Not make the wearing of seatbelts compulsory; 2. Not implement random breath testing; and Not prohibit people over the age of 5 years from sitting down in the tray of a truck (with sides of 300 mm or more) while the truck is in motion. There were 325 signatories to the petition. Mr Speaker, I've received a further petition on exactly the same question from a further 29 residents of Norfolk Island bringing the number of signatories to 354. I table the petition. I would like it noted that although I'm tabling the petition, it's because I think the Member who is responsible for initiating or managing a petition is disqualified from tabling it and I'm tabling it as a matter of course, not because it necessarily reflects my views

## **GIVING OF NOTICES**

There are no notices this morning.

## **QUESTIONS WITHOUT NOTICE**

We move to questions without notice - Are there any questions without notice

MRS JACK

Mr Speaker my first question is to the Minister for Finance owing to the somewhat larger than expected quotes tendered for the runway reseal project, can the Minister please explain, 1, the implications of this cost blowout, 2, the way forward for the project, 3, any changes to the time, date commencement of the project and 4, will any delay cause more than expected stress on the runway causing a review of safety measures. Thank you

MR DONALDSON Mr Speaker I had planned to make a statement in the statement session of this meeting on that subject. I think that statement will contain all answers to the questions that Mrs Jack is asking, and if it's alright with Mrs Jack I would like to delay until such time as the statement is made

MR NOBBS Mr Speaker I ask the Minister responsible for GBE's, I've a couple of questions. The first one relates to the electricity. Minister you would be aware of the impact to fuel costs on electricity tariffs for the next quarter, commencing 1 October. Given world oil price increases, have costs to the island varied and will there be an increase in electricity tariffs from 1 October

MR DONALDSON Mr Speaker it's been practice in the past to at the end of each quarter, and that's each March, June, September and December, to get notice from Mobil who supplies the fuel, as to what the prices will be in the next quarter. That advising has not yet been received. I don't know what the price of oil will be, particularly the price of diesel as it relates to the generation of electricity. I do expect, knowing that the cost of a barrel of crude oil has gone up substantially in the last three months, that there will be an increase in the cost of diesel. I don't believe that increase can be absorbed into the Electricity Undertaking. I believe there will be some amendment to the tariff of electricity but at the moment I have no facts or figures to support or to indicate what the cost will be

MR NOBBS Mr Speaker just a supplementary. Minister I find it quite incredible that you can't answer that question because isn't it a fact that Mobil have been requested to provide by the middle of the month preceding the end of that quarter an estimated price of fuel for the supply in the succeeding quarter and this is to allow the House to then decide at its next meeting, that is, before the quarter commences, if there is to be a tariff increase or note. Isn't it a fact that Mobil is actually required to provide this detail before this time, bearing in mind that we are only a week away from the end of the quarter

MR DONALDSON No I've got no knowledge of ever asking Mobil to provide that information at the middle of the month. In fact in discussions I've had with the Mobil representative here on Norfolk Island that information is not calculated until the whole quarter's price movements are known. It's not something that would be available in the middle of the month and I'm certainly not aware of any undertaking by the Government, by the Legislative Assembly, by the Minister or by Mobil to provide that information mid quarter

MR NOBBS Mr Speaker I ask the Minister responsible for the GBE's in relation to Telecom, what has progressed since the passing of the Telecommunications Amendment Bill No 2

MR DONALDSON Mr Speaker the Telecommunications Amendment Bill was passed by this House probably two months ago. It has been assented to, but it hasn't been commenced. The reason it hasn't been commenced is that we are having negotiations with the people on this island that it effects to find out the appropriate action that we should take. Those negotiations are still taking place although they have commenced and I refer specifically refer here to the use by private individuals of satellite dishes other than the REACH Anson Bay satellite dish and the use of reserved line links

within the telecommunications systems. That matter is still being progressed. I can't give an answer on it although I do hope before the elections on the 20<sup>th</sup> of next month, the matter will be concluded

MS NICHOLAS Thank you Mr Speaker, I'll stay with the Minister for Finance. Would the Minister care to disillusion a recent correspondent to the Norfolk Islander, Norris Buffett, and the hundreds of other community Members who he claims believe that the Government is in a desperate financial difficulty

MR DONALDSON Mr Speaker thank you. I did read Mr Buffett's letter in the paper and was a little alarmed about it. His comments are emotive, uninformed and capricious ....

MR BROWN Point of Order. The person who is being so viciously criticized is not in this House to defend himself and it is totally inappropriate that any Member of this House refer to a Member of the community in that fashion. I ask that those comments be withdrawn and that the answer be provided in a civil and courteous fashion

SPEAKER Mr Brown there are no Standing Orders which give the protection of which you speak however, the tenor of the matter that you raise is something that I'm sure the Minister would care to consider

MR DONALDSON it wasn't my intention to offend or embarrass Mr Norris Buffett on this issue, but that's my opinion of his letter. I've actually stated it in the House. I can go through the theoretical process of withdrawing it and I'm happy to do that but it still remains my opinion and if it has to be expressed as an opinion rather than a fact...

SPEAKER I'm not too sure that the matter should be laboured Mr Donaldson. I think I've explained what the situation is. That it is not necessarily contrary to Standing Orders however the point is one that maybe you would care to consider in how you progress your matter

MR DONALDSON I might explain it better if I say the contents of the letter I found to be described by those adjectives I used rather than the person

SPEAKER I suggest that you answer the matter in lieu of prolonging this discussion

MR DONALDSON I will proceed with the answer. Quite clearly there are a number of considerable financial pressures facing the Government at the moment. As responsible financial managers, we must recognize that our economy being so reliant on tourism is vulnerable and exposed to external influences. We also recognize the significant pressures on our revenue fund budget and on the overall strategic outlook in such areas as the following and I will list the major areas that have been of concern for a long time, the aging population and associated health and welfare costs, the maintaining of the quality and the quantity of the recurrent services provided by the Administration, the increasing costs of occupational health and safety issues, the increasing social responsibilities undertaken by this Government and I refer here mainly to the education and the health responsibilities, the increase in environmental issues, the rising cost of

fuel, the potential erosion of telecom revenue and the potential erosion of tourist related revenue, however Mr Speaker it is important to consider this issue in a balanced and responsible way. In short it is important to consider the issue in context and for this purpose I quote the following financial statistics. The Government's audited financial statements for the year ended 30 June 2003 revealed that we have the following current assets, cash at bank \$10.2m, sundry debtors and prepayments \$3.3m, materials and stock on hand \$2.1m, giving a total current assets from the consolidated Administration financial position of \$15.6m. Against that we have current liabilities, \$3.9m, giving net assets of \$11.7m. now I do recognize in saying that, that a lot of that cash at bank is earmarked for runway extensions or upgrades and other long term projects. It is not available for immediate spending on new and unforeseen projects. The financial statements for the year ended 30 June 2004 have not yet been finalised however the revenue fund financial indicators for that year indicate a surplus of around a million dollars and the total cash at bank is expected to have increased to about \$12m. This years revenue fund budget that was approved by this House, although providing for a deficit of \$257,000 this deficit will only be attained if all expenditure approved is spent. History does not show that this has happened. It is acknowledged that the cost of providing Government services is increasing and that our infrastructure will continue to place increasing financial pressures on the budget. Also the situation is exacerbated by a flattening out of customs revenue and FIL revenue. Clearly we require new or revamped revenue source for future years. I am pleased again to note that in line with responsible financial management the Government is developing and implementing financial strategies to deal with this changing situation and I'll name four of those strategies. The assents management plan, the forward financial estimates, a revenue review, and the creation of reserve funds. Mr Speaker taking all these matters into account I believe it is wrong, wrong and misleading to say that the Government is in desperate financial difficulty. The Legislative Assembly is aware of changes that are happening in the economy and responding to them in an appropriate manner, thank you

MS NICHOLAS

Thank you Mr Speaker, again to the Minister for Finance and I'm sorry to be a little imprecise in this question but details are a little hard to come by. I understand from a radio New Zealand broadcast this morning that telephone access between Ireland and Norfolk Island is being disrupted aimed at prevention of some allegedly illegal activities. Is the Minister able to throw any light on this matter

MR DONALDSON

Mr Speaker very little light. I got an email about ten minutes before the commencement of this Legislative Assembly from the Legal Services Unit saying that Ireland had blocked calls to a lot of destinations in the Pacific one of them being Norfolk Island. At the moment I can say no more than that except obviously the matter is serious, the matter is important and will be responded to and looked into

MS NICHOLAS

Thank you Mr Speaker, and thank you Minister. May I put a question to the Chief Minister. In last weekend's edition of the Norfolk Islander a number of questions were put by correspondent Terry Jope in regard to random breath testing, seat belts and kids on the back of trucks, management of the box, regulations in the building industry and disenfranchisement of persons of New Zealand or British Nationality. Mr Jope asks why has our Government allowed us to be pushed further into line with other areas in Australia. Will the Minister respond to these questions

MR GARDNER

Mr Speaker I'm happy to respond to that. Unfortunately I didn't have the opportunity to fully digest all of the material in last weekends paper but I am in a position to respond to those matters albeit without the benefit of knowing in what context those particular issues were raised but Ms Nicholas has raised the question of random breath testing, seat belts and kids on the back of trucks, management of the box, regulations in the building industry and disenfranchisement of persons of New Zealand or British Nationality. I would imagine that's in relation to the voting question and enrolment question. Mr Speaker I think as we are all aware as life progresses on Norfolk Island there are various demands made by all of us, from the newest the brightest the best the shiniest, the most improved. At the turn of the last century there were no vehicles on Norfolk Island whatsoever. There was no television, we had an education system and we had a housing system but all of those things Mr Speaker over time have had pressures to improve them, cars have been introduced, they've got bigger and more powerful and faster, slicker and we've had television and we've had adjustments in telecommunications generally, which were in the past not available on Norfolk Island and to say that we are being pushed more towards or further in line with other areas in Australia is probably just an indication of where those things progress elsewhere, people are forced into putting into place adequate control measures, regulation, legislative provisions, to control certain of those activities, whether it's the speed of cars, the way they are driven, whether it's the size and shape and other requirements of various pieces of telecommunication equipment including televisions, telephones, and those sorts of issues, but there is a need to control them. We have electricity on Norfolk Island in this day and age. We have significant controls on just what type of electrical equipment can be affixed to that. We've had to regulate that. Simply because of the limitations on the infrastructure that we have and it is no different on Norfolk Island as it is in Australia or New Zealand or anywhere else on the planet that where progress is made and where things change there is a necessity to have to put in place those necessary regulations and controls. That probably deals with the question of random breath testing, seat belts and kids on the back of trucks. Those are necessary things that we need to address and necessary debates that we have to make and without pre-empting debate on those bills later on today, those are matters that the community and us as representatives of the community need to have consideration of, and sometimes just like with the taxation issue or any other issue that comes before this house, there are Members of the community who will either support what the Legislative Assembly does or not support us and they have the ability through their elected representatives to make the message quite clear to all of us. The management of the box I understand the question of that relates to the management of the Norfolk Island Fishery. In other places there are arrangements obviously that are constitutionally based, that allow the resources out of I think it's the three mile zone, it may have changed, for states and territories with that three mile zone to be able to access the resources in those areas. I think it's an absolute plus for Norfolk Island that we be considered having management of the fishing box around Norfolk Island. I think that is a tremendous advance. It is bigger and broader and beyond anything that is available in Australia that I'm aware of. I see that as a plus. Regulations in the building industry. I think when Mr Robinson first came into this House he asked a question of the then Minister for the Environment about his concerns about standing on the top of Mt Pitt looking across the island and being tremendously concerned about the explosion of houses and development across Norfolk Island and I think the question was, what are we doing to control that and because of that explosion of development across the island we have been forced to have to introduce regulations and certainly the debate one way or t'other with various amounts of support would argue that maybe what we have in

place is a little bit over the top, others would argue that it is an appropriate level of regulation to ensure that people on Norfolk Island will still get to enjoy in future years the green spaces on Norfolk Island without seeing it cut up into hundreds of quarter acre sections and the disenfranchisement of persons of New Zealand or British nationality, I don't know whether I would say that persons have been disenfranchised. Those who are of foreign descent, that is other than Australian citizens that were already on the roll I understand have been provided with the certainty that so long as they are not removed from the roll because of extended absences from the island that they are quite legitimately able to continue on the roll and cast their votes. The only persons that it effects are people after the date of the introduction of the Commonwealth legislation who may be other than Australian citizenship that would be prevented from enrolling but not disenfranchised. In response to your question I think I've probably as extensively as I can at this stage without the benefit of having as I say digested the contents of the letter and the context in which the letter was written responded as fully as I can

MR BROWN I ask a supplementary question to the Minister and it is this. If the average person had a view that being disenfranchised could apply not only to the question of whether or not one could vote but whether or not one could stand for election, would you agree that in that circumstance people have been disenfranchised

MR GARDNER Yes I have no difficulty with that

MR BROWN I ask this question of the Minister for Finance, Minister having regard to your statement a short time ago that there is approximately \$11m of cash on hand within the Administration can you advise the total expected cost of the airport runway resealing and can you advise the total unfunded depreciation liabilities and if both of those items are taken into account, do you still maintain that the Government is sitting pretty

MR DONALDSON Madam Deputy Speaker, I'll be making a statement later in the meeting about the airport reseal and in that statement I'll be referring to a figure of around \$12m. that was to be separately funded by an interest free loan from the Commonwealth and that matter is still progressing so that's really outside the equation of viewing the current available funds. The depreciation liability is a major problem. It's something that hasn't been addressed properly I guess by this Legislative Assembly and most previous Assembly's. We are not replacing our infrastructure as quickly as it's wearing out, we are not putting money aside to do it. Part of the financial strategy adopted by this Government is to create reserve funds to allow money to be put aside in addition to depreciation costs that are in the accounts to replace any worn out infrastructure. Part of it is to have an asset management plan that will look forward 15 years to find out what assets we need to replace. I'm not saying that everything's rosy in the garden but I'm certainly not agreeing with the correspondent in the paper who said things are in, desperate financial difficulty. Matters are being addressed, there is a solution there and we are progressing in that direction, but it's certainly not desperate financial situation that was alluded to earlier

MR BROWN Can the Minister please advise whether the solution to which the Minister referred a moments ago is in fact the imposition of very significant additional taxation responsibilities on the Norfolk Island community



Immigration Department to deliver that to the community and he continues to do a very good job in that role as well

MRS JACK Madam Deputy Speaker, to follow on from their Chief Minister, and to actually raise a question from the Select Committee Report of this Legislative Assembly I ask will funding be provided to commence succession planning for the position of Returning Officer and to provide suitable training in that area rather than to continually bring somebody in whenever there's a new election. Can we not have that succession training in place

MR GARDNER Madam Deputy Speaker, without pre-empting the discussion by this House of the Select Committee Report which I understand we will hopefully spend quite some time on later on today, I am supportive of that recommendation in ensuring that, that happens. I am also conscious that sitting on both sides of me are two previous Returning Officers. There is a great deal of experience already within the community of Norfolk Island in that regard. The return of Mr David Rodgers who is a resident of Norfolk Island is welcome to undertake that role and I will support further training, and as Mrs Jack says, succession training in relation to that to ensure that we have continuation and we are in a position to support the Commonwealth and the other states and territories as far as their electoral requirements are concerned, and to deliver that professionally as we have

MR BROWN I direct this question to the Minister for Finance. It relates to the advertised sale of three Administration properties. Can the Minister advise the reason for the properties being advertised for sale at this stage. Can the Minister advise the extent to which there has been community consultation in relation to those sales and the extent to which there will be community consultation prior to any sale contracts being entered into

MR DONALDSON Madam Deputy Speaker, once again that's a matter I'll be making a statement on later. The statement does contain a quote from a press release that was put in the Norfolk Islander two weeks ago, it actually calls for community consultation at that stage and if I could leave the answer to the question till that statement perhaps that would be a more complete way of doing it

MR BROWN A further question to the Minister for Finance can the Minister advise the amount which the Government proposes to provide for the construction of a youth centre at Rawson Hall. Can the Minister advise the number of days of evenings per week on which that building will be used, and will the Minister advise what proposals the Government has in place to ensure the building is a multi purpose building and that it receives more than just one or two nights use per week

MR DONALDSON Madam Deputy Speaker, regrettably all of that question doesn't fall into my portfolio and I don't have complete answers to it but the Youth Centre being built at Rawson Hall is being funded by the sale of the proceeds of the house in Little Cutters Corn. I'm reluctant to put any dollar values on that because it's gone out to tender although we have had a valuation from a real estate agent for that property and that should more than adequately cover the cost of building a Youth Centre. I understand plans for the new Youth Centre are being considered at the moment. I'm not privy to what stage they are at. I understand it will have some multi

purpose functions but once again, it's not in portfolio to deal with that and I'm not up to speed with the latest information on that project

MR BROWN A question in relation to the same subject. In the event that the sale of the property at Cutters Corn generates more money than that which will be required for the Youth Centre project, where will the surplus funds be placed

MR DONALDSON Madam Deputy Speaker, I can only give an answer to the question, that I would like to see it placed, and it will probably be in the hands of the next Assembly, but it has been discussed with Members of this Legislative Assembly in light of selling another property, the Cec Barkman property which I will also be making a statement on later, those funds will be going into the Trust Fund and any surplus funds from the sale of the property at Little Cutters Corn will be going there also to be used for long term community benefit projects and certainly will not be used to spend on recurrent Administration type expenses

MR BROWN Can the Minister advise whether that fund exists today and whether all of those proceeds will go immediately to that fund or is it a fact that the funds will simply go to the Revenue Fund at this stage, leaving it to a future Assembly to decide whether to extract them from that location

MR DONALDSON It's certainly the intention of this Legislative Assembly to put the money into a fund. It's the intention of the Administration officers to put the money into a fund. They are very supportive of that process. That fund hasn't been created yet. There is no guarantee that those properties will be sold, they are not going to be sold to the highest tenderer, they are going to be sold, if they reach the reserve price. There is always a possibility that future Governments will take a different view of available funds and spend it differently, whether it is in a Reserve Fund or not. Even the Reserve Funds that were created by amendment to the Public Moneys Act two months ago, can be changed, the purpose can be changed by a resolution of this Assembly, however it would have to be a publicly viewed process and it would have to be transparent and they would have to be held accountable for it. If future Assembly's are willing to change commitments on that basis, well that's really their decision

MR NOBBS Madam Deputy Speaker I ask the Minister responsible for land, Minister is it not correct that a request was lodged some time ago but in the life of this Government to construct a shed on airport land to provide for more convenient handling and distribution of freight? Is this correct and what action has been taken

MR GARDNER Madam Deputy Speaker, I'm not conversant with the facts surrounding that application. I am aware that there was something that may well have been submitted but as I say I'm not completely au fait at all with what that application entailed. I would imagine that my colleague responsible for the airport would be in a better position to respond to that. I'm afraid I just can't at the moment

MR DONALDSON Madam Deputy Speaker, I can respond in part. Once again it's work in progress. It hasn't been finalised but there has been a proposal put to us by the Administration for consideration and that proposal is building a freight shed. That freight shed would be attached to the current terminal and occupy the area



MR NOBBS Minister isn't it fairly obvious that the opening in public and opening in private for the next tender is not really a very fair way of doing things

MR DONALDSON It's really a matter of logistics. The bigger the tender the more important it is. Anything above \$50,000 has to go out to tender and there's quite a few assets that are purchased that are above \$50,000. If Mr Nobbs would care to put some proposal that all public tenders are opened in public I would be happy to consider it and discuss it with the Administration officers but at this stage it hasn't been the practice in the past, in fact the practice in the past has been to open all tenders in private with independent officers there and it was thought for reasons of public scrutiny and public interest that the airport one be opened in public but you could extend that logic to all tenders. It's not something I had considered

MR BROWN Can the Minister advise the amount of fuel levy which was collected last year from the Norfolk Island community and can the Minister advise whether the fuel levy is specifically earmarked to carry out road repairs

MR DONALDSON Madam Deputy Speaker, no I don't have that figure in front of me but I know it's been a practice in the past to spend at least the amount equal to the amount of fuel levy on roads. I would have to take that question on notice. I haven't the information and if I take it on notice it might be not possible to bring it back to a next meeting but I would be happy to communicate the information back to Mr Brown

MR BROWN Minister could you advise whether the fact is, that the fuel levy goes into consolidated revenue and to such extent as funds are spent on roads, they are separately voted just as they always have been

MR DONALDSON Yes, I believe that is the case, but that's the case with the over-rider and the over-rider being that the amount spend on roads should exceed the amount of the fuel levy and I think therefore the argument is put that the fuel levy is used on roads

MR BROWN A further question to the Minister for Finance is it a fact that the Administration has purchased a substantial number of new vehicles within recent times. Can the Minister advise whether the Government makes decisions about the purchase of vehicles or is that decision delegated in some fashion to officers of the Administration. If it is so delegated, can the Minister advise how the decision is made

MR DONALDSON It's my understanding that, that decision is taken by the officers of the Administration and not by the Government or Member or the Legislative Assembly. The control that Members of the Legislative Assembly have over the purchase of motor vehicles is the amount of money they allocate in the budget each year for the purchase of motor vehicles. The rest of the process is administrative and they've got to live within the money that's been allocated to them for that purpose

MR BROWN Minister is it a fact that if the particular officers who have the decision making power decide to spend all the money on a couple of bright new toys, the funds which the Legislative Assembly thought that it was providing for more significant purposes, are no longer available



there to have a drink rather than go there to take drink away. In fact, I'm not sure if it's legal or not, but the practice that's been established by a lot of clubs in the past is they keep a register of borrowed beer, so if someone wants a cold carton of beer on a Sunday they take a carton of beer from the club and return it in kind the next day or the next week. Now like I said, I don't know if that's legal or not, but I know that practice has happened in the past, and I'm sure it probably is still extending. As for the 6% license fee, yes we are missing out on the 6% license fee that the club's would give us so that's a detriment. The other issue is that there are tourists who buy liquor at the bond where they can get a 30% discount if they show their ticket. They can't get that from the club so we are missing out on the 30% had they bought it from the club. That's one that wasn't mentioned. I think that deals with the list of questions

MR NOBBS I was going to ask virtually the same question but I want to make a comment. That's the first time I've ever heard a Minister ask a question so its fairly significant. In the time that I've been here in the Assembly. Minister will you be taking into account the position of the clubs and the loss that the previous questioner asked in relation to the 6%. Will that be also in the assessment

MR DONALDSON Look I should hope it would be. I should hope that all the factors that influence the Liquor Bond, the people of Norfolk Island and the private or public clubs of Norfolk Island will be taken into account in assessing the continuation of the Liquor Bond being opened on a Sunday morning

MR ROBINSON My question is directed to Mr Buffett in regard to the new smoking laws. I was just wondering while we are on clubs etc, whether you've had a chance to observe the effects of the new smoking laws on the profit or non profitability of the various clubs on the island

MR D BUFFETT Madam Deputy Speaker, no, I've not had access to any financial records that might indicate as to how trading has been effected by the new tobacco legislation

MR ROBINSON Do you accept then perhaps that there may have been some detrimental effect on the clubs

MR D BUFFETT Madam Deputy Speaker, there is prospect that, that may happen. To what extent that would be I don't know and it would rather depend on the capacity of individual clubs as to how they configure their club arrangements so that those who do wish to smoke may do so in an environment where they are not effecting others who might equally wish to frequent those premises

MR NOBBS Madam Deputy Speaker I ask the Minister for Health as well, have we made any progress on providing a comprehensive medical evacuation scheme at all Minister and was the last evacuation in the last week or so of a yachtsman, was that paid for by the island or was it complicated by a rescue arrangement or what was the outcome

MR D BUFFETT Madam Deputy Speaker, I'll endeavour to answer the second bit first. There was a medical evacuation in the last week or so. I think that went to New Zealand if I remember the detail correctly and that was carried out under, the cost of that was met by the insurance of the person involved so that might give some

indicator to that. In terms of the first part, this is more lengthy and more complex, Members will remember that for some time we have been trying to consider ways and means of covering medical evacuations from the island in a way that might be more manageable both in terms of costs and in the method. We had a significant paper that was brought forward and that was circulated to Members. We discussed the paper and we made some recommendations as to the preferred carriers, in other words, people who were in the business and had proven themselves and were able to evacuate people in a medical sense from the island, both to Australia and New Zealand. Probably different ones given the destination and that proposal was made. There were some accompanying proposals made in terms of how people would be organized from here and how they would be organized when they got to the other end. Members at that time if I remember the detail correctly, and this was only in the last three weeks or so, requested some further information that we might look further at some insurance components that we might particularly look at some prospect of insurance arrangements managing the evacuation and one of the thrusts there would have been that with an external management arrangement it might have a closer watch upon the need for somebody to be medically evacuated. The study therefore is continuing. I have asked for further research and I have received further information and that will be circulated. Whether it will mean that we will be able to finalise everything in the life of this Assembly is of course not something that I can give an undertaking on given our time frames now, but there are a couple of areas that Members requested information upon that I am still examining. So in response to all of that we have looked at it in the last two or three weeks. Member asked for additional information and some of that is available but there are still other areas that have yet to be tidied

MR BROWN I direct this question to the Minister with responsibility to the Public Service. Will the Minister be making a statement today about the results of enquiries arising from the Residents Against Corruption on Norfolk Island letter of quite some months ago

MR D BUFFETT Madam Deputy Speaker, no I won't be making a statement. Not that I don't want to necessarily but I'll explain this in terms of responding to that particular situation. Of recent months there has been developed in the Administration an Ethics Programme. A number of things have given impetus to this being done. One is the RACON letter to which Mr Brown referred but there has also been initiatives of an earlier time that we should look at ways and means for the community to have access to an ombudsman and other like facilities, in other words, when people have complaints they have an avenue to be able to pursue them. We did invite the ombudsman to come to Norfolk Island, Professor John McMillan and he came and spoke to all Member and on the radio as well and one of his recommendations was that if an ombudsman is being pursued, one of the first recommendations was that there would be strengthening in the Public Service of its internal procedures to look at complaints and so I'm just illustrating that there are a number of things that led to a strengthening of the internal procedures about complaints and that has led to an Ethics Program. That is now in place and documented. There is a public officer to whom complaints can be referred. The Chief Executive Officer of the Service presented a paper to me which I circulated to Members which outlined that service but in addition to that, I requested and the Chief Executive Officer facilitated, that the public officer, who is one of our legal officers come and explain to Members the system as it was devised and it was done. Not only the system itself but gave an overview of the various complaints that had been received and how they had been processed and the various stages that

they were received. Don't ask me about each particular one because I can't remember that detail off the cuff, but she did explain that to us and in that process was an explanation of how the RACON matters had been processed. The result of that was that there was an indicator that there should be periodic reports but also that we should put together a radio program so that the explanation basically given to Member could be given to the Norfolk Island community and I have asked that, that be done. It has not actually eventuated at this moment but it will give an explanation of both the ethics programme and how those RACON matters had been considered so that there would be a public explanation in response to that letter. Hopefully that's helpful as to how that matter has progressed

MR BROWN could I ask the Minister a further question in relation to another Administration area. Minister can you advise what insurance arrangements apply when Administration vehicles are used for the purpose of driving children to and from school and is the community assured that the community is not at risk as a result of children being driven to and from school in Administration vehicles

MR D BUFFETT Madam Deputy Speaker, regretfully I don't have an answer to that but certainly I can find out what the answer is and as has been alluded to earlier, it's unlikely that we will have another sitting so that I can respond publicly about that but certainly I can respond to Mr Brown who has raised the query with me

MR BROWN One further question in relation to the Public Service can the Minister advise whether it is the case that the appointments to senior positions in the Public Service are performance based and if that is the case, how frequently are performance reviews undertaken

MR D BUFFETT Madam Deputy Speaker, certainly I know of some that are and I'm assuming that at least the two top levels, that is the Chief Executive Officer and the Executive Directors are performance based. In terms of the Chief Executive Officer again if I remember correctly it is a twelve monthly review. I don't necessarily have detail of the next tier, because I don't necessarily have the same recollection about those, but I suspect that they are a) performance based and b) maybe twelve monthly assessed also, but I need to say that I'm a bit hesitant about providing information on the second bit but I can give some clarity to it

DEPUTY SPEAKER Thank you Members. Time for Questions Without Notice has expired

MR BROWN I move that it be extended by five minutes

DEPUTY SPEAKER I put the question that time be extended by five minutes. Thank you, that is agreed

MR BROWN Madam Deputy Speaker, I ask a supplementary question. In researching a response to the question which just has been asked in relation to performance reviews, can the Minister also advise what action is taken if it becomes clear within a twelve month period that a particular Member of the Public Service is not meeting what is expected of him in terms of performance. That is, are the reviews able to take place more quickly if thought necessary



notice no 57. Mr Brown has asked, will the Minister please advise the extent to which progress has been made in discussions with the Public Service Association in relation to productivity gains and cost reductions. I have made enquiries in terms of that question and I provide this information. Probably as a prelude I mention that I have been recently advised that the public service association anticipates lodging a wage claim in the near future and in that context I understand that the Chief Executive Officer, he has advised me, that he has written to the Association seeking confirmation that the Association is willing to enter into joint productivity discussions in the context of the wage claim. Now can I go back to follow the last wage claim, let's just try and give an overview of the present situation, but following the last wage claim the Chief Executive Officer arranged a series of meetings with representatives from the public service association and the Staff Consultative Committee to discuss productivity issues and at that time the discussions focused on the spread of hours arrangements and I should let you know that following those meetings and interim rostering and remuneration policy has been developed and is implemented pending consideration by the Assembly of the final proposed policy for new positions on a trial basis, that is, applying to people who have newly come onto staff. This policy establishes an interim spread of hours arrangement, reducing overtime payments and applying a penalty rate with a net financial savings. The Chief Executive Officer advises me that he is currently reviewing that interim policy and will shortly be letting me have in writing something for a formal approval to an ongoing policy arrangement, in other words, there's been a test put into place to see how it runs and it's at the stage now of giving me notice of a long term proposal. I'm also advised that there have been a number of other improvements relating to human resources management within the public service over recent times including these, some dot points – developing and implementing a revised organizational structure; finalizing a large number of recruitments where positions were previously held in an acting capacity; conducting a review of positions on vacancy to improve appropriateness, efficiency and effectiveness, implementing an enhanced occupational health and safety programme and in that context I think I can remember the risk management people coming to talk to Members around this table which came up for some further evaluation of Occupational Health and Safety arrangements; developing and implementing an Ethics Programme and I gave some elaboration of that earlier when a question was raised with me; developing and implementing new administrative policies and guidelines such as use of Administration vehicles and internet email usage policy, relocation of immigration to customs area establishing a Customs and Immigration Unit and the Chief Minister also to elaborate that particular point gave some detail in responding to another question that he was asked earlier today and relocation of the Health Quarantine Staff to the former metrological station. Those are seen as some significant improvements over recent times and I provide that information in conjunction with the other that was probably more the specific request of the Question on Notice

End tape 2

Start tape 3 .xxx

MR BROWN Madam Deputy Speaker, I gave notice to the Minister yesterday of a further question. I apologise that I did not ask it during questions without notice but I wonder if the Minister is in a position to provide a response in relation to the number of public roads on the island that have been closed off

MR D BUFFETT Madam Deputy Speaker, yes I am very happy to give an interim response but there won't be an opportunity for another one so I don't



MRS JACK Madam Deputy Speaker, I move that the paper be noted. I would just like to ask the Minister yet again, and I'm sure he's waiting for my question, it's one I ask virtually every month. What has happened to the papers regarding the figures covering August. We are almost at the month of September Minister and yet we've got July, where is August? Where is the reasoning for us to be so behind?

MR DONALDSON Madam Deputy Speaker, The reason for it is really a resource problem in the Administration. The officer in charge of preparing these papers has taken an extended annual leave for a six to seven week period, and regrettably that simply meant that the papers were not produced so I apologise for not having the August papers here possible, the next Assembly meeting will not have the August or September papers either, if they meet within a couple of weeks of the election date. It's not a satisfactory situation, I've spoken to the CEO about it and he's attempting to remedy it to make sure that more than one officer in the Administration can do the job of an officer when they are away

MRS JACK Madam Deputy Speaker, I would just like to agree with the Minister that a lack of succession planning, and if you're telling me that only one Members of that service can compile these figures after twenty-five years, I find the situation intolerable. I really do and I hope that, that fact is remedied ASAP

DEPUTY SPEAKER NICHOLAS Is there further debate? The question is that the Paper be noted.

QUESTION PUT  
AGREED

The Paper is noted. Are there further Papers

MR DONALDSON Madam Deputy Speaker, I have another paper here, this is a paper tabled pursuant to the Public Moneys Act. At the beginning of each year the budget provides a vote for the executive Members' discretion, that's really a contingency type of vote, this year we were given \$20,000 to spend at our discretion. I now table a paper that details the expenditure that has been made out of that vote. I will just talk about four of the major items. In total we spent \$18,600 of the \$20,000. There is a project to re-lead the war memorial, that's repaint the names and dates and that cost \$2,966; we paid \$6,500 for lobbyist services in Canberra to deal with various intergovernmental matters, we gave a \$3,400 grant to the Girl Guides to assist them in their world trip, and there is an overrun of expenditure in the SCAG conference of \$2152. All other amounts are reasonably small but they are the four major ones and I table that document

The third paper I'm tabling is the virements made between votes between the 22<sup>nd</sup> June and the 26<sup>th</sup> July and it just shows votes, the transfers of allocations of expenditure from one vote to another and as I've said in previous times this doesn't increase the budget it just moves money from one vote to another so that the expenditure can be met. Once again this paper only goes up to the 26<sup>th</sup> July, there's nothing in here for August and for the same reason as the financial indicators were behind, applies to this

I table the direction I gave under the Public Money's Act and I'll read it out. I Graeme Donaldson Minister for Finance under subsection 32(a)(2) of the Public Moneys Act 1979 hereby direct the Finance Manager to transfer such amounts of unexpended appropriation from the financial year ending 30 June 2004 to the financial year ending 30 June 2005 as the Finance Minister considers equal to the amount remaining unpaid and substantial liabilities incurred in the financial year ending 30<sup>th</sup> June 2004. Madam Deputy Speaker this is just a mechanism whereby expenditure or liabilities are incurred in one year and relate to that particular year can be paid out of funds allocated for that year otherwise those funds actually lapse on the 30<sup>th</sup> June and this allows really for payment of creditors that relate to the previous year to be made in the current year and I table that document

Again, Madam Deputy Speaker I table an approved exemption under the Customs Act section 2(b)(2) of the Customs Act 1913 makes provision for the executive Member to exempt goods from duty where duty payable is less than \$200. Section 2(b)(5) of the Act provides that where the executive Member has exercised this power he should lay a copy of the exemption on the table of the House. I table those exemptions and just speaking to those exemptions, the first sum was \$38.17 on imported trophies for the netball association, the second amount was \$70 on the importation of tennis equipment donated by the international tennis federation for the promotion of Junior Tennis on Norfolk Island and I table that document

One further paper Madam Deputy Speaker, I table the Norfolk Island Employment Tribunal Annual Report and note that the Court of Petty Sessions Acts as the Employment Tribunal in this role and in this role deals with complaints and disputes under the Employment Act. The Report outlines matters heard during the year ended 30<sup>th</sup> June 2004. In all, thirteen matters were heard by the Employment Tribunal. Five related to unfair dismissal, four of these complaints were found in favour of the employee and one in favour of the employer. Two complaints related to non payment of workers compensation relating to hernias and the Tribunal found in favour of the applicant in both cases. One application for workers compensation was dismissed as the applicant had not complied with the required medical assessment process. Three applications for holiday pay were heard, resulting in holiday pay being paid in all three cases, one application for additional holiday pay was dismissed, however basic entitlements were paid, and one application to be paid for hours not worked was dismissed. That's my summary of the report. I table the narrative report that I received from Mrs Elaine Sanders who is a member of the tribunal

MR D BUFFETT

Thank you Madam Deputy Speaker I have Some papers which relate to inbound passenger statistics into Norfolk Island. These are the ones that I regularly table each month. I table those so that they may be distribution to Members. The figure to come to the chase for August for visitors is 2,841. Just to go back to the month of July of 2004 we have 2,476. In terms of where those people have come from, 896 from New South Wales, Queensland 618, New Zealand 674. Also visitors from South Australia, Western Australia etc but they are the main ones and you can see those enumerated on the paper itself. It also gives the bed nights in terms of visitors to the island, the year that we have just concluded 2003/2004 we have 287,822 bed nights in that year and that is to be measured against our goal set in Unity 2004 which is to reach by 2005 340,000 bed nights. There is also and I like to continue to refer to this particular set of figures, our visitor exit survey and I explain each time that as each month goes on, the figures become more meaningful because it is a greater

accumulation. The figures that we have are from the 1<sup>st</sup> January of this year and they run through now until the 31<sup>st</sup> August this year. It is interesting to note from this that the motivation to visit Norfolk Island stands at about 35% from recommendation from friends and that's interesting to see how that might attract people to Norfolk Island. Another interesting fact is the rating of accommodation in Norfolk Island. There are four categories, excellent, very good, satisfactory and poor. In the two top categories, excellent and very good, first is 39.7% and the next, very good, 40.3% so 80% of our visitors rate our accommodation in those two categories and that's a good plus for us. The rest I think you can see for yourself. Another factor that might be of interest is a rating on the holiday experience. There are again four categories in this. Great, beyond expectation, as expected and below expectation and the top two categories cover over 80% of those who visit here. The below expectation is at 0.8. I'm sure we would like that to be NIL but nevertheless, 0.8 is not a bad figure in that context. I table those figures  
Madam Deputy Speaker

## **STATEMENTS**

Are there any Statements of an official nature.

MR D BUFFETT  
Madam Deputy Speaker, there is one statement that I would like to make in terms of the Norfolk Island Fisheries Consultative Committee. It's obviously about fishing. I have recently taken up responsibility for this area. Our colleague, Mr Toon Buffett looked after this and he would be much more knowledgeable about it than I am but there are some important aspects about the Fisheries Consultative arrangement in the island and I'd like to just give you this overview, following a meeting that has recently been held within the island. The Norfolk Island Fisheries Consultative Committee met on the island on the 8<sup>th</sup> September this month. Three Members of the Norfolk Island Fishing Club represented Norfolk Island's fishing community at that meeting. The main issues of discussion revolved around the future management of the Norfolk Island inshore fishery. That's known as the box. Within which fishing by other than Norfolk Island vessels is presently excluded. The Australian Fisheries Management Authority interim policy relating to the box will be reviewed at AFMA's Board meeting on the 26<sup>th</sup> November coming up. That interim policy presently provides that AFMA will not issue any commercial fishing permits before the end of 2004, AFMA is seeking a formal agreement with the Norfolk Island Government on the collection of fishing activity, that is effort and catch and the provision of that data to AFMA and thirdly, continuation of the interim policy will be subject to review of progress regarding the AFMA and the Norfolk Island Government negotiations before the end of 2004. The Fisheries Consultative Committee at its meeting just held agreed these points, that persons fishing in the Norfolk Island box either from a boat or from the shore will be encouraged to provide fishing data to AFMA or to the Administration from the 1<sup>st</sup> October; that AFMA will design an easy to complete data sheet which will be distributed to fishers by the Fishing Club and the Administration and the Fishing Club will provide a list of fishers to the Administration or to AFMA. The Fishing Club fully supported the collection of fishery data and would encourage its Members to provide fishing information to AFMA or to the Administration and that AFMA and the Norfolk Island Government would agree on an Memorandum of Understanding on the collection and analysis of fishing data and that would be aimed to be achieved by the beginning of October. I just mention further that AFMA will report to the AFMA Board Meeting, that the Fisheries Consultative Committee supports continuation of the interim policy and will inform the board of progress to implement fishing activity data collection and that policy

as you will understand, and I endeavoured to briefly mention it earlier, that there is exclusivity in terms of that zone. That's an overview of the most recent discussions that have been held here about fisheries and particularly the box, which we have particular interest in

MR DONALDSON

Madam Deputy Speaker, I would like to make a brief statement on the progress being made with the current runway reseal project. The last runway reseal project was carried out in 1991 and it was estimated to have a life span of between 15 and 20 years, however, due to early weathering of the runway surface, a decision was made in 2001 to commence the resealing process again. The resealing process involves laying a 60mm layer of asphalt over the existing surface and involves about 25,000 tonnes of crushed rock. In February 2002 this House appointed GHT to provide design and project management services for the proposed pavement works. In July 2003 the decision was taken to proceed with the resealing of the main runway, the eastern end of the secondary runway, and the taxiway to the terminal. Estimated costs for this work were in the vicinity of \$6m and that was in 2002. tenders were then called for the carrying out of the reseal and closed in mid July 2004. Tenders were received ranging from between 1.5 times the original estimate to twice the original estimate. Funding for the original estimated cost of the project was provided by the Commonwealth with an interest free loan. A loan agreement for this amount was signed on the 28<sup>th</sup> July 2003 and although the loan was interest free there was a condition on the loan that we put an amount equal to notional interest aside for future upgrades. We also had to put aside a further amount to ensure that after ten years we had about \$8m in a reserve fund to put towards the following upgrade. As a result of high unexpected costs to the reseal the loan amount is insufficient to fund the project and in accordance with clause 16(1) of the loan agreement, and that clause deals with variations, the Minister for Local Government Territories and Roads, the Hon Jim Lloyd M:P has been written to advising that we will be seeking a variation to the loan agreement once tenders have been assessed and a final cost is known. Tenders have been considered by the Tender Evaluation Panel which is a panel comprised of a representative from GHT, two representatives from Administration and an independent engineer. The recommendation of a tenders evaluation panel is now being considered by the Tenders Committee however, the tenders committee is yet to approve any of the tenders and in any case, cannot do so until funding is secured, negotiations for the variation of the loan have commenced between the Department of Transport and Regional Services and the Administration on an officer to officer basis and good progress is being made however, as we are all aware the election in Australia has meant that the Minister has not been able to finalise this matter. The Department of Transport and Regional Services has advised that this is a matter that will be given priority once the outcome of the Australian elections is known and the appropriate Minister appointed. In the meantime, the runway remains in good working order and its use is not under any immediate threat, thank you

MR ROBINSON

Madam Deputy Speaker could I move that the Statement be noted. Of the funds to do the airport I understand that the original sum was \$5.8m that the Australian Government was going to lend us. Shouldn't we have had some cash of our own stuck aside for this job or do we blow it all on various other projects

MR DONALDSON

Madam Deputy Speaker, perhaps I could answer that. We have got accumulated cash of when the loan agreement was first



MR DONALDSON I don't think it was ever the intention that the full details of the tender itself were made public. What was made public was the opening process and as I understand it the total cost of each tender and who it was received from and at that stage the public information stopped and it became a privacy matter between the tenderer and the tender evaluation group

MR NOBBS So what we have now is a situation where the Norfolk Island Government, that's the three Ministers, it's with them at this point in time, is it

MR DONALDSON It's been considered by them. There was a Tenders Evaluation Committee formed and that Committee was an engineer from GHD who are the project managers, two Administration staff which is the Executive Director for Environment and Infrastructure and the Airport Manager and an independent engineer which was Andy Lyall. We've given it back to them to seek further information before a decision is made

MR NOBBS Is Mr Lyall an expert is he on airports

MR DONALDSON He's a quarry expert I understand. A rock expert

MRS JACK Madam Deputy Speaker, are you saying you can't explain or given any reasons why there was the blowout in the tender. Some of the reasons behind the blowout

MR DONALDSON part of the advise we got from the Tender Assessment Group went towards explaining why there was an increase in the estimated cost of \$6m and the tender cost of around \$12m. That's still confidential information as to why that's blown out and it will probably remain confidential information for ever and a day

MRS JACK I find it rather strange that perhaps there's something in that tender process that the community could assist with or the restrictions place on the tenders might be able to be moved with the consent of the community. I just find it strange that you go so far and then there's no more, that's all

DEPUTY SPEAKER Is there further debate? Then I put the question to you that the Statement be noted.

QUESTION PUT  
AGREED

The Statement is noted. Are there further Statements this morning Honourable Members

MR DONALDSON Thank you, yes I have one more statement to make. I would like to make a statement on the sale of the two Administration properties. These are the properties for which the four tender advertisements have recently been placed in the Norfolk local paper. There are two properties for sale. The first property is a three bedroom house in Little Cutters Corn and the second property which consists of two land titles is the estate of the late Cec Barkman in the Captain Quintal Drive area.

There has been some misinformed public comment made regarding the anticipated sale of the properties and the use to which the proceeds will be put. The Chief Executive Officer issued a press release on the 11<sup>th</sup> September 2004 which was published in the Norfolk Islander explaining why the properties were being offered for sale and the use to which the proceeds would be put. I'll repeat the words used by the Chief Executive Officer in his press release. He said and I quote, that the properties were not required by the Administration use and the proceeds would be used for community projects. The Little Cutters Corn property is being sold to fund the construction of the Youth Centre behind Rawson Hall and the Chief Executive Officer went on to say the proceeds of the sale of the Barkman properties will be placed in trust pending a decision on what community projects will be supported with the funds received. We are committed to using the proceeds of this very generous gift for the good of the whole community and would welcome suggestions about appropriate projects and that's a quote out of the press release put out by the Chief Executive Officer about two weeks ago. The Press Release is consistent with discussions held by MLA's whereby Members expressed a strong desire that the proceeds from sale not be swallowed up as consolidated revenue and be used to pay Administration operating expenses but apply to a worthwhile project of lasting community benefit. Finally neither property will be sold unless the reserve price is reached, thank you

MR BROWN Madam Deputy Speaker, earlier this morning the Minister told us that there was no trust fund to which the proceeds of the sale of these properties would be deposited. We've now had read to us part of a press release by the Chief Executive Officer saying the funds are going to go into a particular trust fund. Can the Minister please tell us whether in the time between his answer this morning and the time in which he read the CEO's press release a trust fund as been created or is the CEO's press release actually inaccurate at this time

MR DONALDSON A trust fund has not been created although the process of creating a head of a trust fund for the purpose of holding this money is a very simple process. It is clearly the intention of the Assembly Members that they want this done, it is the intention of the Chief Executive Officer to do this and if the properties are sold and the money is realized a trust fund will be created there and then, probably within the trust account of Norfolk Island. They are already using the public account of Norfolk Island for divisions. The revenue fund, the Administration Services fund, the Trust Fund and the loan fund. The trust fund facility does exist

MR BROWN Madam Deputy Speaker, I'm sorry, I was just looking out the window to see if there was a cloud going past because the Minister obviously thinks we all came down in it. We didn't come down in the last cloud. There is no trust fund and isn't the true situation that if the next Assembly completes the sale of these properties and decides that it wants to spend the money on pay rises for example it will be quite able to do so

MR DONALDSON I think Mr Brown is repeating the words I said earlier, that we have no control over future Assembly's even when statutorily provided for revenue reserve funds, that we pass amendment to the Public Moneys Act two meetings ago, can be changed by resolution of this Assembly. What I'm saying is that there is an intention of this Assembly and the management of Administration that this money be placed in a trust fund. We cannot lock it up forever and a day, we can't force our ideas on subsequent Assembly's but we can do it in such a way that if a subsequent



will go nowhere near to replacing the hospital which has been suggested by some people as more of a palu than anything else I should imagine, but anyhow, I would hope that the Minister and the Chief Administrative Officer will take the concern of the community on board and do something about it very quickly. Thank you Madam Deputy Speaker

DEPUTY SPEAKER Thank you Mr Nobbs. Is there further debate?  
Then I put the question to you that the Statement be noted.

QUESTION PUT  
AGREED

The Statement is noted. Are there further Statements this morning Honourable Members. No further Statements. Then we move to Messages

### **MESSAGES FROM THE OFFICE OF THE ADMINISTRATOR – NO 35**

Honourable Members, I have received the following message from the Office of the Administrator being Message No. 35 advising that on 25 August 2004 pursuant to section 21 of the Norfolk Island Act 1979 I declared my assent to the following, Public Moneys Amendment Act 2004 (Act No 17 of 2004), Firearms Amendment Act 2004 (Act No 18 of 2004). I also reserved the following proposed laws passed by the Legislative Assembly for the pleasure of the Governor General, the Legislative Assembly Amendment (No 1) Bill 2004 and the Legislative Assembly Register of Members Interest Bill 2004. The message is dated the 25<sup>th</sup> August 2004 and is signed Grant Tambling, Administrator

### **MESSAGE FROM THE OFFICE OF THE ADMINISTRATOR – NO 36**

Honourable Members, I have received a further message from the Office of the Administrator being Message No. 36 that's headed Norfolk Island Act 1979 section 24. Reasons for Withholding Assent to a proposed Law. I Grant Ernest John Tambling, Administrator of Norfolk Island furnish the following message under section 24 of the Norfolk Island Act 1979. On the 31<sup>st</sup> August 2004 His Excellency the Governor General acting on the advise of the Federal Executive Council declared that he withheld assent to the Legislative Assembly Amendment Bill 2003. The reasons why assent to the Legislative Assembly Amendment Bill 2003 was withheld by the Governor General are that the amendments to the Norfolk Island Act 1979 by the Norfolk Island Amendment Act 2004 comprehensively covered the issue of the qualification of electors on Norfolk Island therefore the amendments to the Legislative Assembly Act 1979 proposed by the Legislative Assembly Amendment Bill 2003 and also dealing with that issue would be inconsistent with the Norfolk Island Act. There is a general principle that legislation made under a parent Act cannot be inconsistent with that parent Act and to the extent of such inconsistency that legislation will be invalid. To assent to the Legislative Assembly Amendment Bill 2003 would have brought into effect a law that was immediately invalid therefore assent to the Legislative Assembly Amendment Bill 2003 was withheld to avoid such invalidity. That message is dated the 9<sup>th</sup> September 2004 and is signed Grant Tambling, Administrator

MR D BUFFETT Madam Deputy Speaker, are you able to entertain a motion that Message No 36 be noted

DEPUTY SPEAKER

Indeed

MR D BUFFETT

I so move

DEPUTY SPEAKER  
Message

Thank you. The motion is to take note of the

MR D BUFFETT

Madam Deputy Speaker, in light of some recent happenings I think it deserves some explanation as to what has happened with this particular piece of legislation. The piece of legislation that this Legislative Assembly proposed was one that endeavoured to safeguard people who lived in Norfolk Island of various nationalities. Nationalities that had been established amongst us for decades. Generations. And that was the subject of this piece of legislation. It has obviously been declined by the Australian Government and I don't want to necessarily prolong the argument about that because we've already had argument about that, but this really means that our efforts have been declined and now formally refused. I think that deserves a further explanation because we've now moved into a general election mode and the rolls are closing. In fact today. And we have had earlier in this meeting some indicator that some people may not be able to get back onto the electoral roll and I think it needs to be explained that if our proposals contained within this legislation have been accepted then people who are in that difficulty at this moment, would not be in that difficulty. I think it just deserves us saying that we have made a great effort to try and have people not be in that situation be very regrettably we appear to have been overridden in this situation and I'm sorry to prolong that but I think it deserves that elaboration in terms of receiving that message today

MR NOBBS

Madam Deputy Speaker I didn't agree with the Bill that was passed here in the House because I believe that we should have left it as it was but I think the Bill went through as an attempt to compromise what was the Australian Government's position and I feel for those people who may miss out due to that and as Mr Buffett has said, considerable work has gone into it but it really begs that question that we need to clarify our position in relation to Australia. This is just a promotion of the normalization, integration role that we have come to expect over the last couple of years in relation to the Australian position and I'm more than convinced now that we desperately need to clarify our position and stop this move to overtake the Norfolk Island situation completely and I say that with all respects to the Australian situation and I don't want to be seen to be either knocking Australia or supporting total independence, but getting away from the sort of controls we are under and I think it's very important that we now clarify our legal position

MR ROBINSON

Madam Deputy Speaker as maintenance of the electoral rolls is a schedule 2 matter I think that this act by our colonial overlords just confirms that we've had twenty five years of practice at self Government but we do not in fact have self Government and this is why I didn't say anything at the last ceremonial



inclined to be looking at providing subsidies to the various organizations that seek our assistance by way of waiving customs duty. I would hate to think what it costs us each time that a motion has to come before the house in order to waive duty. It involves time within the public service to accept the application, it involves time within the Public Service to relay it to this place, it involves time for our staff to put it on the Notice Paper, it involves time for the Minister to prepare himself to try to provide an explanation of why it should happen and perhaps it would be more transparent to use the buzz word if we were providing grants each year, rather than handling things this way. I'm afraid I can't support this unless there's going to be a level playing field for everyone because I think that would be inappropriate

MRS JACK Madam Deputy Speaker, I would have to agree with Mr Brown on this. Mr Brown used the phrase for emergency equipment, and yet what we have here mentions safety equipment and further on today if you look you will see that we are going to be debating the Road Traffic Act and if you extend that to the safety aspects of those proposals within that Act and it was mentioned in our meeting on Monday that we are going to be looking at some cars needing seat belts and those seat belts will have to be imported in order to make them registrable so because that's a safety aspects are we going to be looking at customs duty exemption on that. If children are going to be under correct restraints are we going to be asked that booster seats and baby capsules also be exempted. In actual fact it's also mention in DAA Working Group that as an assistance to random breath testing that there is a possibility that clubs and hotels could bring in the hand held breathalyser test kit to enable patrons to have their own little indication by breathing into that of whether they are over or approaching the points where this is proposed and this act would be a safety issue. Would we be asked to look at customs waiving on those points. I think it's been poorly thought out. I don't think the ripple effect has been realized and like Mr Brown I'm sorry, but I can't agree to this motion until the whole thing is thought out further and I agree with Mr Brown that the customs duty exemption should just be for grave stones and the religious. This is getting more and more complex with each exemption that we have. I have voted no to exemptions in the past and I continue to do so today thank you

MR DONALDSON Madam Deputy Speaker, could I provide a little further information that might assist Members although I do understand their point of view and I have expressed that point of view on other matters but first of all a further description of the goods that are being imported. There's 25 EPERB units and their cost is \$208 each. There's 20 coastal flare packs and their cost is \$170 and there's 20 cruising flare packs and their cost is \$102 each. There's also some other stuff imported on the same invoice to deal with UHF radios and the aerials for those radios but application hasn't been made for those items for exemption. I'm told by Administration officials that this is consistent with policy being a safety community benefit type purchase and I'm also told because it happens to be imported by a non profit organization, namely the fishing club and not a commercial enterprise such as a retailer, that it has in the past gone through as a duty exemption. I hear what Mr Brown says about an even playing field. I also hear what he says about possibly the best way and the most transparent way of dealing with matters like this is not to give exemptions from duty to St John's Ambulance, Girl Guides and those other organizations but to actually up front fund them with an amount each year to accommodate the Governments contribution but as it stands at the moment, what we have in front of us is the Government contribution to an upgraded awareness of the need for safety equipment on boats. I'm still going to support that the motion be exempted but I do recognize that there needs to be some review of



say well from now on we are going to allow a certain type of tyre that goes onto your car into the island duty free because we consider it to be a safety matter and that goes right down to using the type of oil that you use in your vehicle. The roll over cages that you want people to have on tractors. The indicator lights that attach to the trucks because they are all argued to be safety measures. Now I'm not saying that we should not be supporting those but we need to develop policy that says to everybody that they are going to be treated equally in this matter and the Government's efforts in ensuring that safety is going to be adhered to, those who can't afford them are going to be provided with the same protective measures as everybody else and for that reason I find it difficult in being able to support this motion. I agree with the words about we are starting to build something that is incredibly complex and jumping forward a bit and with meaning to pre-empt debate I have similar words to say of some of the detail stage amendments that might attach to some legislation later today but to be looking at fixing age groups and levels and things like that just lead to further complexities in the system that we are trying to administer generally and I don't think we can afford the luxury of being overly complex about the way we go about doing things and I tend to suggest that we need to get back to basics and keep the system as simple as we possibly can so that we are not burdened with the time that is spent not only in the officers doing the job that they are put there to do and that's to provide advice to the Minister and the Minister is duty bound under the requirements of the legislation to bring these matters to the House so that we can say, that is not a matter we will consider. We need to revisit the policy and say those things will not be considered. Be very very clear about the matters that are going to be considered under the duty exemption policy and make it very widely known and very clear. Unambiguous. And I think that would solve a lot of the problems we have experienced today and have experienced regularly in the past

TAPE 4 END  
TAPE 5 BEGIN

MR BROWN Madam Deputy Speaker, I do think that we need to make a decision about this today. I would normally have suggested that we adjourn the debate and that a lot more attention be given to all of the issues that have been discussed but there are people who need to know whether they are paying one price or another price for goods. I certainly encourage the acquisition of them. It's unfortunate that the advice which has been provided to the Minister might not be as detailed as we would like it to be but I don't think its appropriate for us to further adjourn the debate

MR NOBBS Thank you Madam Deputy Speaker. There must be an election. We seem to be jumping all over the place with this one. One of the problems that you have with this sort of arrangement that we have at the present time is that fishing is not really in the Treasurers area of responsibility. Now I think we should just hone in on what's really gone on here and that is that we are looking at trying to get boats to put the safety equipment in the boats without coming down with a great hammer which seems to be a wish in some areas and this is, I believe a form of encouragement. That's all it is. To get these guys to make sure that they have their safety equipment in their boats at all times and operational. Now I don't know whether the responsible Minister who hasn't been in the post for any length of time, has any background on the discussions that have been going on now for several years in relation to safety equipment on the boats, registration of boats and all those other heavy handed, if you like, some people call them heavy handed, others call them necessary and in a big area it probably is necessary but in a smaller area when you've got about 70 or 80 boats



MRS JACK Madam Deputy Speaker, thank you. I would just like to add on to Mr Brown that some of this equipment has a shelf life and will have to be renewed in so many years when particular batteries and what not runs out. Are we then going to have more of these coming through as a regular occurrence every five years with greater amounts as prices increase. Where's it going to end? I think as Mr Brown says, it's got to be decided today and the level playing field brought to bear

MR NOBBS Thank you Madam Deputy Speaker. Yes. I'm quite surprised. No. I'm not surprised at all because if somebody has a different view to Mr Brown there's always this sort of backlash but anyhow, so be it, but the situation is...

MR BROWN Point of Order. To such extent as the Member is attempting to cast an aspersion against another Member it is inappropriate and should be withdrawn

DEPUTY SPEAKER I would ask you to withdraw please Mr Nobbs

MR NOBBS I withdraw it but I still find it... What do I withdraw. The fact that I said there was a backlash. Well there is. I find that being impugned as far as playing to the electorate when nominations haven't even been closed quite interesting

MR BROWN I repeat the earlier Point of Order Madam Deputy Speaker

DEPUTY SPEAKER I tend to uphold that. Mr Nobbs. Mr Brown is offended by your referring to him in those terms during debate

MR NOBBS Well if he's offended well I find that... well I can withdraw it if that's going to please him to the extent that it pleases him but I am concerned that when Members make such statements and I don't want to be jumping in every five minutes and saying Point of Order, Point of Order all the time trying to make a point but the situation really is this Madam Deputy Speaker I believe that we can do things in other ways in relation to this particular point that we are on. Forget about the other aspects of this dutiable goods. That can be dealt with. We can't deal with it around the table here today. What are we going to do. Where is the motion. Where can we deal with it. We can't. what I'm drawing your attention to and Members attention to the fact that we are dealing with a motion which sets out in column 1 and column 2 what is to be examined. Some Members have said that they are not going to support it. Well that's fine. I've got no problems but I explain why I am supporting it. Okay. And that's all I was stating and I won't go any further Madam Deputy Speaker but I don't like being told that there's some sort of political gain to be made because I'm not into that sort of caper

MR ROBINSON Madam Deputy Speaker given that we sort of get bogged down on the same problem every time an exemption comes up, perhaps I will be not supporting the motion, however, there's other avenues to show support for the various people who do this from time to time and that's a simple Minister's discretionary vote if you want to help them, do it that way but I won't be supporting the motion

MR BUFFETT I move that the question be put

DEPUTY SPEAKER I think most speaker's have spoken then indeed we should put the question that the motion be agreed to

#### QUESTION PUT

DEPUTY SPEAKER Could the Clerk please call the House

MR BUFFETT	AYE
MR GARDNER	NO
MR DONALDSON	AYE
MRS JACK	NO
MR NOBBS	AYE
MS NICHOLAS	NO
MR ROBINSON	NO
MR BROWN	NO

DEPUTY SPEAKER The result of voting Honourable Members, the Ayes three the Noes five, the motion is lost

#### SUSPENSION

Is it your wish to deal with the next Notice or adjourn. We suspend the sitting for lunch and resume at 2.00pm Honourable Members. The House stands suspended until 2.00 o'clock this afternoon

#### RESUMPTION

Honourable Members we resume our sitting for Wednesday 22<sup>nd</sup> September 2004 and we call Notice No 2

#### **PUBLIC SECTOR MANAGEMENT ACT 2000 – APPOINTMENT OF PRESIDING MEMBER OF THE PUBLIC SERVICE BOARD**

MR BUFFETT Madam Deputy Speaker, I move that the Legislative Assembly, in accordance with paragraph 10(1)(a) of the Public Sector Management Act 2000, recommends that the responsible executive member appoint Nadia Lozzi-Cuthbertson to be the presiding member of the Public Service Board for the period 22 September 2004 to 21 September 2005. Madam Deputy Speaker the Public Service Board comprises three substantive Members and three deputy Members. One of the three substantive Members is the presiding Member. That office has been vacant for some time and we are very grateful to the deputy presiding Member who is Mr Brent Hattersley who has stepped into that role for some period of time and obviously longer than one would expect a deputy to need to perform and I'm very grateful for his continuing role in that context. This is endeavouring to fill the substantive role as presiding Member and I commend this motion on that basis to Honourable Members

MR BROWN Madam Deputy Speaker as I understand it, the motion only calls for a person to be appointed to the position of presiding Member and as I understand it the role of the Public Service Board today is a very limited role compared to that which applied prior to the relatively recent reforms in that the major role is to deal with appeals which are brought to the Board rather than anything else. I think

it's important that Members and the community be aware of the nature of the position to which we are making the appointment, thank you

DEPUTY SPEAKER NICHOLAS                      Is there further debate. No. The question is that the motion be agreed to and I put that question

QUESTION PUT  
AGREED

MR BROWN    ABSTAIN

The motion is agreed to

### **REMOVAL OF PRISONERS BILL 2004 - DECLARATION OF URGENCY**

DEPUTY SPEAKER                      Honourable Members I report that the Business Committee, under standing order 158, declared that the Removal of Prisoners Bill 2004 should be passed through all stages at this sitting

### **REMOVAL OF PRISONERS BILL 2004**

MR GARDNER              Madam Deputy Speaker, I present the Removal of Prisoners Bill 2004 and move that the Bill be agreed to in principle. Madam Deputy Speaker in having sought urgent dealing with this matter and in the normal fashion in tabling the explanatory memorandum I will choose for the sake of explanation for those listening and certainly my colleagues around the table, the purpose for this Bill and certainly to give a better understanding of the nature of the urgency of the Bill and the need for it. To the explanatory memorandum

**Paper:**              \_Mr Gardner tabled the Explanatory Memorandum to the Bill  
Debate ensued... and for the Administrator to make Regulations

Madam Deputy Speaker that's the extent of the explanatory memorandum. I would just like to add further words if I may at this stage in relation to the urgency of this matter. This legislation also supports the previous urgent matters passed through this House in the guise of the Mental Health Amendment Act and the Criminal Law Amendment Act passed by this House at its last sitting and serves to provide the necessary facilities for transfer of prisoners in certain circumstances. This one obviously is prisoners on remand and the previous legislation dealt with people under orders of the Mental Health Tribunal and Orders of the Court in relation to those matters. That legislation that I referred to still stands if and when other jurisdictions are willing and more importantly able to mesh their legislative provisions with those of Norfolk Island. It is important to emphasise the fact that we will continue to explore all future options, particularly in relation to the transfer and custody of Mental Health patients as is envisaged by the previous legislation that came before this House. Just to emphasise some of the matters contained in the explanatory memorandum the bill is intended to assist in the general administration of justice and compliments legislation passed by this Legislative Assembly in August which are those matters which I referred to earlier. That legislation dealt specifically with persons who are or were believed to be suffering from mental illness at the time of the commission of an offence or later. Madam Deputy Speaker before that legislation was

passed and subsequently, officers of the Legal Services Unit and myself as the Minister responsible had been closely and continually involved in discussions with officers in Commonwealth Victoria, New South Wales and Queensland. While we have received a great deal of encouragement from each place for which we are most appreciative, and believed that most likely we would be able to make arrangements with Queensland, it became clear that they would need to make more substantial changes to their legislation than was originally thought by both us and that State. A similar situation Madam Deputy Speaker arose with Victoria. Eventually it transpired that changes in New South Wales may not as extensive as originally thought and following further discussions we now believe we can make arrangements with that State to mirror arrangements that they have with the ACT. Norfolk Island has had an arrangement for some time that permitted prisoners from here to be sent to New South Wales to serve a sentence and this has been done on numerous occasions. Unfortunately, as I said earlier, it was never considered necessary that these arrangements covered persons who might have to be held on remand for a lengthy period awaiting trial. The situation now is that it is important Norfolk Island be able to have remand prisoners held within places that are designed for lengthy stays. As I said earlier, that legislation, the previous legislation passed in this House in August still stands, if and when those other jurisdictions are will and able to mesh their legislative provisions with those on Norfolk Island. We have, as I've said, had extensive consultation with the States and Commonwealth on the various options available to us to overcome the present difficulties or the difficulties that we've encountered and their co-operation to date has been very welcome and as I said, very much appreciated, albeit without a satisfactory outcome being found. Madam Deputy Speaker it is important that this legislation address our immediate and most pressing concern for the welfare of persons held in custody and it also provides as I said earlier, for eventual charges that may arise from the Patton case. It is important that I recognize with the passage of this legislation the enormous effort that so many people have put into ensuring the welfare and safety of Leith Buffett and its important to thank those persons publicly. The police, the jailors, the doctors and the many other people who have had hands on experience with ensuring that both Leith Buffett, his family are well catered for and looked after in Norfolk Island and also a great deal of thanks needs to be extended to Mrs Shelly Buffett who in very trying times has been very patient and very understanding of the efforts that we've been trying to make to ensure that we have been dealing with the safety and security of Leith and the community at large. It is important to recognize the ongoing efforts that both the Queensland Attorney General's Department, the Premier's Office of Queensland, the relevant health departments of both Queensland, New South Wales and Victoria and officers of the Commonwealth have made and I'm deeply grateful for the significant co-operative efforts that have been demonstrated by those States in assisting Norfolk Island to resolve its problems. The bipartisan support in many regions has been gratefully received and I am pleased to report in closing my debate, if I could to just draw on words contained in Hansard from the New South Wales Government sitting yesterday where the Government of New South Wales has given their full support to their own legislation complimentary legislation to compliment this on passage and the words of Mr Andrew Humferson who is the Member for Davidson in New South Wales and spokesman for the Opposition in the New South Wales Parliament yesterday evening and his words were, that the Opposition offers strong bi-partisan support for the Crimes Administration of Sentences Amendment Norfolk Island Prisoners Bill. The Opposition is completely supportive of the purpose and objective of the bill. That piece of legislation that I referred to is the New South Wales legislation that would give effect to the complimentary provisions provided by this legislation before us today. The spokesman for the New South Wales Opposition

went on to say that he wanted to make the point that this is one occasion on which we have worked strongly and closely in support of sensible legislation and went on to say that they offered strong bi-partisan support for the bill and for it to be fast tracked. My understanding Madam Deputy Speaker is that it has gone through all the necessary readings in the Lower House of the New South Wales Legislative Assembly yesterday. I'm not certain whether it has been finalised through the Legislative Council today, I understand it was to be deferred to today, but I am confident, extremely confident Madam Deputy Speaker that it will go through all of the necessary readings and necessary steps for New South Wales to finalise their legislation and the expectation is that New South Wales legislation will be commenced before the end of this week, if not by the end of this week, very early next week, which would coincide with the passage and finalization of this legislation at EXCO and the commencement of that legislation and I commend the Bill to the House

DEPUTY SPEAKER Thank you. The question is that the Bill be agreed to in principle. Is there any further debate Honourable Members. Then I put the question that the Bill be agreed to in principle

QUESTION PUT  
AGREED

The Bill is agreed to in principle. We move now to the detail stage and Mr Gardner has foreshadowed detail stage amendments

MR GARDNER Madam Deputy Speaker I do apologise for not having given earlier indication in my opening address as to the detail stage amendments that are proposed. They are matters that in earlier discussion this week around the table at our informal sitting, had been raised by Members. One of those is in relation to the number of a sub clause. The appropriate number and reference to a sub clause and also the deletion of what was considered to be matters that were not necessarily required to give full effect to the operation of this bill and they delete those sub clauses 3 to 6 and clause 9. Madam Deputy Speaker I move to amend Clause 9 as follows, firstly in sub clause (1) for "6(3)" substitute "8(3)" and secondly to delete sub clauses (3) to (6) inclusive and those have been circulated to Members Madam Deputy Speaker

DEPUTY SPEAKER Thank you Mr Gardner. Is there any further debate Honourable Members on those amendments. Then I put the question that the amendments be agreed to. We will deal with the amendments together

QUESTION PUT  
AGREED

Thank you. I now put the question that the clauses as amended be agreed to

QUESTION PUT  
AGREED

Thank you. Now I put the question that the remainder of the Bill be agreed to

QUESTION PUT  
AGREED

I seek a final motion Chief Minister

MR GARDNER Madam Deputy Speaker I move that the Bill as amended be agreed to

DEPUTY SPEAKER Is there any final debate. No then I put the question that the Bill as amended be agreed to

QUESTION PUT  
AGREED

Thank you Honourable Members, the Bill as amended is agreed to

#### **ANNUAL REPORTS BILL 2004**

DEPUTY SPEAKER Honourable Members we resume debate on the Annual Reports Bill from 19 August 2004 on the question that the Bill be agreed to in principle and Mr Buffett you have the call to resume

MR BUFFETT Thank you Madam Deputy Speaker. When I introduced this bill at the last sitting Madam Deputy Speaker I gave a brief explanation that in a number of areas we were endeavouring to increase accountability and not only accountability in terms of people documenting their situation but there be some timeliness to it. This particular piece of legislation talks about when people have a statutory provision to provide reports, especially those on an annual basis, there is some timeliness to it, and some time frames are set out. That really is what this bill is about. It's an endeavour to increase the accountability process and I explained that earlier at the last time. We are now at the final stages of considering the bill Madam Deputy Speaker and I continue to commend it to Members

DEPUTY SPEAKER Is there any debate Honourable Members. Then I put the question that the Bill be agreed to in principle

QUESTION PUT  
AGREED

The Bill is agreed to in principle. We move to the detail stage. Is there a motion to dispense with the detail stage. Thank you, we so dispense. I seek a final motion Mr Buffett

MR BUFFETT Madam Deputy Speaker I move a final motion that the Bill be agreed to

DEPUTY SPEAKER Honourable Members the question is that the Bill be agreed to. Any final debate? Then I put that question

QUESTION PUT  
AGREED



DEPUTY SPEAKER Thank you Mr Brown. The motion before us is that Recommendations 1 and 2 be noted and I put that question

QUESTION PUT  
AGREED

Those two are so noted

### **Recommendation 3**

MR BROWN Madam Deputy Speaker this relates to the Australian Electoral Commission and it is as follows that the Select Committee does not support the involvement of the Commonwealth Electoral Commission in elections in Norfolk Island unless as the result of a specific request from the Norfolk Island Government. Madam Deputy Speaker the Committee has every confidence in the integrity of the electoral system in Norfolk Island. The Committee saw no cause to involve as a matter of course the Australian Electoral Commission or any other body in Norfolk Island elections but the Committee recognises that there may be occasions where the community may decide, for whatever reason, to make a specific request for assistance at some stage and so the ability to make that specific request was retained in the recommendation. I would move that Recommendation 3 be agreed

MR GARDNER Madam Deputy Speaker I add my words of support to that recommendation of the Chair of our Select Committee. It's also important to note and I know it was a matter that was raised in our discussions as the Select Committee to our involvement and membership of the Commonwealth Parliamentary Association and if it was thought that there was a need or just to satisfy ourselves that our processes are 100% up to scratch as I believe they are, that the option to invite the Commonwealth Parliamentary Association as a highly esteemed body as it is to have some oversight or some participation in our electoral process I think is something that we are able to pursue under the arrangements as a member of the Commonwealth Parliamentary Association

MRS JACK Madam Deputy Speaker, I can't exactly find the excerpts in here, but it was just to note that when people were suggesting that perhaps the Australian Electoral Commission could come in it was never over our elections per se it was always as I understand it, for wording in any referenda to get better clarification and so yes, I have no problem in Mr Brown's suggestion and go along with the recommendation

DEPUTY SPEAKER Thank you Mrs Jack. Any further participation. Then let me handle this slightly differently. Mr Brown has suggested that this recommendation, Recommendation 3 be agreed to.

QUESTION PUT  
AGREED

That recommendation is agreed

### **Recommendation 4**



view is a recognition by the Commonwealth of certainly an improved degree of respect towards Norfolk Island and an acceptance that we are charged with the many and varied skills that it takes to run an island nation but we are blessed with many very skilled people on Norfolk Island that I am sure that if we continue along that road I can ensure that the relationship between the Commonwealth and Norfolk Island will only go from strength to strength

MR NOBBS You could have fooled me but there we go

DEPUTY SPEAKER You seek the call Mr Nobbs. No. Any further debate

MR BROWN Madam Deputy Speaker could I move that Recommendation 5 be agreed and referred to the 11<sup>th</sup> Assembly for such action as that Legislative Assembly deems appropriate

DEPUTY SPEAKER Thank you Mr Brown I believe it's Recommendation 4. Again, I put it to you in simplest form. Is there any dissent

AGREED

### **Recommendation 5**

MR BROWN Madam Deputy Speaker I'm back to counting my fingers correctly. Recommendation 5 relates to the structure of executive Government in Norfolk Island. The Select Committee recommends that there be no change in the present structure of executive Government in Norfolk Island and that Members of all Legislative Assembly's develop a better understanding of the respective roles and responsibilities of the parliament and the executive and that appropriate educational programmes be provided for that purpose. However, the Select Committee acknowledges that in the event of any significant change in the operations of the Legislative Assembly and the executive Government whether through the introduction of a comprehensive committee system or otherwise, the structure of executive Government may require a review to take account of those changes. Madam Deputy Speaker the Select Committee saw no need for the present structure of executive Government to change. In different parts of the British world there are differing systems. I should say in different parts of the western world there are different systems. We are all aware that the system in the United States is somewhat different to that which we are used to from England, Australia and New Zealand and the other countries that we deal with. Our system is one in which the Members of the parliament are elected by the community. Those Members then decide how many executives there should be in the life of that particular Government and those Members decide precisely who should fill each of those executive roles. Strictly speaking the executive while wearing their executive hats are quite distinct from parliament. What is known as the doctrine of separation of powers prescribes that the legislature, the executive and the judiciary must all remain separate. It's not appropriate for the parliament to be telling the courts what they should be doing. The parliament makes the laws but the courts implement them. A confusion exists in relation to the executive and the legislature in the minds of some and that's understandable because sitting in the legislature are the executives and they do carry out certain executive roles whilst sitting in the legislature. For example they answer questions without notice and questions on notice. Nevertheless, the committee believes

that the present structure is a sound structure. It has been suggested in the past that we could perhaps move to a system which operates in the Channel Islands called the committee system. I must confess that I had understood that comment to relate to more extensive use of committees. We have a number of committees that are standing committees of this House. We have the power to appoint Select Committee and we've debated in recent times the appointment of some additional standing committees so we would have committees in the nature of estimates, committees, public works committees and so forth. In the Channel Islands until now they have had a system where they have not had executives or Ministers. They've had committees and the committees have tried to run the place. Interestingly they're just about to change that to an executive system of Government because as time passes, no matter how you are and the parliaments there have been running for 700 years, no matter how old you are on occasions you have to revisit your structure and be prepared to change it if it's in the community interest to do so, so the Select Committee has said the present system is fine. We see no need to go to a shire council type system which has been suggested by some at Commonwealth level. We see no need to move to any other system but we recognise that there is room for us to improve the way we do things and we can achieve that improvement by ensuring that each member of the Legislative Assembly develops a better understanding of the respective roles and responsibilities of the parliament and the executive. It's one thing to come down here, sit here and make decisions. It is much better if we understand the long history of development of the parliament and the Government in the British world and the reasons for that development. The Select Committee suggested that appropriate educational programmes be provided for that purpose. The Commonwealth Parliamentary Association is developing a range of courses which are internet based which had expanded quite considerably over the last twelve to eighteen months and those courses would be a very good starting point. It may be that we can resume an arrangement with one of the University's in Australia or perhaps New Zealand so as to then have available not only for Members but for prospective Members and for interested Members of the community, a diploma type course which could expand on the Commonwealth Parliamentary Association course. I believe that Members will be prepared to endorse recommendation 5 and on that basis I move that it be agreed

MR NOBBS Thank you Madam Deputy Speaker. The report was actually developed by a group of four Members of which Mr Brown was the Chairman. It started off as five I think and some of them were comprises. In relation to this one, because we had done work on it previously in an early Legislative Assembly my personal view is that we should reduce the number on the Legislative Assembly and reduce the ministry but I accept this. I mean when that decision is made, that can be changed but at the present time I agree with it as a compromise

MR BROWN Madam Deputy Speaker I commenced dealing with this matter without again thanking all of the people who have been involved in the workings of the committee and the preparation of this report. In fact Mr Nobbs had been Chairman of the Committee until March 2003 and I had that role from then onwards and the late Ivens Buffett, the Chief Minister, Mr Nobbs and our former Member George Smith were all Members of the committee at different stages. Ron is indeed correct. We strived to achieve agreement on all of the issues and in order to achieve that agreement frequently we had to take a step backwards from the extent which individually we may have liked the committee to go. Ron has indeed had a view for quite some time that the number of members and the number of executives could and should be reduced and in fact this recommendation would allow that if a subsequent Assembly should decide that

is the course to follow. This recommendation is intended to deal with the structure of the Government, not in particular with the number of Members either in the assembly or in the executive and as Members are well aware, it is the role of each successive Legislative Assembly to decide how many executive Members will be appointed and what their titles will be

DEPUTY SPEAKER Thank you Mr Brown. Further participation? No. Then I would ask again whether or not there is any dissent from agreeing to this recommendation

AGREED

That question is agreed to

### **Recommendation 6**

MR BROWN Madam Deputy Speaker this recommendation deals with a number of issues and they have subheadings a, b, and c,. in the course of its enquiry a number of other matters came to the attention of the Select Committee as a result of which the Select Committee makes the following additional recommendations. A. deals with the December 2003 report of the Australian parliament's Joint Standing Committee on the National Capital and External Territories into Governance on Norfolk Island. Firstly the Select Committee supports the Norfolk Island Government's response dated 17 December 2003 to the Joint Standing Committee's report and a copy of that response was attached to the Select Committee's report as annexure c. the Select Committee then made six recommendations in relation to that Joint Standing Committee report. Could I move firstly that the Select Committee's support of the Norfolk Island Government's response dated 17 December 2003 to the Joint Standing Committee on the National Capital and External Territories into Governance on Norfolk Island be agreed

DEPUTY SPEAKER Thank you Mr Brown. Participation. Any dissent from Mr Brown's motion to agree that response

AGREED

### **Recommendation 6(a)(i)**

MR BROWN Madam Deputy Speaker I will now deal individually with each of the six sub paragraphs. The first sub paragraph dealt with pecuniary interest and bias and it recommended that a pecuniary interests register be established for Members their spouses and children. That register should be open for public examination. In addition a code of conduct for Members should be established to deal inter alia with pecuniary and non pecuniary interests and in particular to deal with the possibility of bias in decision making. Madam Deputy Speaker events have overtaken us in that regard in that, that is one matter about which the House felt prompt action should be taken and that action has been taken. I would like to move that recommendation 6(a)(i) be noted

MR GARDNER Madam Deputy Speaker in relation to 6(a)(i) Madam Deputy Speaker Mr Brown is quite correct. On a motion of Mrs Jack's some months ago, we brought that matter forward, brought the necessary legislation to the

House in the guise of the Legislative Assembly Register of Members Interest Bill which has been at executive council and is referred to the Governor General for assent and once that's assented to we would have that legislation in place and operative. Thank you

DEPUTY SPEAKER  
paragraph 6(a)(i) be noted

Thank you Chief Minister. The question is that

QUESTION PUT  
AGREED

That is agreed

### **Recommendation 6(a)(ii)**

MR BROWN  
Madam Deputy Speaker the next recommendation deals with whistle blower legislation. The recommendation is that legislation should be introduced to protect whistle blowers. The Select Committee notes the availability of Australian Standard AS 8004-2003 in this regard. Whistle blowing was a matter to which the Joint Standing Committee referred. It was a matter which appeared to be quite close to the heart of at least one of the Joint Standing Committee Members and it basically deals with the protection of a person who either comes forward with a complaint or perhaps comes forward with information about wrong doings and it is intended to ensure that such a person does not then suffer in particular in the workplace. It has not been unknown in other places for such people to find that a continuation of their employment is made quite difficult by some of those around them. I believe that it would be appropriate for us to note that recommendation at this stage and to leave it to the next Legislative Assembly to look not only into the question of whether there is adequate protection of whistle blowers within the Public Service but to look also at the question of protection of whistleblowers generally in order to ensure that people are not discouraged from bringing forward information about things that need to be fixed or from bringing forward complaints generally

DEPUTY SPEAKER  
paragraph 6(a)(ii) be noted and referred to a subsequent Assembly for its early consideration

Thank you Mr Brown. Is your question is that

MR BROWN  
That would be my recommendation Madam Deputy Speaker but I know that the Chief Minister wishes to address the issue

MR GARDNER  
Madam Deputy Speaker thank you. Just in support of Mr Brown's recommendation. He did refer to the Joint Standing Committee having some concern at the lack of legislation on Norfolk Island in relation to that matter and they had drawn a link between maybe the Ombudsman's Office having some form of role in the discharge of the oversight of whistle blower type legislation in Norfolk Island. In the report we had back from the Commonwealth ombudsman it was indicated to us fairly clearly that he didn't see himself as having a role in that but he would be happy to provide advise of where to go and which doors to open in relation to establishing a workable system on Norfolk Island in relation to that and its important in relation to this in our obviously later discussions about the ombudsman's role that an officer of the Commonwealth Ombudsman will be attending Norfolk Island I believe sometime early in November so obviously in the life of the 11<sup>th</sup> Legislative Assembly to discuss with that

Legislative Assembly various issues to deal with the establishment of an Ombudsman's office but one of the matters that is obviously able to be discussed in some detail and maybe some advice sought from them will be the matter of whistle blower legislation for Norfolk Island

DEPUTY SPEAKER Further participation? You might insert the word refer for "early" consideration Mr Brown

MR BROWN If you would be prepared to accept a motion to that affect Madam Deputy Speaker I would be delighted to move it

DEPUTY SPEAKER Thank you Mr Brown. The question is that paragraph 6(a)(ii) be noted and referred to a subsequent Assembly for its early consideration. Is there any dissent from such a motion

AGREED

We have agreement on that

### **Recommendation 6(a)(iii)**

MR BROWN Madam Deputy Speaker subparagraph (iii) deals with the role of Chief Minister and the committee was of the view that the submissions and evidence to the committee and the responses to the committee's questionnaire do not indicate that there is a community desire to alter the existing role of the Chief Minister. Madam Deputy Speaker various suggestions have been made and in particular by the Joint Standing Committee about changes in the role of the Chief Minister. Some have suggested that the Chief Minister should be separately elected in the same fashion as the Lord Mayor of a large city such as Brisbane or Sydney. In those situations those persons as I understand it, stands for the position of Lord Mayor or stands for the position of a councillor. When you look at a council such as the city of Brisbane you find that the person who is the Lord Mayor does not necessarily control the balance of power on the floor of the Council Chamber. In fact in Brisbane it is quite the opposite. There is a liberal Lord Mayor who is working with a very labour city council. If the Brisbane City Council was a Parliamentary type body the Chief Minister or the Lord Mayor would need to find a ministry from among those on the floor of the Council Chamber and the likelihood is he wouldn't be able to do so or alternatively he would form a minority Government. So in that situation although he had been appointed as Lord Mayor by a vote of the community, the community might find if it was an executive style of Government that he did not have the opportunity to nominate his own executive or alternatively, that his executive had to work as a minority Government. In the Norfolk Island situation we do have executive Government and it is left to the nine Members once elected to select one from among them as their Chief Minister although I should add that the title Chief Minister is not to be found in the legislation. It is a convention rather than something arising through legislation. What the nine Members do is they decide how many executives there will be and what their titles will be and in recent Legislative Assembly's we have decided that one of the titles should be Chief Minister. We have not gone the step further in taking a view that the Chief Minister should then select his own ministry. Nor have we taken the traditional view of appointing to that position a person who comes before the parliament and says well, this is my team, I command a majority on the floor of the House and these are the executives that I wish to

appoint. Norfolk Island is a small jurisdiction and we have worked on the basis that all nine Members make the appointments. Some of us may have views that it is time for that to change and may have views for example that accountability would better be provided if the Chief Minister was given the power to hire and fire the other executives. Similarly, to the other parliaments which largely surround us. But the questionnaires did not give strong support for that concept, nor did the presentations which were made to the Select Committee and on careful reflection the Select Committee made the recommendation that appears in the report that the submissions and evidence to the committee and the responses to the Committee's questionnaire do not indicate that there is a community desire to alter the existing role of the Chief Minister. The appropriate motion I believe Madam Deputy Speaker will simply be that Recommendation 6(a)(iii) be noted but I'll be very interested to hear any contribution from any Members

DEPUTY SPEAKER Thank you Mr Brown. Debate Honourable Members. No. Then I put the question that paragraph 6(a)(iii) be noted and referred to a subsequent Assembly for its early consideration. Is there any dissent from such a motion

AGREED

That is agreed

**Recommendation 6(a)(iv)**

MR BROWN Madam Deputy Speaker Recommendation 6(a)(iv) deals with the role of the Speaker and the recommendation is that the Speaker should continue to be appointed from among the Members of the Legislative Assembly but he should not at the same time hold office as Speaker and as an executive Member. There are a number of issues here Madam Deputy Speaker. The first is that there have been suggestions that the Speaker should be separately appointed in some fashion. There are jurisdictions where the Speaker is separately elected. There is an election for the Parliament and there is a separate election for the Speaker. The Committee did not support the introduction of that concept into Norfolk Island. There have been suggestions that perhaps the Speaker could simply be appointed and some form of eminent person could take responsibility for the role of the Speaker. The Committee did not support that either Madam Deputy Speaker. The Committee supported a continuation of the traditional Westminster system whereby the Speaker is appointed from the floor of the House. The office of Speaker is a very old and honourable institution. It dates back hundreds and hundreds of years and one of its key elements is independence. In the British system other political parties do not stand against the Speaker at the time of an election. It is considered that important. That has not occurred in this part of the world and in this part of the world the Speaker needs to balance his role as an independent Speaker with his desire to be re-elected come the time of an election. So he indeed spends time in his electorate and he would generally involve himself in many of the functions of a Member save that he does not come down to the floor of the House in order to join in debate and his very independence precludes him from holding office as an executive Member at the same time. Madam Deputy Speaker we recently celebrated 25 years of self Government in Norfolk Island. In that time we've seen a number of changes. The extent of our responsibilities has grown significantly, I have a view that we have self Government. I recognize comments such as that made by

Mr Robinson this morning that if someone else can over-ride our legislation is that really self Government. Well what I say to that is we have developed to the stage where we are at. There are only a very small number of precluded powers. Foreign Affairs, Defence, Coinage and Euthanasia from my recollection and as to anything else we have the power to pass legislation. Some of it will relate to schedule 2 and as a schedule 2 matter that's a local power and the Administrator sitting in Executive Council once provided with the advise of his Ministers in Executive Council is bound to assent to legislation relating to a schedule 2 matter. A schedule 3 matter, that's one where we share the power with the Commonwealth. The Administrator will seek the advise of the Commonwealth Minister before he assents, but again, he assents on the advise of his Norfolk Island Executive Council together with the advise of the Commonwealth Minister and the other type of legislation relates to unscheduled matters. Something that's not in Schedule 2 or Schedule 3. certainly that has a different assent process involving the Governor General but nevertheless it is Norfolk Island legislation that we pass so I certainly encourage Members to recognize the great achievements in terms of self Government that have been achieved in the last 25 years and to ensure that we reach out and embrace self Government and not simply say oh that power should be transferred to Schedule 2 or that power should be transferred to Schedule 3 and fail to tackle our responsibilities where we actually have the responsibility to deal with all those issues. So what I'm saying is that we have grown in the last 25 years and although it has been quite possible for a person until now to be Speaker and Executive Member and although it is still quite possible to do that, the Committee has recommended that the Speaker should continue to be appointed from among the Members but that he should not at the same time hold office as Speaker and as executive Member and I believe that the appropriate motion there is that Recommendation 6(a)(iv) be agreed. I expect there will be Members who will wish to speak about that

MR NOBBS Thank you Madam Deputy Speaker. I think we should still have an independent person selected as Speaker and would allow then a continuation of debate that certain Members or nine Members as there are now, seven in the proposal, would be fully involved in it and not have one sitting sort of in judgement on the others. So that's a difference but as I've said, there were five Members on here and we agreed or disagreed and everybody agreed to agree on the Report so I'll support what's said in the Report on that basis and at this particular point in time Madam Deputy Speaker

MRS JACK Madam Deputy Speaker, I agree with Mr Brown. I've just been on this one Legislative Assembly and while I admire the contribution made by Mr Buffett during this time as holding both the Speaker and the Minister for Community Services and Tourism at times we are waiting for him to lead the front bench and come and join the floor in order to take Questions Without Notice. I would like to have the Ministers available at all times. One could say that better I think. So I agree with Mr Brown and I do appreciate the motion to be agreed rather than noted, thank you

DEPUTY SPEAKER Is there further participation. We have before us a suggestion that, that recommendation be agreed. Again I'll put it to you. Is there any dissent

AGREED

Paragraph 6(a)(iv) is agreed



during the life of the Advisory councils was reintroduced, there was further debate. In particular as to whether or not it should be compulsory to vote at all, or if it would be compulsory to vote, whether it should be compulsory to use all of one's votes. Some had a view that if they only wanted to support two candidates they did not want to have to give to seven other candidates an indication of the same level of support as they had for their preferred two. Other's felt that the problem would be solved if it was not compulsory to vote. But compulsory voting has long been a feature of the Norfolk Island electorate. I was very interested to learn recently that Norfolk Island and Australia are two of not very many places in the world where in fact it is compulsory to vote. It was suggested at a conference that I attended a few weeks ago, that compulsory voting, at least in Tasmania, had enabled better representation of the female gender in Parliaments. The discussion came up after Senator John Hogg had made a keynote address in relation to gender equality in Parliaments and there was discussion among Parliamentarians throughout the world about the issue and I was fascinated at some of the things that I learnt, but in particular I was fascinated to learn that not everywhere has compulsory voting in the fashion that we do. Madam Deputy Speaker having regard to all of the things that I have said I feel that the appropriate course is simple to refer this item to the next Legislative Assembly. Perhaps noting it would indicate a degree of support for it. I'm not suggesting that we should indicate support one way or the other. I would simply move that Recommendation 6(a)(vi) be referred to the 11<sup>th</sup> Legislative Assembly for such action as that Legislative Assembly deems appropriate

DEPUTY SPEAKER

Thank you. Any participation.

MR ROBINSON

Madam Deputy Speaker thank you. As I understand it Mr Gardner canvassed with petitioners some 47 odd who petitioned this House to go back to first past the post and he found up to five different versions on what was first past the post. Is that correct Mr Gardner. Yes. A number of different versions. Yes I think to note it would indicate support, so perhaps referring to is the only real way to get around it

MR GARDNER

Madam Deputy Speaker maybe just some explanation for persons that may be aware of matters on the Notice Paper. One in particular relates directly to this discussion on this item and that is the Legislative Assembly Amendment No 2 Bill 2004. Madam Deputy Speaker at the last sitting of this House and following a presentation at that same sitting of the Petition that Mr Robinson refers to and in debate prior to adjourning the matter, I think I made it quite clear that there was indeed a deal of confusion about what was actually meant by the first past the post system that even though I had brought to the House a piece of legislation that would have sought to amend the voting system to the process as is discussed in this Report of the Select Committee Madam Deputy Speaker it made me go back to have a look at the responses that we have received as a Select Committee and within that work a great deal of different views on what first past the post meant and in that debate, prior to adjournment at the last sitting Madam Deputy Speaker I did indicate the necessity for a full and frank consultation process to be undertaken with the Community and properly explained to them as we have today exactly what was proposed by first past the post and let people chew the fat on that and basically made the necessary representations if it was felt that there was still a desire to want to progress in that direction as far as changing the legislation. The question may be asked, well, it's on the Notice Paper so why don't we finalise it. Principally the problem there Madam Deputy Speaker is because the Commonwealth are in election mode as they are and any moves that we

might make on a matter like this that would require the assent of the Governor General would be subject to the advise of the Governor General's Executive Council. My understanding is that in the phase that they are in, that, that would be highly unlikely to happen and therefore would not effect the general election to be held on Norfolk Island on the 20<sup>th</sup> October. And therefore rather than have a piece of legislation that is virtually meaningless as far as trying to finalise it, and could be considered as trying to finalise it in a rush in the last days of this Legislative Assembly Madam Deputy Speaker that I haven't chosen to bring that on but certainly would be supporting the recommendation that the matter be referred to the 11<sup>th</sup> Legislative Assembly, that the proper consultation processes be entered into and that the matter be resolved once and for all amongst Members of the community so that at the next bi-election or referendum or whatever the case may be obviously a general election is the only place where it would have any real meaning or effect, the first past the post, that for all intents and purposes that's not going to happen for three years down the track that there is an opportunity for people to be properly informed about exactly what is meant by first past the post and unfortunately, time hasn't permitted us to be able to finalise that project

DEPUTY SPEAKER Thank you. Is there further participation. Then I think Mr Brown that what you are suggesting to us is a motion to refer to the 11<sup>th</sup> Assembly for such action as is deemed appropriate

MR BROWN Yes thank you Madam Deputy Speaker and I so move

DEPUTY SPEAKER Thank you. Is there any dissention

AGREED

Then I think we can agree that one too

### **Recommendation 6(b)**

MR BROWN Madam Deputy Speaker the next section deals with the 1997 Commonwealth Grants Commission Report. That Report detailed 37 main findings. Those numbered 29 to 37 are relevant and are set out in the Select Committee's Report. 29 to 34 deal with Administrative Capacity, 35 to 37 deal with other matters and they are 29. Administrative Capacity is the main factor limiting the Norfolk Island Government's ability to deliver services. 30. Conflict of Interest Guidelines should be developed for the Legislative Assembly, the Executive and the Public Service. 31. The Norfolk Island machinery of Government needs to be reviewed and clearer lines of responsibility drawn between the Ministers, the Chief Administrative Officer, the Public Service and Government Enterprises. 32. A new Public Service Act should be put in place, the skills of the Public Service upgraded and the structure of the Public Sector reviewed. 33. A system of forward estimates would facilitate long term planning of recurrent and capital needs and cash flows. 34. There should be regular and timely annual reports of the Norfolk Island Administration covering all services and delivery agencies. 35. There is a need for improved communication between the Commonwealth and the Norfolk Island Governments. 36. it is essential for the Norfolk Island Government to push on with its proposal to develop a long term strategic plan. 37. A review of the Norfolk Island Act 1979 is needed to clarify responsibilities, make the Act more administratively useful and strengthen accountability and conflict of interest

requirements. Madam Deputy Speaker the Select Committee noted that since 1979 there has been substantial reform of the Public Service in Norfolk Island particularly through the enactment of the Public Sector Management Act 2000. The Select Committee also noted that Conflict of Interest Guidelines have been developed for the Public Service through the Human Resources Policy which was endorsed by the Legislative Assembly in February 2001. Conflict of Interest Guidelines for the Legislative Assembly and the Executive and issues of accountability are dealt with elsewhere in this Report. Findings 31 and 32 have been dealt with by the enactment of the Public Sector Management Act 2000 and that left three recommendations to be made by the Select Committee. The first and I think I'll deal with the three together. The first was, since 1979 various Legislative Assembly's have developed systems of forward estimates. But the Select Committee nevertheless supports findings 33, 34 and 35. The Select Committee recommends that the Strategic Plan adopted by the Legislative Assembly at its meeting of 5 October 1998 be reviewed. And the Select Committee supports the suggestion in finding 37. That there should be a review of the Norfolk Island Act 1979 to clarify responsibilities and made the Act more administratively useful. Madam Deputy Speaker it's easy to look back at 1997 and say, gee there was a lot of work needed to be done. But it is important to recognize the work that has been done since that time. Not all of it has been done perfectly. Time and experience has shown that perhaps there needs to be further review in some areas. But a significant part of what was referred to by the Commonwealth Grants Commission has been attended to and the Select Committee makes the recommendations that I read through a moment ago in relation to the remainder and I would like to move that the recommendations contained in Recommendation 6(b) be agreed

DEPUTY SPEAKER Mr Brown may I just draw your attention to your reading in the second last sentence of paragraph c, the Select Committee recommends that the existing Strategic Plan be reviewed. You made mention of a date there of 1998. The copy I have in front of me just says the existing Strategic Plan be reviewed

MR BROWN Let me check that I'm not reading from a draft. The document reads in that regard, the Select Committee recommendations that the Strategic Plan adopted by the Legislative Assembly at its meeting of 5 October 1998 be reviewed

DEPUTY SPEAKER Apparently there is a more recent copy than I have here

MR BROWN There was an initial version tabled and then some editorial work was done on that and the version which we are dealing with is the version tabled in the House on the 26<sup>th</sup> May 2004 with amendments on 23 June 2004 and at the foot of the cover page the initial version has May 2004 written. The final version has June 2004

DEPUTY SPEAKER Yes. I think we have the May document Mr Brown

MR BROWN The differences are minimal and not in any way dramatic Madam Deputy Speaker

DEPUTY SPEAKER Yes. I understand that and I'm sorry. So to come back to your question. You are suggesting that the recommendations contained in 6(b) be agreed. Is there some participation

MR GARDNER Madam Deputy Speaker briefly if I could just express the fact that there are a couple of matters contained in this 6(b) that have been dealt with to some form of finality by this Legislative Assembly. One is in relation to the Members Interest Bill which is referred to in the second paragraph after item 37. from the Grants Commission Report and also today we have finalised consideration of the Annual Reports which is I think recommendation 34 from the Commonwealth Grants Commission Report and to say that these aren't new things. These aren't things that shock, horror we need to do. They are things that are being dealt with and I also need to commend the Administration who over a number of years since 1997 have actually put their nose to the grindstone and they've got on with the job and that's recognized in the report itself to a degree but to emphasise that these aren't things that are just sitting on a shelf waiting to be done. There's actually been some action in relation to a number of them and it's important to see that there are also proposed actions in relation to some of these on track at the moment, including the Asset Management Plan which will be a solid supporting piece of documentation for the Review of the Strategic Plan long term and certainly that last point about the Review of the Norfolk Island Act, that goes hand in glove with what is proposed in part of recommendation 4 that we've already dealt with, which is about the constitutional issues and things like that and the argument being that it's been around for a long time. It does need a bit of a look at and as part of I guess our steps into the future in the next 25 years it's timely that it should be reviewed

DEPUTY SPEAKER Further participation. No. Then I would suggest we deal with 6(b) and Mr Brown suggests that, that be agreed. That recommendation collectively be agreed. Is there any dissent

AGREED

I think we have agreement there Mr Brown

### **Recommendation 6(c)**

MR BROWN Thank you Madam Deputy Speaker we now move to recommendation 6(c ) and there are 13 subparagraphs in that recommendation. I suggest that we deal with each sub paragraph separately.

### **Recommendation 6(c)(i)**

MR BROWN Madam Deputy Speaker subparagraph 6(c)(i) is the Select Committee recommends that the Government commence discussions at an early date with the Commonwealth about recognizing the extent of self Government in Norfolk Island by changing the role of the Administrator such that the Norfolk Island Government shall recommend to the Commonwealth a person for appointment to a role in the nature of a Governor to be funded by the Norfolk Island Government and the Commonwealth shall select and fund its own representative perhaps the Official Secretary, to represent the Commonwealth in those areas where the Commonwealth retains responsibilities. Madam Deputy Speaker this is a very significant recommendation. This recommendation is intended to recognize all that's been achieved in 25 years of self Government and to



appointed in order to decide on whether someone had committed the equivalent of a contempt of the Parliament. However, there are roles of a Privileges Committee which are outside of that and it is interesting to look at how Privileges Committees have developed in other places. In the United Kingdom Parliament the Committee to a large extent used to have a role of trying to pick up the pieces after a Member got into some form of trouble and it was recognized that perhaps a better function for that Committee would be an educational function in order to prevent people getting into trouble and to ensure that to such extent as there were ever complaints there were guidelines which could be looked at to see whether or not a Member had throughout whatever he had been attending to, done things correctly and the chairman of that Committee of the UK Parliament has told me that he believes that their Committee has been extremely successful as a result of taking that pro-active role and endeavouring to provide an education function. An education function in Norfolk Island would be aimed at ensuring that Members are aware of the nature of their responsibilities and duties, that they are provided with appropriate training and education and that as far as it is possible, the chances of a Member being criticized for some form of inappropriate behaviour are absolutely minimized if not eliminated and I seek the support of Members to a motion that Recommendation 6(c(ii)) be agreed

MR GARDNER Madam Deputy Speaker we probably need to suggest that the recommendation is in conflict with legislation that we've passed in relation to a Register of Interest for Members. That doesn't necessarily mean that there is not merit in maybe redesigning it and probably redesigning what is proposed here and probably suggest that I would be more comfortable in noting that and making a referral to the 11<sup>th</sup> Legislative Assembly to give some consideration to it rather than agreeing to it which would put us in conflict with legislation passed by the House

MR BROWN Madam Deputy Speaker there's certainly no intent to agree to something which causes a conflict with something that we've already done if there is the slightest possibility of that the appropriate course is indeed to note the recommendation and refer it the 11<sup>th</sup> Assembly for such action as that Legislative Assembly deems appropriate

DEPUTY SPEAKER Thank you. Subparagraph 6(c(ii)). Is there further participation. Then I think we have the same words as we had earlier that Mr Brown moves that this recommendation be referred to the 11<sup>th</sup> Assembly for such action as that Legislative Assembly deems appropriate. No. A modification of that

MR BROWN That this recommendation be referred to the 11<sup>th</sup> Assembly for consideration and such action as that Legislative Assembly deems appropriate. Is there any dissent.

AGREED

That is agreed

### **Recommendation 6(c(iii))**

MR BROWN Madam Deputy Speaker Recommendation 6(c(iii)) is that a book be prepared and provided to Members of the Legislative Assembly containing copies of all submissions made since 10 August 1979 by the Norfolk Island

Government and the Administration of Norfolk Island to Committees of the Commonwealth Parliament and other Commonwealth Committees or Entities. Madam Deputy Speaker it may be that the task envisaged in this recommendation is simply to large and it may be that it would be better to note this recommendation rather than agree to it so that the next Legislative Assembly can ascertain just how large the task would be. One of the difficulties that we all suffer is that there are just so many submissions that need to be made to Joint Standing Committees, other forms of Committees, other Commonwealth personnel and so forth and it is very easy for an undertaking to be given by one Legislative Assembly that is simply not known to the Members of a subsequent Legislative Assembly. When I say not known, some of these submissions have been quite lengthy. After a few years it is very easy to overlook some of the statements that were made in them. At other times over the course of a few Legislative Assembly's there may have been so many changes of Members that few if any of the remaining Members were around at the time of the earlier submission or were aware of the full extent of the earlier submission. We did on one occasion prepare a green book about an inch thick which contained many of those submissions and there are two benefits of having an available record. Sure there'll be copies in different files at the Administration but it would take a long, long while to find them. If Members are able to be provided with such a booklet it gives the Members a good idea of history. A good idea of just what has gone on. What the arguments have been. How they were resolved and frequently we find the same arguments being served back to us by the Commonwealth and if Members are able to go back through a booklet they will be able to see that the issue was addressed and dealt with years and years ago and that there is perhaps absolutely no justification for it being resurrected. The Members recommended that such a book be prepared. My suggestion is that we note the recommendation and refer it the 11<sup>th</sup> Assembly so that if it is a viable recommendation the next Legislative Assembly can do something about it

DEPUTY SPEAKER Thank you Mr Brown. The question is that paragraph 6(c)(iii) be noted and referred to the 11<sup>th</sup> Assembly for such action as is deemed appropriate. Is there any dissent

AGREED

Thank you. That is agreed to

#### **Recommendation 6(c)(iv)**

MR BROWN Madam Deputy Speaker Recommendation 6(c)(iv) is that the Norfolk Island Government Review those submissions in order to ascertain whether any undertakings remain outstanding and if so, examine them and make a clear statement of the Government's current position in relation to each such outstanding undertaking. Madam Deputy Speaker in earlier times I had occasion to go through that one inch thick green book to which I referred a moment ago and there were numerous undertakings or near undertakings which were at the time contained in that book and which had not been finally dealt with. The Committee's view is that it is important that we not simply try to overcome a problem by saying we will go away and do such and such and then forget about doing it. On occasions the Commonwealth may come back to us and say hey, what have you done about your undertaking to do x, but it is very important in the committee's view that we be our own masters in that regard, that we check through the question of whether there are any remaining outstanding undertakings, and that we then review them so that we can say to the Commonwealth well we have

reviewed all the previous undertakings, there are a few that have not been attended to which we will attend to as soon as it is conveniently possible. There are a few others namely these, list them, which on careful reflection and after taking account of the passage of time, we think are no longer appropriate. It is in that fashion that we will ensure that we retain credibility in all of our dealings with the Commonwealth. Because we do not know whether it is reasonably possible to prepare the book referred to in the previous recommendation, I suggest that it would be appropriate for us to note this recommendation also and refer it to the next Assembly

DEPUTY SPEAKER Note and refer to 11<sup>th</sup> Legislative Assembly. Is there some participation

MR GARDNER Madam Deputy Speaker in support of that recommendation it also gives us a valuable opportunity to remind ourselves of the undertakings that may have been given by the Commonwealth

DEPUTY SPEAKER Thank you Chief Minister. The question is that paragraph 6(c)(iv) be noted and referred to the 11<sup>th</sup> Assembly for such action as is deemed appropriate. Is there any dissent.

AGREED

Thank you. That is agreed to

### **Recommendation 6(c)(v)**

MR BROWN Madam Deputy Speaker Recommendation 6(c)(v) is that the Commonwealth Government be requested to provide a complete list of all Commonwealth legislation which it believes has been extended to or applies in Norfolk Island. We have been criticized at times in the past Madam Deputy Speaker on the basis that we may not have had a clear statement available for the community on precisely what legislation applies in Norfolk Island. Well that legislation at first glance is very simple to identify. It is the English law of 1828 as amended by those Acts of the Commonwealth Parliament which are specifically expressed to extend to Norfolk Island as further amended by Norfolk Island legislation and then there is the question of common law but common law is not legislation so it's not relevant to the present discussion. At an earlier time when I held executive office this became an issue with the Commonwealth and the Commonwealth was asked to provide a list of what they believed was the full extent of Commonwealth legislation which applied in Norfolk Island and after quite a lengthy period Madam Deputy Speaker the Commonwealth came back and said words to the effect, well this is a difficult task because there are some which extends by implication. Now the legislation as to what the law of Norfolk Island is, is quite clear and it doesn't mention extension by implication in any spot that I could see but if the Commonwealth at any time in the future wishes to make comment about precisely what legislation applies in Norfolk Island the Committee agrees that it is appropriate to invite the Commonwealth to provide a complete list of all of its legislation which it believes has been extended to or applies in Norfolk Island. I believe that the appropriate motion is that Recommendation 6(c)(v) be agreed

DEPUTY SPEAKER Thank you. Is there some participation



DEPUTY SPEAKER Thank you. Is there some participation. The question is that paragraph 6(c)(vi) be noted and referred to the 11<sup>th</sup> Assembly for such action as is deemed appropriate. Is there any dissent.

AGREED

Thank you. That is agreed to

**Recommendation 6(c)(vii)**

MR BROWN Madam Deputy Speaker Recommendation 6(c)(vii) is that the Norfolk Island Government ensure that an Ethics Programme currently being developed by the Administration of Norfolk Island be finalised and implemented without delay, the components of that programme include a probity complaints management system; the appointment of an external investigator for use when there is a particular need; a staff education component; a public communication component; enhanced conflict of interest provisions and the development and implementation of a Pecuniary Interests Administrative Policy and Guideline; the development and implementation of a Protected Disclosure Administrative Policy and Guideline to encourage and protect genuine allegations and the implementation of a series of probity audits. Madam Deputy Speaker much of the work which is recommended in this recommendation is already under way and I would suggest that an appropriate course is for us to simply note this recommendation

DEPUTY SPEAKER Thank you. Is there any participation. The question is that paragraph 6(c)(vii) be noted and referred to the 11<sup>th</sup> Assembly for such action as is deemed appropriate. Is there any dissent.

AGREED

**Recommendation 6(c)(viii)**

MR BROWN Thank you Madam Deputy Speaker. I should make it clear that the following page as a result of the error just noticed where 6(c)(vii) was the correct paragraph number, not 6(c)(vi), on the following page each number needs to be increased by one, so where it says 6(c)(vii), that should be 6(c)(viii) on page numbered 5. That the Norfolk Island Government ensure that the achievements of successive Governments since 1979 are documented and recognized together with a recognition of any shortcomings in order to enable comparison with the performance of Governments in other Pacific jurisdictions

DEPUTY SPEAKER Mr Brown, could you bear in mind that most of us I think are dealing with an Edition dated May 2004. The words are exactly as you have read them. The Roman numeral is viii

MR BROWN I'll just make sure that we're all using the same one

DEPUTY SPEAKER Chief Minister you are using a revised Report

MR BROWN Madam Deputy Speaker the June 2004 version does have the paragraph numbers corrected and paragraph viii is the paragraph that I've just read that the Norfolk Island Government ensure that the achievements of successive Governments since 1979 are documented and recognized together with a recognition of any shortcomings in order to enable comparison with the performance of Governments in other Pacific jurisdictions. Madam Deputy Speaker this is an important recommendation and its aim is to ensure that we do not sell ourselves short. If we sit here today, it's very difficult to think back on the achievements of the various Legislative Assembly's but there have been some very significant achievements and the Select Committee is of the view that those achievements should be documented and recognized and at the same time we should recognize any shortcomings and I suggest that the appropriate motion is that paragraph 6(viii) be agreed

DEPUTY SPEAKER Thank you. Any further participation. The recommendation we are dealing with is 6(viii) and the question is that paragraph 6(v) be agreed to. Is there any dissent.

AGREED

Thank you. That is agreed to

**Recommendation 6(c)(ix)**

MR BROWN Thank you Madam Deputy Speaker. The next is Recommendation 6(c)(xi) that the Legislative Assembly make more use of the Committee system. It would be appropriate Madam Deputy Speaker that this simply be noted as Mr Nobbs has already moved a significant extension of our committee system and it could be a matter which could be taken up by the next Legislative Assembly as to whether it expands on that further again so my recommendation is that Recommendation 6(c)(ix) be noted

MRS JACK Madam Deputy Speaker is that to be noted and no referral

DEPUTY SPEAKER Thank you. I think what Mr Brown is suggesting is that there is already an amendment to Standing Orders if I understand him correctly. Is there any further participation. The question is that paragraph 6(ix) be noted. Is there any dissent.

AGREED

Thank you. That is agreed

**Recommendation 6(c)(x) and 6(c)(xi)**

MR BROWN Madam Deputy Speaker the next two recommendations could perhaps be dealt with together Recommendation 6(c)(x) is the Freedom of Information and Ombudsman concepts be introduced in Norfolk Island as soon as possible initially on an informal basis and Recommendation 6(c)(xi) is that the Norfolk Island Government consider the adoption of a code of procedure for Ministers. Perhaps each of those could be simply noted and referred to the next Legislative

Assembly and the Chief Minister has already done considerable work in the ombudsman area. It will not be within the ability of this Legislative Assembly to take that any further but the Select Committee is of a view that they are issues which should be examined and certainly if appropriate, introduced in the life of the next Assembly

DEPUTY SPEAKER Thank you. So noted and referred. Is there some participation. The question is that Recommendation 6(c)(x) and Recommendation 6©(xi) be noted and referred to the 11<sup>th</sup> Assembly for such action as is deemed appropriate. Is there any dissent.

AGREED

That is agreed

**Recommendation 6(c)(xii)**

MR BROWN Madam Deputy Speaker the next Recommendation 6(c)(xii) is that the funding be provided at an early date to commence succession planning for the position of Returning Officer and to provide suitable training in that area. The Chief Minister made comments about this today. The Chief Minister referred to an Immigration Review some eighteen months or so ago which had recommended that the Returning Officer role could be moved out of the Immigration area so as to allow immigration to concentrate on its own area and to some extent as a result of the engagement of a short term Returning Officer the pressures within the Immigration Office have been relieved, but nevertheless we need to look at what needs to be done in the longer term. It may be felt that it is appropriate to simply continue to bring someone in on a short term contract. I can understand people expressing as view that, that brings with it an additional degree of independence, however, we are attempting to do locally whatever we can do locally and many may support the recommendation of the Select Committee that funding be provided at an early date to commence succession planning for that position and to provide suitable training in that area. Madam Deputy Speaker this would appear to be a recommendation which it would be appropriate to note and to refer to the next Legislative Assembly and I so move

MR NOBBS Thank you Madam Deputy Speaker I agree with this wholeheartedly. I'm not saying anything against the short term appointment that we have now because I know he'll do a great job but what worries me is that the next step will be, oh we can't get anybody suitable, we'll get the Australian Electoral Commission to do it. That's the next step so I would suggest that we put ourselves in a position to counter that very quickly

MR GARDNER Madam Deputy Speaker I have absolutely confidence that there is no reason why the Returning Officer's role can't be provided on island without having to bring anybody from outside and still retain the degree of independence that is appropriate for an office of that type. Every confidence in the world that, that can be achieved

MR BROWN Madam Deputy Speaker I should reinforce Mr Nobbs comment. This recommendation was put together quite some months ago and the recent change in terms of the Returning Officer was not on the drawing board at that stage. The comment that I have made is certainly not directed at any existing persons,

and most certainly not directed to the outgoing Returning Officer or the current short term Returning Officer but it is a role which has been filled locally for a long, long time. In fact the current short term officer has filled it previously as have two of our present executive Members in their former lives so I move that this recommendation be noted and that it be referred to the 11<sup>th</sup> Legislative Assembly for such action as that Legislative Assembly deems appropriate

DEPUTY SPEAKER Thank you. Is there some participation. The question is that paragraph 6(c)(xii) be noted and referred to the 11<sup>th</sup> Assembly for such action as is deemed appropriate. Is there any dissent

AGREED

That is carried

### **Recommendation 6(c)(xiii)**

MR BROWN Madam Deputy Speaker Recommendation 6(c)(xiii) is that at an early date the Norfolk Island Government investigate the recruitment of a part time representative to be based in Canberra in order to promote the interests of Norfolk Island to the Commonwealth Government and Commonwealth Departments, Members of both Houses of the Australian Parliament and other relevant persons, bodies and institutions. Madam Deputy Speaker on of the difficulties which we do encounter from time to time is that we are a long way away from those who are in Canberra. They don't always see our successes. And there are many of them. They tend to focus on any problems that might arise and they do not give us the credit which this Legislative Assembly has deserved for various activities and which has been deserved by various Assembly's in the past but more importantly, which is well and truly deserved by the Norfolk Island community. Having a representative of this kind would hopefully enable us to have our message in front of Members who might become Members of a Joint Standing Committee to visit Norfolk Island at some stage. It would enable us to have our message in front of Members of the Cabinet. It would enable us to have our message in front of the staff of the various Commonwealth Departments so that there are not misunderstandings, so that there is a recognition of what has been achieved and what can be achieved in Norfolk Island and so that relations between Norfolk Island and the Commonwealth are maintained at the very best possible level. How do we handle this. The Committee's suggestion is that a part time representative could be appointed, somewhat on similar lines to what the Falkland Islands do in London. Their representative is actually full time and they have a few people in their office because it promotes the Falklands from a tourism point of view, it to some extent looks after the industry on the Falklands, it to some extent assists in terms of Falklands people who are in London at the time, whether it's been a child at school or a resident of the Falklands in London for medical treatment or whatever. The Falklands have been very successful. They've also been entirely non political in the way they've handled that office. They have not aligned themselves with any particular party. They have taken a view that they need to convey their message in equal terms to every Member of the British Parliament whether they be on the Government side, the Opposition side, the cross benches or independent. The Falklands are not the only place to have done something similar. A number of the Caribbean Islands have part time representatives in London and bearing in mind that many of those Caribbean Islands are in effect external territories of the UK, have gone through various names as dependent territories and they are now referred to as overseas territories, but they have in many respects a similar

relationship with the UK to that which we have to the Commonwealth of Australia. The recommendation would involve a cost and partly for that reason it is at an early date for the Norfolk Island Government to investigate the recruitment rather than undertake the recruitment but we do have friends in places such as the Falklands who I'm sure would be very happy to show us precisely how they have undertaken this same concept in London in terms of the Falklands and I would hope that Members would be prepared to support this recommendation which as I said is that at an early date the Norfolk Island Government investigate the recruitment of a part time representative to be based in Canberra in order to promote the interests of Norfolk Island to the Commonwealth Government and Commonwealth Departments, Members of both Houses of the Australian Parliament and other relevant persons, bodies and institutions. Madam Deputy Speaker it would seem that the appropriate motion is that that Recommendation 6©(xiii) be agreed

MRS JACK Madam Deputy Speaker, I have a bit of trouble with an agreement. I would rather it be noted and referred to the 11<sup>th</sup> Legislative Assembly

MR BROWN Madam Deputy Speaker the meaning of the two has very little difference because it is not agreeing to do it, it is agreeing to ask the Norfolk Island Government to investigate it. If Mrs Jack is happier noting it and referring it to the next Assembly then I will be more than happy to amend my anticipated motion accordingly

DEPUTY SPEAKER Thank you. Perhaps there some further discussion to give us a lead on that. Then how say you Mr Brown

MR BROWN Then I'll move that Recommendation 6©(xiii) be noted and referred to the 11<sup>th</sup> Legislative Assembly for such action as that Legislative Assembly deems appropriate

DEPUTY SPEAKER Thank you. The question is that paragraph 6(c)(xiii) be noted and that it be referred to the 11<sup>th</sup> Assembly for such action as that Legislative Assembly deems appropriate. Is there any dissent.

AGREED

That is so agreed

### **Recommendation 6(c)(xiv)**

MR BROWN Madam Deputy Speaker the final recommendation is one which I believe is very close to Mr Nobb's heart and that is Recommendation 6(c)(xiv) that the Norfolk Island Government commence discussions with the Commonwealth Government and relevant Opposition parties with a view to negotiating continued expansion of the powers listed in Schedule 2 of the Norfolk Island Act Commonwealth and in particular that the Norfolk Island Government set milestones to be achieved by the 30<sup>th</sup> Anniversary of Self Government on 10 August 2009 to include firstly the transfer of title to all Norfolk Island land which is present owned by the Commonwealth and secondly, the identification of aspects of Norfolk Island's infrastructure which were inadequate at the commencement of self Government on 10 August 1979 and negotiation with the Commonwealth as to an appropriate Commonwealth contribution towards the cost of rectifying any such infrastructure

inadequacies which still exist. Madam Deputy Speaker by the 10<sup>th</sup> August 2009 self Government will be thirty years old. The Land Package which is in the process of completion will it is understood enable the responsibility for land to be transferred to a local power and the major land function remaining with the Commonwealth at that stage will be the ownership of those areas of Norfolk Island which remain in the ownership of the Commonwealth. Now there are many ways in which a transfer of that land could be achieved. Virtually all of them should appropriately involve Norfolk Island in a staged fashion picking up the responsibility of meeting the cost but many have expressed a view that self Government will not be complete until the title of land is transferred to the island. The second aspect of that recommendation deals with infrastructure. It is accepted that at the 10<sup>th</sup> August 1979 there were a number of areas of Norfolk Island's infrastructure which were inadequate. The Commonwealth held responsibility for running the island from 1914 through until 1979 and during that time, those inadequacies were not addressed. It is appropriate that the Norfolk Island Government and the Legislative Assembly address those deficiencies now. Certainly it is appropriate that they be identified. It is appropriate that there be a determination of just what needs to be done in order to overcome them. It is also appropriate that there be discussions with the Commonwealth on a once and for all basis to work out who should pay so that we reach a stage where quite properly the Commonwealth is able to say well, we have fulfilled all of the responsibilities which we might not have fulfilled in the period up until 1979, we have assisted you to rectify them and now it is time to put to an end any further discussion of what may have been inadequate in 1979 and to move on with the future. That is a significant recommendation all round Madam Deputy Speaker. I would suggest that it would be appropriate for that recommendation to be noted and referred to the next Legislative Assembly

MR NOBBS Thank you Madam Deputy Speaker. This, as Mr Brown said, is really significant, or I believe it's a significant recommendation but I think that in relation to the second part of it, with the Asset Management Plan being developed it should take consideration of the second part of that in relation to the identification of aspects of Norfolk Island's infrastructure which were inadequate at the time of commencement of self Government in August 10<sup>th</sup> 1979. It has to be taken into account in that and I don't know whether it's spelt out in any documents at all in relation to that tender process but anyhow, I would hope that this current Government would pick it up but if it can't be done, if it's not finalised before, I'm quite happy to refer it to the incoming Government to deal with it

MR GARDNER Madam Deputy Speaker, just one issue I want to raise in supporting the noting of it is just a word of caution that when we start to identify aspects of Norfolk Island's infrastructure that were inadequate at the commencement of self Government on the 10<sup>th</sup> August 1979 it does not come back to bite us when people, including Members of this community and a significant portion of Members of this community identify items of infrastructure that we have been responsible for since 1979 that may well have been in a state of good repair in 1979 that have gone backwards. Let's not lose sight of the fact that we have responsibilities to look after what we have now and today just as much as we have a responsibility to see if we can explore options, and this is one of those options that has been provided as far as infrastructure in general is concerned. I agree with what Ron says, that if this is a matter that is going to be pursued and is given a life, then it is imperative that it be included in the consideration of the Asset Management Plan and the formulation of a Plan of Management for Norfolk

Island 's assets for the next fifteen years which go well past the time frames envisaged by this recommendation

MR NOBBS I agree that there probably will be some that come back and bite us in relation to what the Chief Minister just said but we should be big enough to deal with those and that's why I believe that the Commonwealth should be big enough to deal with those aspects that they were responsible for. So it's a win for both

MR GARDNER I think Madam Deputy Speaker we are speaking the same language

DEPUTY SPEAKER Thank you. Is there some participation. The question is that paragraph 6(c(xiv) be noted and referred to the 11<sup>th</sup> Assembly for such action as is deemed appropriate. Is there any dissent.

AGREED

That is agreed

MR BROWN Madam Deputy Speaker that brings our consideration of the Select Committee Report to a conclusion. Could I thank Members for their time and their contributions. I'm sorry it has taken so long for us to deal with it today

DEPUTY SPEAKER Mr Brown I think we still have before us a formal motion that the Report be adopted and we need to work out a way to deal with that

MR BROWN Perhaps Madam Deputy Speaker we could resolve that the Report...

MR NOBBS Could I make a suggestion. Couldn't we say that it be adopted and add to along the lines as suggested by Members

DEPUTY SPEAKER Or as annotated perhaps

MR BROWN I think that would be adequate that the Report as annotated be adopted

DEPUTY SPEAKER Thank you. Then I put that motion to you that the Report as annotated be adopted

QUESTION PUT  
AGREED

Thank you. The Report is adopted as annotated

MR GARDNER Madam Deputy Speaker before we move on I know that Mr Brown as Chairman has gone out of his way to thank the Members who participated in that but might I also through his chairmanship thank the Members of the public who so keenly responded to the questionnaire in support of the work of the Select Committee and also particularly to those persons that made formal oral and written

submissions and to Mrs Gaye Evans, Deputy Clerk who was the secretariat to the Select Committee. I would just like to thank all those persons who participated

MR BROWN Madam Deputy Speaker could I firstly support the words of the Chief Minister in thanking all those within the community who participated in any way and in thanking our staff in this place and could I add my thanks to my secretary who was of great assistance in typing the numerous different versions of the documents before we all got to read them. Thank you

MR NOBBS May I also add my thanks. We are thanking everybody today. It's great. Wonderful

#### **PLANNING (AMENDMENT) BILL 2004**

DEPUTY SPEAKER Thank you Mr Nobbs. I think we need to move to Order of the Day No 3. Planning (Amendment) Bill 2004 and we resume debate from the 26<sup>th</sup> May on the question that the Bill be agreed to in principle and Mr Gardner has the call to resume

MR GARDNER Madam Deputy Speaker it might just be worthwhile seeing this matter has been off the table so to speak for a number of months and was originally introduced into the House I believe back in May by the then Minister for Lands and the Environment the Hon Ivens Buffett, just to read the explanatory memorandum again so we can refresh ourselves as to the purpose of the amending Bill before I go into debate on the matters before us and certainly on what I would propose as necessary and effective detail stage amendments. Madam Deputy Speaker that explanatory memorandum said that this proposed enactment is intended to correct and make provision for matters that have arisen in the Administration of the Act. In particular, clarification has provided that breach of certain sections

Tape 9 xx insert explain memo

Continuing

A section of the principle Planning Act, namely 78(2), to make a deletion to the principal Act. So in actual fact he wasn't looking to amend the amending Act that was coming before the House but whilst that was on the table looking to amend the principle Act. There have been a number of questions raised by Members in that ensuing time period as to why that 78(2) was in place and it's relationship to section 91. I stand to be corrected on that. I believe that section 91. and I have endeavoured in the last couple of weeks to try and find out some of those answers to Members and I explained to Members on Monday at our informal meeting where section 91 came from and obviously its relationship to section 78(2). Madam Deputy Speaker I was provided with a copy of the Commissions of Inquiry for Environment and Planning booklet on how those Commissions work in New South Wales. That was what our Norfolk Island legislation and Planning Act drew its base from in relation to both those sections. I've had a read of that and really at the end of the day the only thing that I've been able to settle on as to why we've were looking for a provision like that was in relation to what was known previously as a category 3 application under the 1996 Planning arrangements where if there was what was an ordinarily prohibited type of arrangement in place there was a process that needed to be followed in the assessment which included but not limited to

the need to have some sort of public information and public consultation type phase in relation to an ordinarily prohibited development. Now my understanding and you would need to appreciate that I'm only early back into the planning arrangements under a completely different regime but my understanding was that this was the best possible arrangement to replace that public consultation and information gathering section. I think in the minds of Members and certainly in my reading of it that maybe the provisions of the Planning Act as we currently see it now, namely 78(2) and 91 may be a bit of an overkill in that it establishes a commission as it reads at the moment with the powers of a Royal Commission as if it had been established as a Royal Commission to go through what really is a public consultation process but I think what really complicates it is Mr Brown's proposed detail stage amendment where it was deemed that any investigation that was taking place under section 91 where a decision of that conforms with a decision That an executive Member has made is a matter that is not appellable to the ART. Now if I could just spend some time to try and give an example of where potentially, I say potentially as I don't believe it would happen but where the is potential where possibly that may be abused is probably not the right word, but let's say for example a planning application had come across my desk as the planning Minister I'd had a look at it, the Planning Board had made a recommendation to me with which I did not agree, I had therefore gone and substituted a decision for the recommendation that was made to me, in conflict with all of the planning advisors including the planning board, the planning officer and other officers and then I had knowing that, that is something that may well have gone to Administrative Review Tribunal may have then invoked the provisions of section 91 of the Act to establish that Commission of Inquiry into the matter and so long as that Commission of Inquiry agreed with what I had to say, wasn't appellable. It really did present a problem in my mind that I don't think we needed or wanted to entertain and that it is far better in my mind to support the repeal of the section as Mr Brown has proposed in his detail stage amendment and at the same time, to move in such a way to clarify the appointment of a person established as a Commissioner under section 91 that, that section be amended and I have proposed detail stage amendments for that section to be amended that would make it necessary for a resolution of Members of the Legislative Assembly to give effect to the appointment of that person to inquire into those matters. I am strongly of the belief that we need to retain that section 91 and that, that is amended in an appropriate fashion. I don't believe that there will be significant matters that would require the invoking of section 91 but it is important that we retain those types of aspects to ensure that there is a very open and transparent assessment of planning applications and that it is not seen that the system is open to abuse. Madam Deputy Speaker I commend the bill to the House and at the appropriate time obviously following Mr Brown's first call on a detail stage amendment I would look to move my detail stage amendments to finalise this matter

DEPUTY SPEAKER  
at the moment is that the Bill be agreed to in principle. Is there any debate in that regard. No. Then I put that question

Thank you Chief Minister. The question before us at the moment is that the Bill be agreed to in principle. Is there any debate in that regard.

QUESTION PUT  
AGREED

MR NOBBS ABSENT FROM CHAMBER

Thank you Honourable Members. The Bill is agreed to in principle. We move to the detail stage and I look firstly to Mr Brown to move his foreshadowed amendment

MR BROWN Madam Deputy Speaker I move that the following new clauses be added, "4A. Subsection 78(2) of the principal Act is repealed. The purpose of this amendment is simply to preserve the right to appeal to the Administrative Review Tribunal in the event that a decision is made after a section 91 inquiry, thank you

DEPUTY SPEAKER Thank you Mr Brown. Is there debate. There being no debate I put the question that the amendment be agreed to

QUESTION PUT  
AGREED

That amendment is agreed to. I now put the question that the clause as amended be agreed to. Any final debate? Then I put that question

QUESTION PUT  
AGREED

The clause as amended is agreed to. Any further debate Honourable Members

MR GARDNER Madam Deputy Speaker if I may just before I move my amendment if I explain to Members the form of the detail stage amendment that I circulated to Members yesterday they will hopefully not jump down my throat about it but there is a matter that I hadn't discussed in my earlier debate which is attached to this detail stage amendment which I hadn't given any consideration to in that debate and that is the insertion of new clause 9 where I am looking to replace the word less with more. Now this talks about the requirement to gazette the approval of the development application. As it stands currently within the legislation the words say "as soon as practicable and not less than 14 days after a decision is made on a development application, notice of the decision shall be published in the Gazette". Madam Deputy Speaker I believe that was an oversight in the legislation and the intent of the legislation was to ensure that "as soon as is practicable and not more than 14 days after a decision is made on a development application, notice of the decision shall be published in the Gazette" and hence the proposed amendment to change the words less as it appears with the word more so it is no more than 14 days. The importance of that being from the date the approval is given the appeals process starts and it would lessen the ability for people to be able to make an appeal which would be a disadvantage to those persons who have an interest in the matter, therefore I move that the Bill be amended as follows, to insert new clause 9, and that reads "Amendment of subsection 48(1). Clause 9. Subsection 48(1) of the principal Act is amended by replacing the word "less" with the word "more"." And secondly, to insert new clause 10, "Amendment of section 91. 10. (1) For subsection 91(2) substitute – "(2) The Assembly, on the recommendation of the executive member, may resolve to appoint a person to investigate any matters specified in the resolution (being matters relating to those to which this section applies) and to make recommendations on those matters. Such resolution shall be published in the Gazette."; and (2) From subsection 91(3) (a) delete "is taken to be a Commission of Inquiry issued under the Royal Commissions Act 1928 and"; and (b) delete "under that Act" and insert "as described in the Royal Commission Act 1928"." In moving that amendment and for the sake of clarity, the amendment to section 91 will have the effect that its final writing into the Bill will read as follows, subsection 91(3) would read as

follows, upon publication of the notice the person has all the powers, privileges and protection of a Commission as described in the Royal Commissions Act 1928, thank you

DEPUTY SPEAKER Thank you Chief Minister. Now, first of all I ask you if leave is granted to put those amendments. Now I'm in a position of approving that so we can move through that fairly neatly. I then ask you if there is debate on Mr Gardner's proposals. Is everyone clear. Then I put the question that the amendments be agreed to

QUESTION PUT  
AGREED

The amendments are agreed to. I now put the question that the clauses as amended be agreed to. Any final debate? Then I put that question

QUESTION PUT  
AGREED

The clauses as amended are agreed to. Any further debate Honourable Members. Then I put the question that the remainder of the Bill be agreed to

QUESTION PUT  
AGREED

The remainder of the Bill is agreed to. Chief Minister I seek a final motion

MR GARDNER Madam Deputy Speaker I move that the Bill as amended be agreed to

DEPUTY SPEAKER The question is that the Bill as amended be agreed to. Any final debate Honourable Members. Then I put the question

QUESTION PUT  
AGREED

The Bill as amended is agreed to

#### **ROAD TRAFFIC AMENDMENT BILL 2004**

DEPUTY SPEAKER Honourable Members we resume debate from the 19<sup>th</sup> August on the question that the Bill be agreed to principle and Mr Buffett you have the call to resume

MR BUFFETT Thank you Madam Deputy Speaker. This bill has been with us for some time now. When it was first introduced a number of months ago I explained that its major purpose was a safety measure in the community and it was initiated from a number of quarters and whilst I don't want to be overly repetitive about a whole host of things that I've said earlier about this, I think this part deserves just reinforcement. Initiated from a number of quarters including DAA Working Group recommendations, a Coroner recommendations, from Hospital Reports, from court records, from resolutions of this Legislative Assembly and those provisions which were put into a Bill encompassed variety of recommendations from those quarters. When the

bill was introduced an overview says that we covered these factors. Addressed these issues. Seat belts. No back of trucks. No mobile phones when driving. Helmets motorcyclists. Safe behaviour in motor vehicles. No driving under the influence. And the measures in that context were not meant to alter the existing blood alcohol limit content which was 0.08 except for some specific areas. The legislation has been with us since introduction, since discussed, for quite some period of time and in the last week or so I consulted with Members as to how we might endeavour to progress in an administrative sense with some finalization of the various components and I would most like to explain the intent of the progression or otherwise of things today. It would depend upon Members on how they vote upon the substance of the matters. But in terms of this piece of legislation I intend to ask Members to agree the Bill in principle. And when we come to the detail stage I will endeavour to make 4 amendments to it. Three of the amendments are fairly straight forward. They are things that I'll explain when we come to it, they are things that are quite straight forward and appropriate to do and probably are not overly controversial. But the fourth item is quite important for me to stress at this stage and the fourth amendment is that those provisions of this particular Bill which relate to driving under the influence of alcohol or drugs be extracted from that particular piece of proposed legislation and made into separate legislation. Then Members will need to examine the present Bill in its present form, covering those range of things that I have just mentioned today and earlier mentioned on other occasions but minus the driving under the influence of alcohol or drugs provisions and that will be considered separately and Members will be invited to make up their mind about those provisions. When we've concluded that particular piece of legislation one way or the other then I have given notice of that piece of legislation that I have just mentioned and I will seek leave to introduce that, and to bring it before Members as the next stage today. So Madam Deputy Speaker that's where we are at. I have given an overview of what this is about. We have debated at length but if Members wish to pursue that further of course that is something that they are at liberty to do and if it needs my further participation on those points I will be happy to oblige but there we are on the matter Madam Deputy Speaker

MR ROBINSON Madam Deputy Speaker traditionally, there's that word again, in the Westminster system it is seen as anathema to pass controversial legislation while the Government is in caretaker mode. It seems to me that this body chooses to use tradition only when it suits them to say in public how it must be upheld. We have seen today that another 29 people have signed the Petition. Many of those are people who said to me after the last petition was presented to this House, why didn't you come and see me. Unfortunately I've been off the island for a while and if there's anyone I have missed, I do apologise, but it appears that this House intends to ignore the petitioners on any account. That's all 354 of them. As I said, traditionally in the Westminster tradition, it is seen as anathema to pass controversial legislation while the Government is in caretaker mode. That's all I'll say for now

MRS JACK Madam Deputy Speaker, just a short response to Mr Robinson and I understand and appreciate what he's saying. But at the same time we can't ignore some 354 people who responded in part to some of the questions on the DAA Working Group when it came to some of the issues that the Hon David Buffett has raised when it came to the introduction of what's needed as random breath testing where you've got 354 on agreeing to strongly agreeing aspects. I mean, we can play with figures and I know also that we can't take all those responses provided on survey forms as necessarily taking reactions in reality. However they give a really strong

response with high scores and this only provides us with the guide to the size and strength of community opinion. I mean we can play with figures both ways, but I think we must also account for those who have said in the DAA Report and isn't that convention that you talk of, the caretaker mode, a convention. I'm just asking please

MR ROBINSON

Yes, so I understand

MR BROWN

Madam Deputy Speaker I'm interested in what Mr Robinson has said, to the effect that perhaps it is not appropriate in our dying days for us to be dealing with this matter and I wonder if the executive Member proposes to respond to that because I would certainly be interested to hear his response. I understand what Mrs Jack has said. I understand that there are issues which are significant issues in terms of contemporary road safety. It may be that there are reasonable grounds to take a view that we are compelled to deal with this particular matter but not to deal with the following road matter. I just would be interested to hear the views of the Government about that

MR D BUFFETT

Madam Deputy Speaker, there have been two issues raised. One is the matter of caretaker arrangements. There is an election process going on in Australia at the moment and they are in "caretaker mode" and that is oft quoted whilst that is happening. I think it deserves explanation that the Australian caretaker mode is quite different then that, that we experience in Norfolk Island. In Australia the arrangements are that once an election date is set and an election called, then in fact the role of the Members then cease and the Parliament doesn't sit at all. And they are requirements by statute. And therefore the same accountability process isn't in place for Government although ministerial arrangements continue, but not necessarily carrying out the full spectrum of initiatives that might otherwise be and so in a general sense they are put on hold. Caretaker arrangements. In Norfolk Island the situation is quite different in that all Members have full authority of office until polling day. Not the date the election is called, and therefore, they have the full capacity to carry out their duties up until polling day and as we all know, polling day is in October. Equally in terms of the executive of the Norfolk Island Government they hold office in fact longer than that. They hold office until the first meeting of the new Legislative Assembly and so they have capacity in place to be able to perform right up until that time, and so I'm just endeavouring to describe when the caretaker mode was mentioned that while some people may be hearing this is how it operates in the Australian scene, it is not necessarily the case as to how the statutory requirements are in Norfolk Island. In terms of this piece of legislation it's not something that has just been introduced now and therefore something brought in at the end of the time. It is something that we've been entertaining in our minds and we have been having discussions and indeed, have had a public display of this particular piece of legislation since May of this year, so it's been around for a considerable time. I would say that there is a stronger argument having commenced and gone through the processes that one should endeavour to draw to a conclusion one way or the other whilst it has that time frame and I would invite Members to at least address the basic bill which is as I've described to you, and that's the one on the table at this moment, to see how they feel that it needs to travel and bring it to finality one way or another. If in fact when we come to the second piece of legislation they want to handle that differently, they want to put that on hold, well let's tackle that at the time and I wouldn't be adverse to that if in fact the majority of Members thought that they needed to do that but if I may explain that the second piece of legislation is equally not new. It is presented in a new form but it is really extracting from the original Bill exactly

the same provisions and I have done that because some Members have requested that I do that. That it be segmented and I've endeavoured to respond to that so that those provisions might be seen in one semi package so to speak and maybe separate from the others. I might say that they are segmented in the original Bill as well by separate sections but maybe not as seen as much to be so segmented so I'm just really trying to explain that the second bill is not new either, but however if Members are uncomfortable about that they have the opportunity to express that when I actually introduce it but I hope it would not impair trying to find a solution to the first situation, one way or the other. I don't know whether that helps in response to try and put it further on the table

MR BROWN Madam Deputy Speaker it indeed is the case that in most of the other nearby jurisdictions, when a new election is called that is the end of the Parliament. The Government continues

Here xxx tape 10

**THAT the debate be adjourned**

MR NOBBS Madam Deputy Speaker I move that debate be adjourned

ACTING DEPUTY SPEAKER Honourable Members the question is that debate be adjourned and made an Order of the Day for a subsequent day of sitting

QUESTION PUT

ACTING DEPUTY SPEAKER Could the Clerk please call the House

MR BUFFETT	NO
MR GARDNER	NO
MR DONALDSON	NO
MRS JACK	NO
MR NOBBS	AYE
MS NICHOLAS	NO
MR ROBINSON	AYE
MR BROWN	ABSTAIN

ACTING DEPUTY SPEAKER The result of voting Honourable Members, the Ayes Two, the Noes five, with one abstention, the motion is lost

MR GARDNER Mr Acting Deputy Speaker I move that the question be put

ACTING DEPUTY SPEAKER The motion is that the question be put

QUESTION PUT

AGREED

That is agreed. I now put the question that the Bill be agreed to in principle

QUESTION PUT

ACTING DEPUTY SPEAKER                      Could the Clerk please call the House

MR BUFFETT	AYE
MR GARDNER	AYE
MR DONALDSON	AYE
MRS JACK	AYE
MR NOBBS	NO
MS NICHOLAS	AYE
MR ROBINSON	NO
MR BROWN	ABSTAIN

DEPUTY SPEAKER                      The result of voting Honourable Members, the Ayes five, the noes two with one abstention, the motion is agreed, the Bill is agreed to in principle, we move to the detail stage

MR BUFFETT                                      Mr Acting Deputy Speaker

**Detail stage:**

Mr Buffett moved the following amendments:

**1. After Clause 5 Insert —**

**“Insertion of new section -**

**5A. The principal Act is amended by inserting immediately following section 15 —**

**“Permitting an unlicensed driver to drive a motor vehicle**

**15A. A person who is the owner of, or not being the owner is in control of, a motor vehicle must not knowingly permit a person to drive the motor vehicle if that person would thereby be in breach of a provision of section 15.**

**Penalty:            (a)    3 penalty units; or  
                          (b)    in the case of a second or subsequent conviction — 10 penalty units.”**

**2. Amend Clause 8 as follows -**

**For subsection 44J(2) substitute —**

**“ (2) After December 31, 2004, no vehicle imported into Norfolk Island that has not been previously registered in Norfolk Island, may be registered unless it has been fitted with approved seatbelts or is exempt by Regulation from the requirements to fit seatbelts.”**

**3. Amend clause 12 as follows —**

(a) Following subsection (3) substitute —

“ (4) The Committee is required to provide an annual report to the executive member on the operation of the Act for the preceding year ending 30 June, and its effectiveness, and may make recommendations for changes to the Act or the Regulations that may make it more effective in regulating road traffic for the purpose of improving road safety for persons in Norfolk Island.”

(b) Re-number subsection “(4)” as “(5)”

**4. Delete clause 7.**

Question – That amendment No. 1 be agreed to – put and agreed to

Question – That amendment No. 2 be agreed to – put and agreed to

Question – That amendment No. 3 be agreed to – put and agreed to

Question – That amendment No. 4 be agreed to – put and agreed to

Mr Robinson moved the following amendments:

**1. Amend Clause 8 as follows:**

(a) in section 44G(2)a) for “and” substitute “or”;

(b) Following subsection 44G(6) insert

“ (7) A person is exempt from wearing a seat belt if that person is over the age of 18 years.”

**2. Amend clause 11 as follows:**

Following paragraph 40A(6)(c) insert

“(d) over the age of 5 years sitting on the tray of a truck while the truck is moving if the truck has 4 sides that are at least 300mm high measured from the surface upon which the person is seated, and are securely fixed in place.”

Question – That amendment (1)(a) be agreed to – put

The House voted –

**AYES, 2**

**Mr Nobbs**

**Mr Robinson**

**NOES, 5**

**Mr Buffett**

**Mr Gardner**

**Mr Donaldson**

**Mrs Jack**

**Ms Nicholas**

**ABSTENTIONS, 1**

**Mr Brown**

Motion negatived

Question – That amendment 1(b) be agreed to – put

The House voted –

**AYES, 3**

**Mr Nobbs**

**NOES, 4**

**Mr Buffett**

**ABSTENTIONS, 1**

**Mr Brown**

**Mr Robinson  
Ms Nicholas**

**Mr Gardner  
Mr Donaldson  
Mrs Jack**

Motion negatived

Question – That amendment 2 be agreed to – put

The House voted –

**AYES, 2  
Mr Nobbs  
Mr Robinson**

**NOES, 5  
Mr Buffett  
Mr Gardner  
Mr Donaldson  
Mrs Jack**

**ABSTENTIONS, 1  
Mr Brown**

Motion negatived

Debate ensued

Question – That the clauses as amended be agreed to – put and agreed to on the voices, Mr Nobbs and Mr Robinson dissenting

Question – That the remainder of the Bill be agreed to – put and agreed to on the voices, Mr Nobbs and Mr Robinson dissenting

Mr Buffett moved –

**THAT the Bill as amended be agreed to**

Question put

The House voted –

**AYES, 5  
Mr Buffett  
Mr Gardner  
Mr Donaldson  
Mrs Jack  
Ms Nicholas**

**NOES, 2  
Mr Nobbs  
Mr Robinson**

**ABSTENTIONS, 1  
Mr Brown**

Bill as amended agreed to

**The Deputy Speaker took the Chair at 5.30 pm**

Tape 12 xx

MR D BUFFETT

Madam Deputy Speaker,

What Mr Robinson has said. This Legislative Assembly has not passed every piece of legislation that is thought appropriate in Australia. We have had some Australian pieces of legislation forced upon us. We have fought against some. But it must be recognized that when safety issues are the issues and we feel it in balance, there needs to be some recognition of that, then we need to walk forward difficult though it may be in that set of

circumstances and it will be wrong to interpret that as just trying to mirror what happens in Australia

MR NOBBS Madam Deputy Speaker the Minister says that they are safety issues. what I'm saying is that we should do it a different way. That's what I'm saying. Don't bring in this now but do it a different way and I'm sure if it's done properly that the community will come along behind it and it's better to do it that way in a way that's acceptable to the community and I guarantee that you'll get most of them along with you if you do it that way, but this way, you are going to have the community offside, there'll be considerable concern expressed obviously and I find it so unnecessary because it can be done another way, thank you

DEPUTY SPEAKER Thank you Mr Nobbs. Is there further debate at this time. There being no further debate I put the question that the Bill be agreed to in principle

QUESTION PUT  
AGREED

Would the Clerk please call the House

MR BUFFETT	AYE
MR GARDNER	AYE
MR DONALDSON	AYE
MRS JACK	AYE
MR NOBBS	NO
MS NICHOLAS	AYE
MR ROBINSON	NO
MR BROWN	NO

The result of voting Honourable Members the ayes five the noes three. The Bill is agreed to in principle

We now move to the detail stage. Mr Robinson has circulated detail stage amendments dated 22 September 2004

MR ROBINSON Madam Deputy Speaker I move to amend clause 4 as follows. (a) in section 32e delete subsections 2,3,4 and 5 and (b) remove references to the deleted subsection. Madam Deputy Speaker this will leave clause 32e(1) there and I think this is the best solution with the problems we've had with the police not being able to apprehend and breathalyse people with the legislation the way it stands at the moment. I'll read it to you. A Member of the Police Force may require a person to undergo a breath test or breath analysis or both if the Member has reasonable cause to suspect that the person has (a) committed an offence against section 32 (b) was the driver of a motor vehicle at the time of an accident on a public road or a public place in which the motor vehicle was involved or (c) was in an accident on a public road or a public place owing to the presence of a motor vehicle and that person has or had at the time of the accident alcohol in his or her blood. I think that's going far enough to provide a solution to the problems that we had. I think that 32e 2,3,4 and 5 are going over the top. Mr Gardner referred to legislation that goes over the top a little earlier on today. Our Planning Act is one such piece of legislation. In 1996 we had to fill out a two page form

to get approval to build a building on Norfolk Island. Nowadays we've gone right over the top and it takes fourteen pages to get the same job done. You're just getting carried away with these pieces of legislation. If 32e(1) doesn't solve the problem, which I think it will, then later on you can look at putting in the other sub clauses. Madam Deputy Speaker I commend the motion

MR DONALDSON Madam Deputy Speaker, I'm going to change course on this one and vote with Mr Robinson I really believe that 32e does provide the Police with the ability to pull over someone they suspect of driving under the influence and giving them a breath test but it takes away from them the ability to pull over every car in a queue of cars going past a certain point on the island and breathalyse every driver just at random. It really takes the randomness away, but it doesn't take the targeting of suspected drunk drivers away from it. I think that's one of the big concerns about the people here, although it's hard to say the innocent will be found guilty, the responsible drivers who may be hovering around the .05 .08 or whatever the limit is going to be and is still driving sensibly and exhibiting no signs of dangerous driving or drunken driving whatsoever, who are pretty well assured of being able to get home without falling into the trap of have I had half a drink too much and be pulled over at a random breath test station so I'm going to support this amendment of removing 2,3,4 and 5 from section 32e

MR NOBBS Madam Deputy Speaker I wasn't actually going to support this because I think it's still over the top but seeing as we may have a chance, there may be a sniff around, so therefore I definitely will support Mr Robinson's amendment

MR GARDNER I believe that I'm starting to be able to count too Madam Deputy Speaker and for the sake of not wanting to lose all of the provisions of the legislation by being defeated on an equal vote I too find myself in a position that I would need to support the amendment

MR BROWN I move that the question be put

DEPUTY SPEAKER The question before us at the moment is Mr Robinson's amendment to amend clause 4 to delete sections 2,3,4 and 5 and (b) to delete references to the deleted subsections. Is everyone clear enough? Then I put the question that the amendments be agreed to

#### QUESTION PUT

Would the Clerk please call the House

MR BUFFETT	NO
MR GARDNER	AYE
MR DONALDSON	AYE
MRS JACK	NO
MR NOBBS	AYE
MS NICHOLAS	AYE
MR ROBINSON	AYE
MR BROWN	AYE





supported but certainly there are a great deal of the provisions within this act that are universally supported. Being conscious of those views I certainly have provided an opportunity for Members to access advise on those matters and for persons who may have differing views in relation to those an opportunity to present those to Members of the Legislative Assembly. I guess at the end of the day the views of Members on some of these issues are guided by the expertise of some of those persons that we've sought consultation from and primarily persons involved in the delivery of the justice system in Norfolk Island and they include all of those persons referred to previously including the police, the magistrates and practicing solicitors both here and off shore. It is important to point out that there is a significant weight of support to provide some consistency with our legislation with other jurisdictions where we do source our legal expertise from so that those persons are easily able to work within the confines of the Norfolk Island legal system and persons practicing here are armed with the necessary expertise and experience to be able to move freely in other jurisdictions. I am conscious of the fact that the Australian Law Reform Commission is undertaking a fair firm review of Evidence legislation Australian wide and it has been suggested that the Legislative Assembly, and so we should so that we are assured that we keep up to date with developments elsewhere both in Australia and New Zealand and other jurisdictions which may provide useful provisions for us to follow, that we stay attuned to what is happening in those areas and that the Australian Law Reform Commissions investigation and report due in December 2005 will enable another opportunity certainly for the 11<sup>th</sup> Legislative Assembly and Members of our own legal services unit and legal fraternity on Norfolk Island to give consideration to the outcome and recommendations that would be contained in a report of such standards. There are detail stage amendments that I will address at the detail stage. They are primarily of a minor nature but they are detail stage amendments that have picked up and corrected some minor errors in the original drafts and also are the result of some of the responses we've received as part of the consultation process in relation to the definition of the courts and like matters. I commend this legislation to the House. As I said it is a very important part of our justice package and it's taken some time for us to actually get this close to making any sufficient change and update to our legislative provisions. It is something that certainly I know some of my colleagues would take some issue with but something that we have been subject to some criticism in relation to, but with a bit of luck, with the modernizing of our justice system then hopefully some of the taunts and things that we receive from various critics outside of Norfolk Island will be addressed and addressed appropriately for the benefit of the legal system on Norfolk Island. I look forward to Members' comments and at an appropriate time I will look to moving my detail stage amendments

MS NICHOLAS

Thank you Mr Speaker, in speaking to this bill in May of this year I highlighted a number of concerns some of which have been answered, however the matter of the unsworn statement remains a vexed question as it has for many learned men and women. I realize that the difference voiced quite vehemently by both sides is understandable when one realizes that one voice speaks for the prosecution and the other for the defense. I find myself truly betwixt and between on the issue. Should I look at it from the point of view of the defense or from the prosecution. The part of the Norfolk Island Legislative Assembly I could be said to be part of the establishment and therefore part of the crown process, hence the prosecution more often than not. However I also represent Members of the community who may find themselves as defendants and I'm loath to deprive them of every available tool with which to defend themselves. The Chief Minister tells us that the intent of the bill is to bring us into line with the legislation of Australian states so that practitioners visiting

Norfolk Island to represent various clients are more readily able to find their way about within the legislation on family ground as it were rather than having to deal with the complexities of a law of which they are unfamiliar. This bill also has the support of our magistrates so lacking the wisdom of Solomon on this one and rather than abstain or vote against the bill, I'm prepared to grit my teeth and support it thank you

MR BROWN

Mr Speaker there is wisdom if we must change legislation, in following the legislation of another jurisdiction so that it is possible to get a practice book so it is possible to know with some precision, how the courts will interpret the legislation. Nevertheless there are some aspects of this bill with which I do not agree. The first is the proposed abolition of the right of an accused person to make an unsworn statement. Certainly it is true that I have rarely acted as a prosecutor. My legal experience in these areas has been in the main acting for defendants and in doing so, I have learnt that a very important underpinning of the criminal law system is that a person is presumed to be innocent unless and until he is properly convicted by a court and that it is better that nine guilty men go free than one innocent man be convicted. That latter statement came from a case of *Wolmington vs the Director of Public Prosecutions* often referred to as the golden thread of criminal law. I can understand a policeman not wanting to have a dock statement because he might think that it makes it easier for him to get a conviction. I can't understand a prosecutor wanting that changed because there is a very important distinction between the role of the policeman and the role of the prosecutor. The role of the prosecutor is a largely independent role. He is obliged to put before the court, all of the information. He can't just keep in his file information which may tend to establish someone's innocence. He can't get up to dirty tricks. He has a very independent role. We have been told that this bill if my recollection is correct, is based on the Commonwealth Act but if we look at section 25 and the note immediately below it, it makes it clear that the Commonwealth Act preserves the dock statement where it is preserved under the law of a state or territory. So it's the law of Norfolk Island, and it does now, allow for a dock statement. The existing Commonwealth law preserves that and I don't think we should be changing that situation. My suggestion is that we should vote against clause 25 and the hearsay sections of the Bill which is from section 59 through to 68 being the whole of part 3.2. These sections are intended to, so we are advised by the Legislative Counsel, to in effect restate the existing law in Norfolk Island. Be that as it may, and I'm not aware whether I've correctly interpreted what the Legislative Counsel said, be that as it may, the adoption of hearsay evidence in a very small jurisdiction such as Norfolk Island should be very carefully considered. I don't think you would find any lawyer in New South Wales who will say to you that the introduction of the basically uniform legislation there, has been totally a good thing. I think you will find many lawyers in New South Wales will tell you that some bad things have happened. That some unexpected things have happened. Much of the hearsay section appears to rely on allowing the hearsay evidence if it would be inconvenient and expensive to get the evidence in some other way. Well again if we are talking of the criminal law, we should not just say sorry, it would be a bit difficult and a bit expensive to insist that someone bring over these witnesses so that they can give their evidence properly and so that we can cross examine them and so on. What we'll do is we will allow hearsay evidence. We will allow someone to say well I heard someone or other say such and such. And to such extent as it tends to allow a policeman to give hearsay evidence then many lawyers would say that in the Norfolk Island environment, that does not necessarily further the interests of that old maxim that justice must not only be done, it must be seen to be done. I would prefer at this stage that part 3.2, being the whole of the sections in relation to hearsay, be deleted and reviewed at a later date. The other

section to which I would draw Members attention, is section 77. it is an exception to the opinion rule stating that it does not apply to an opinion which is admitted because it is relevant for a purpose other than the proof of the existence of a fact about the existence of which the opinion was expressed. In the Norfolk Island environment it is my suggestion that, that is not an appropriate section. And you might say, how can you justify saying all that, after you've said it's a good thing to have a practice book. Well the answer is, both statements are consistent with each other because if a particular section is deleted from here, when one looks at the practice book and sees what the relevant section might be in the other place, you simply ignore that because of the fact that, that section doesn't apply to Norfolk Island so what I'm saying is consistent and subject to those changes I would be happy to support the bill. I am aware that Mr Zande had asked a number of questions in relation to the bill and I will be interested to hear the Chief Minister advise us whether all of those queries have been resolved or whether some of those might still be outstanding. I have no personal knowledge of that. Thank you

SPEAKER Mr Brown I just want to ensure that I have some of the items that you identified. I'm just doing some homework so that when we come to the detail stage. Working backwards, you mentioned section 77 of 3.3, you mentioned all of part 3.2, and section 25. Is that correct? That is correct. Thank you indeed

MRS JACK Mr Speaker, I will be supporting this bill and I have no problem with section 25 that Mr Brown has. I feel in some way as a Members of this Legislative Assembly that I've been subjected to unsworn statement type issues. When the Joint Standing Committee of the External Territories allowed the confidential statements to carry such weight, and gave it such fervor without us, never mind that we didn't know the source, but we weren't even allowed to know the content of the claims made by confidential submissions to those enquiries so I felt that we were bound and gagged to any right of reply and I feel that, that section 25 is a similar type instance. That said, I will be supporting the bill

SPEAKER Thank you Mrs Jack. Is there further debate at this time. Then I put the question that the Bill be agreed to in principle

QUESTION PUT  
AGREED

The ayes have it thank you, the Bill is agreed to in principle

We come to the detail stage. Chief Minister you have foreshadowed some detail stage amendments. I'll turn to you first please

MR GARDNER Thank you Mr Speaker, I move the detail stage amendments dated 15 July as circulated to Members of the Legislative Assembly be agreed. Items 1 to 5. Mr Speaker as I alluded to in my opening address, the matters contained in these are matters that were raised by Members as far as some of the references and omissions of various words, minor typographical errors and certainly the inclusion of some of the definitions and I think that one in particular arose out of the advise received from Mr John Walsh of Brannagh in his submission to us. I think whilst I had the floor, Mr Brown had raised some issues about Mr Zande's submission to us. Certainly that was provided to the Legal Services Unit for consideration and certainly my invitation was extended to Mr Zande to discuss those issues. I hadn't heard any further

from Mr Zande so I naturally assumed that he was satisfied, as I think his letter says with the bulk of the legislation and he had concerns relating to its relationship primarily with the Mental Health Act and the provisions contained in that Act. I understand that they have been addressed. As I say I haven't heard any further critique I guess of the Bill and I would assume that he was satisfied in his discussions with our Legal Services Unit about the provisions and what was intended by the provisions of the legislation. That's about the extent of the advise that I can provide to Mr Brown at this stage on that matter

MR BROWN Mr Speaker I thank the Chief Minister for that. I note that the letter from Mr Zande is addressed to the Chief Minister rather than to Members generally and it was simply copied to Members for information by the Chief Minister. Mr Zande has not contacted me directly about the matter and I note that the Chief Minister is of a view that having put Mr Zande in touch with the Crown Counsel, the various queries have been resolved. Certainly I hope that is the case, but as is always the situation in this place if there turns out to be an issue which we have overlooked, that can be remedied at a later date. Insofar as the Chief Minister detail stage amendments are concerned, I agree that they are minor in nature, they are certainly not controversial and I do not have a difficulty in supporting them

SPEAKER Thank you. Further debate. The matter before us are the Chief Minister's amendments numbered 1 to 5. Is there Further debate? Are Members agreeable in terms of those amendments? I put the question

QUESTION PUT  
AGREED

Those amendments have been agreed to

MR BROWN Mr Speaker could I seek leave to move three amendments. The first is that clause 25 be deleted; the second is that part 3.2 be deleted and the third is that section 77 be deleted

SPEAKER Is leave granted? Leave is granted

MR BROWN Mr Speaker I so move. Mr Speaker I've addressed each of the issues. I'm happy for other Members to speak or for the matter to be put to the vote

MR ROBINSON Mr Speaker Thank you . I have here an advise from Dr John Walsh of Brannagh on section 25. He says that this is a significant departure from the present law in Norfolk Island which at present allows defendants on criminal proceedings to make an unsworn statement. It is somewhat noteworthy that the Commonwealth Act preserves this provision for Norfolk Island. This might be considered part of the way of life. The Norfolk way of life. The argument put forward by some that this right has been abolished elsewhere is persuasive to some extent but in itself is not a reason for the law to be changed on Norfolk Island. I would suggest that this proposed change to this existing right be properly and thoroughly considered by the Legislative Assembly as the change is major and fundamental

MS NICHOLAS Thank you Mr Speaker, unfortunately Mr Speaker there's reams and reams and reams of advise on that question and it really is a difficult

one. That's one I've already said it depends on whether it's coming from the defense or the prosecution. However, if one does have some sympathy for the unsworn statement, and I do and I made that clear in made, the situation is somewhat ameliorated by the right of a defendant to speak last. That softens the blow somewhat. Mr Brown's moved all three of his amendments hasn't he. In respect of 3.2 which he seeks to delete, there is provision in section 190 of the bill for all of that part, 3.2 to 3.8 being the hearsay evidence, and it says in 191 the court may, if the parties consent, by order dispense with the application of any one or more of the provisions of and that is 3.2 to 3.8 included so I think there is some room to maneuver on that one. I make no comment in respect of section 77. it's convoluted and probably would take me 20 minutes to sort out what it was saying, thank you

SPEAKER Further debate? No further debate. We are addressing Mr Brown's three amendments. Section 25 be deleted; part 3.2 be deleted and section 77 be deleted. They are the proposals from Mr Brown and I will call them one at a time Mr Brown unless there is a different way you would like it to be tackled, so can I tackle the first one first. Mr Brown's amendment first that section 25 be deleted

#### QUESTION PUT

Would the Clerk please call the House

MR BUFFETT	NO
MR GARDNER	NO
MR DONALDSON	NO
MRS JACK	NO
MS NICHOLAS	NO
MR ROBINSON	AYE
MR BROWN	AYE

The result of voting Honourable Members the ayes two the noes five. The noes have it. That amendment is defeated Honourable Members

I come to the second one. That part 3.2 be deleted and I put that question to you

#### QUESTION PUT AGREED

MR BROWN NO

Would the Clerk please call the House

MR BROWN There's no requirement to do so Mr Speaker

SPEAKER No? Okay then Mr Brown. On that basis I would say that the noes have it Mr Brown thank you

The proposal before us is that Section 77 to be deleted is the third amendment and I put that question to you

#### QUESTION PUT

AGREED

MR BROWN NO

The noes have it

MR BROWN

There is no request to call the House

SPEAKER Thank you Mr Brown. Honourable Members, I've interpreted that the amendment that you want to put to the House have now been attended to and that you have decided what you want to do with those. So I now turn to the next question which is that those clauses as amended be agreed to

QUESTION PUT  
AGREED

The ayes have it. Can I now turn to the balance of this particular piece of proposed legislation and that is that the remainder of the Bill be agreed to.

QUESTION PUT  
AGREED

The ayes have it. The remainder of the Bill is agreed to. I now look to a final motion Honourable Members, and I look to you Chief Minister and the final motion would be that the Bill with its amendments be agreed to

MR GARDNER

Mr Speaker I move that the Bill as amended be agreed to

SPEAKER

Any final debate

MS NICHOLAS

Thank you Mr Speaker, I just wish to be assured that this in fact is what is known as the model legislation

SPEAKER

Who seeks the call

MR GARDNER

Mr Speaker I think I've been consistent in providing that advise. My understanding, my very clear understanding is that this is for Norfolk Island circumstances, legislation that follows as close as is possible to the model legislation developed for the sake of consistency

SPEAKER

Any further debate? I put the question to you that the Bill as amended be agreed to

QUESTION PUT  
AGREED

MR BROWN NO

The ayes have it. The bill is agreed to. Honourable Members, that has concluded our notices and orders of the day and I now turn to the matter of adjournment

Before we take that, our officers are leaving the House Honourable Members, and some of them have spent some considerable time in terms of preparation of various things for a good many of us and we've kept them today. May I on your behalf offer words of appreciation for their attendance and for the work they've done particularly today. Before I turn to Mr Robinson in terms of the adjournment notice, Honourable Members, you will note there has been no proposal for a next sitting day which has signalled that we don't expect to meet in the normal course of things during the life of this 10<sup>th</sup> Legislative Assembly unless of course, there are pressing needs and there are processes to allow us to come together should that turn out to be the case

## **ADJOURNMENT**

MR ROBINSON

Madam Deputy Speaker, I move that the House do

now adjourn

DEPUTY SPEAKER

The question is that the House do now adjourn. Is there any adjournment debate Honourable Members?

MR GARDNER

Mr Speaker as this is our last proposed formal meeting of the 10<sup>th</sup> Legislative Assembly I would just like to take the opportunity very briefly so thank my colleagues around this table and those who are unable to be with us, Mr Nobbs obviously with his absence requested earlier, but certainly also to our departed colleague, the Hon Ivens Buffett, for the tremendous work that all of you have put in over the last three years and the support sometimes that I've received from Members and other times not received. That's what makes this institution such a great place to have been part of. I am tremendously honoured to have worked with you all in this Legislative Assembly and also I would like to give heartfelt thanks to the staff in this compound for their assistance and support over the last three years. And too, to the Members of the Administration, not just in my own areas of responsibility, but for all those areas of the Administration that support the Legislative Assembly in their work and for the work that the Administration has provided and support to this community over the last three years and last but not least Mr Speaker, the support and the desire from within this community to continue along the road to self Government without this community, without those people, we certainly would not be here today and we would not be looking forward to what I believe is a very bright future for Norfolk Island and I would just like to thank you all for your support, your advise, your contrary advise on some occasion, on many occasions but thank them for that because it does provide the balance and I'm appreciative of the time that people have given so freely and willingly to support the Legislative Assembly and myself in our work and that extends to all those people who have volunteered to be parts of statutory bodies authorities and committees. Thank you very much for that

MS NICHOLAS

Thank you Mr Speaker, yes, to reiterate this may well be the last meeting of this Assembly. The gathering of this particular group of Members and I would like to thank the community for allowing me an opportunity to be part of the process of Government on Norfolk Island. I'm frequently asked about frustration and whether it is overwhelming in this job. From my own perspective I can say no, it's not. I confess to having become disillusioned about some of the processes and sometimes disappointed in a result but frustrated no. this has been a good group of people to work with and for. I've served the Minister for Health in various ways and have

made some small progress in those matters. The same could be said as my role as a Member of the Immigration Committee. Overall the job has been a satisfying one and given the opportunity I would like to continue with tasks commenced and perhaps as part of an electoral platform I shall speak about a wish list for the future. Thank you my colleagues for good discussion and occasional argument. Thanks especially to Mrs Jack. I believe we have more often than not arrived at the same conclusion but by very different pathways and that's probably been a good thing. Thanks to my Chief Minister, the Minister for Finance, the staff, the Clerk, the Deputy Clerk, and to yourself Mr Speaker for guidance along the way. It is my intention to offer myself for selection at the forthcoming election and may I take this opportunity to wish all those standing, good luck

MRS JACK Thank you Mr Speaker, I too would like to say thanks to my colleagues and the community who have helped and given constructive criticism over the last almost three years. I've enjoyed my time on the statutory committees. Had a lot of fun, some good heated discussion, and a couple, had a few Chairpersons to work under and with and I've thoroughly enjoyed my time and the educational processes that those committees gave me. Also to my fellow Members on those statutory boards, there's the Planning and Environment and the Social; Welfare. You've given me a lot of important education, assistance, all sorts of things over that time and I thank you and give you my appreciation

xx  
Tape 14 start

MRS JACK Mr Speaker,  
If it's allowed I would like to explain what may seem to be by some, to my complete turnaround. Mr Speaker I spoke to you on this matter prior to the introduction of the bill last month and in the lead up to it, I spoke about it in the House but I firmly believed that the bills as they stood needed everything there and that any amendment detracted from their overall worth. Now perhaps to use Mr Nobbs favourite phrase, I've thrown the baby out with the bathwater but in this House I stated that any change, any reduction or amendment to those bills would, as I said earlier, see their value lowered and I've stood by that and I also said that if any amendment did get up I would say no to the bill I felt so strongly on the bills as they stood. That does not mean to say that after a year has passed, if I am also along with Ms Nicholas, allowed to come back into this place, but during that years time when that bill will be in abeyance, I will strive for education, community knowledge and awareness and most definitely the acceptance of that bill as it stands today in its entirety when it is next presented. Do not think that I have thrown that bill out at all. I totally supported it as it was, not as it was amended. But again, thank you very much for this time, thank you to the community, thank you also to my family for putting up with absences, and coming home a bit late, thank you

MR ROBINSON Mr Speaker the Australianisation of this piece of land that is the homeland for many of us, continues. In 1856 when our people first came here we had 39 laws on the books. In 1913 they were cut down to 32. now we have some 185 of our own pieces of legislation while our colonial overlords say they have between 200 and 300 pieces of legislation that apply here. Some people would call that progress. In a way I guess it is. It's progressing down the path of the Australianisation of Norfolk Island. The sad part is that there are Members of this Legislative Assembly who are actively pursuing that end. They do this by directly copying legislation from our



Assembly to have us conduct its business and I would hope that we have done that to the best of our ability and that the Members of the community will not be too disappointed in the role that we have endeavoured to perform but on your behalf to those who we would like to acknowledge, I would like to add those words of acknowledgement. Can I particularly mention the person who sits in the corner every time. It's Connie on this occasion, sometimes it's George, but somebody from the Radio Station is always there to look after our needs and playing a very important task that what happens here is heard in the community and it's not easy. We all want to talk at once and the like for that to be picked up and broadcast and so on your behalf may I also pay acknowledgement there. Thank you. Honourable Members, I wish each of you well if you are to be candidates and those who are not Members who will be candidates for the continuing Legislative Assembly. The Legislative Assembly in terms of us doing our own thing in Norfolk Island is of the most vital importance. It is the lifeblood of how we get through to other places as well as to co-ordinate our Norfolk Island community in being able to do our own thing. Notwithstanding that sometimes we may not have the same view, as today has been expressed in a number of ways, but that doesn't mean that we do not have the same want to get on with this task and I commend it to our successors. The motion before us Honourable Members, is that the House do now adjourn

QUESTION PUT  
AGREED

We are agreed. The House stands adjourned Honourable Members,