



**NORFOLK ISLAND LEGISLATIVE ASSEMBLY  
11<sup>TH</sup> NILA HANSARD – 25 JANUARY 2007**

**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

**LEAVE OF ABSENCE FOR MR CHRISTIAN MLA**

MRS JACK Mr Speaker seek leave for the sitting for the Minister for Finance the Hon Neville Christian who is currently off island and does not return until this weekend

SPEAKER: Honourable Members, is leave granted? Thank you.  
Leave is granted?

**SUSPENSION OF STANDING ORDERS**

MR BUFFETT Thank you Mr Speaker, I move that so much of Standing Orders be suspended as would (a) prevent my introducing a Bill for an Act to amend the Juries Act 1960; and b) for the Bill from being considered through all stages at this sitting

SPEAKER Thank you Chief Minister

MR BROWN Mr Speaker as Members know I am a lawyer and my firm acts for the accused person in a trial for murder which commences in Norfolk Island next Thursday. The Bill which it is proposed to move if the motion in relation to suspension of Standing Orders is passed, is a Bill seeking to amend the Juries Act 1960 specifically in relation to that trial in effect. In those circumstances it's not appropriate that I participate in the debate. It's not appropriate that I vote in relation to the matter and I would like to simply record in Hansard that I will now, with your leave retire from the Chamber so that the remaining Members can deal with that

SPEAKER Thank you Mr Brown. I just wonder if we deal with suspension of Standing Orders before we deal with that

MR BROWN Mr Speaker I thought it was important that we deal with that because the suspension relates to the subsequent matter so I felt that it would be inappropriate for me to vote on the suspension either

SPEAKER Thank you Mr Brown. Leave is granted. Is there further debate on the motion to suspend Standing Orders

MR BUFFETT Mr Speaker would you like me to read that again. I move that so much of Standing Orders be suspended as would prevent the House from only dealing with the matters listed on the programme this afternoon

SPEAKER Thank you Mr Buffett. For the benefit of Members that is in relation to the Juries Amendment Bill 2007 and as Mr Buffett earlier said, it is seeking to deal with the Bill through all stages this afternoon

MR T BROWN Thank you Mr Speaker I ask for your guidance. Seeing as I'm actually the son of someone who has a vested interest in the case so to speak, I was wondering whether it was appropriate for me to remain

SPEAKER I see no difficulty in that Mr Brown but I will look to other Members for input on that question. I don't detect any difficulty Mr Brown. Further debate on the question that Standing Orders be suspended. I put that question

QUESTION PUT  
AGREED

Thank you. That motion is agreed to

We move now to item No. 3 on the Programme

### **JURIES AMENDMENT BILL 2007**

MR BUFFETT Thank you Mr Speaker. This is in two parts. One, it again addresses Standing Orders and then it goes on to Juries introduction of the matter itself, so I move again Mr Speaker, I move that so much of Standing Orders be suspended as would (a) prevent my introducing a Bill for an Act to amend the Juries Act 1960; and b) for the Bill from being considered through all stages at this meeting.

SPEAKER Any debate Honourable Members. No debate. I will put that question then

QUESTION PUT  
AGREED  
MR TIM BROWN ABSTAIN

Thank you. Mr Tim Brown abstaining. That is the required six Members. That motion is so agreed to

MR BUFFETT Mr Speaker given those endorsements I present the Juries Amendment Bill 2007 and move that the Bill be agreed to in principle. Mr Speaker firstly may I acknowledge that this is a special sitting of the House and at quite short notice and may I acknowledge your participation and the participation of Members in coming together in short notice. The reason is to address some urgent provisions of the Juries legislation and there are pressing circumstances for this matter to be addressed quite soon. The matter was actually brought to attention to myself as the Minister who has responsibility for the Administration of justice just yesterday so you will see that it's not a matter that is of long standing but has just surfaced and requires some significant attention. If I might explain at the outset Mr Speaker, that the Juries legislation that we have here in Norfolk island is under the Juries Act 1960 and this legislation provides that twelve jurors need to be empanelled when a jury is required. There are basically two categories within that. One for the general run of matters to be heard in that context, requires that a majority of the twelve jurors be determining the result of the case so twelve to be empanelled and the majority to decide the case except, except, when it is a capital matter, that means, whether it is a matter of murder or treason then there is a requirement for all of the twelve to be unanimous as opposed to be in the majority. That's all straight forward to date. The difficulty arises that if that is the requirement for a unanimous situation for twelve if there are cases for incapacity, for one of the twelve, what happens then. The only result that can be if there is incapacity on behalf of one of those twelve, is that the trial must be aborted and needs to start again. I mentioned that this legislation was made in 1960. Similar legislation has applied in other states and jurisdictions within the Australian Australasian scene, and this matter has been addressed by those other jurisdictions, maybe in the 1970's and 1980's and

they have addressed it in this manner. Two options they have exercised. One is that they have reserved jurors, and the other is to allow a fall from the number of twelve to a lesser figure but not below ten in the main or maybe another figure in very exceptional circumstances and that appears to have been the case in all other jurisdictions within the Australasian scene, and so they now do have provisions if there is an incapacity in terms of the twelve. Now whilst the figure may fall from twelve to another number but not below ten, it still remains that whatever remains, needs to be unanimous. It's not a matter of majority. That part doesn't change. You will recognise Mr Speaker and so will Members and indeed, Members of the community, that there are situations that are arising now in which this particular provision may become important. Whilst those other states and territories have made their adjustments, Norfolk Island has not made any adjustments so we still stick with the original arrangement. You may well ask why haven't we made an adjustment in earlier times and the very simple answer to that is that we have never had to call upon this provision. We've never had a treason situation in Norfolk Island nor a murder situation and so that particular piece of legislation has not needed to be exercised in that way. We do now have a case that is projected and we need to examine the need for putting the juries legislation into a form that may account for any possible prospects that may arise and so this piece of legislation picks up a recommendation from the New South Wales jurisdiction in which they allow the number of empanelled jurors which must be twelve at the outset to fall to a minimum of ten if circumstances dictate that and one of the reasons that this particular example has been used is because it has already been tested in the High Court. In other words, it has already gone to a superior court and it has been found to be sound by those who have challenged it and so it is thought an appropriate measure to remedy our situation but remedy it in a way that has proven standing and so that's the proposal before us this afternoon, Mr Speaker. The amendments propose that there is a continuation of twelve jurors to be empanelled, but if in fact there is an incapacity that is experienced along the way and one doesn't know whether that will be so or not so, then there is the capacity for the court to decide whether it can reduce the number and in the proposals that are here it cannot be less than ten and of those that remain should that situation occur, it remains that they need to be unanimous in their decision. Mr Speaker that is the proposal and I've endeavoured to set out the reasons for it and also to explain, given time frames, we need to address the matter quite soon for our long term future, but indeed there are matters that are coming to the courts quite soon. We need to act promptly and put these appropriate provisions in place so that the courts might function in a way that is accepted in the wider spectrum of things in this day and age. Thank you

SPEAKER Debate Honourable Members on the question that the Bill be agreed to in principle

MRS JACK Mr Speaker as the Chief Minister has stated, this matter has only presented itself before all Members yesterday, and trying to get your head around it and consider implications of hurried or urgent legislation is always a concern. I would like to congratulate the Chief Minister on answering many questions that have come to him by the broader Membership and inasmuch as just a few minutes ago a talk with an independent legal advisor offshore and his views on the proposed legislation, I found it very helpful for some of his answers and examples that he gave, and the questions that even arose from those discussions and the way we were taken through his answers and the reasons given I found extremely helpful. To the public, three basic questions were put before us, and before the counsel and the first one was, is this bill necessary. The second one was will the passing of the Bill be valid if enacted, and the third, does the Bill give rise to legitimate reason for complaint. Now all of those were answered Mr Speaker. Other issues were raised but in view of those answers I found that while legislation like this is cause for concern, that I would personally have no trouble in agreeing to the Chief Minister's proposal for this act and to see it through all stages to completion. Thank you

MR NOBBS Mr Speaker I'll be supporting this amendment to the Juries Act. As the Chief Minister said, it's been a difficulty of some long standing now, but fortunately we've never been called on in the past, to actually utilise that particular section, so I guess it's been overlooked and it's now to be utilised, obviously, in the next weeks and it's time to clear up what is obviously now an anomaly in the Act and a potential for considerable concern. From my point of view I was extremely concerned when it was appointed out to me yesterday that we had this difficulty because it leaves it wide open to a number of issues including considerable stress and as well as cost to the community at large. I don't think it's an unfair request, this, on the judicial system and I don't think it's unfair on anybody who actually comes to be tried under it in the future and I hope there won't be too many of them but as far as this is concerned, we needed to do something, and I think this is the best alternative. Maybe eight might have been better but ten is accepted elsewhere as the Chief Minister said in New South Wales and its been tested in the High Court, hopefully in agreeance with it, and I will support the amendment. Thank you Mr Speaker

MRS BOUDAN Mr Speaker I intend to support the Bill. It deals with a deficiency in our Act but we had not been aware of it until now and bringing this Bill in will indeed rectify our legislation for now and into the future. Thank you

MR SHERIDAN Mr Speaker just like the others who have spoken before me, this legislation has come to us at short notice, but I believe that it is something that is necessary, to enable our laws here on Norfolk Island to operate effectively. Now in a normal jury case you have a majority verdict but in the case of murder or treason as the Chief Minister pointed out, it must be unanimous. Now when a murder trial is not normally a short affair, it goes on for weeks, sometimes months, it seems fairly stupid that there is not an offset in the legislation to allow for the dismissal of a juror or for a juror to be sick. Now if that was to be the case, if we left that on the books, if we did have a case, and unfortunately we do have one coming up, you may never ever see the end of that case because the defence team will always argue that legislation was bought in purely for this case yo might say. It's unfortunate timing. Even if we waited until after the oncoming case next week and we bought this legislation to the fore I'm just wondering whether Mr John Brown would have excused himself from the House then. I understand that he's involved with this murder trial next week but I really believe with him being a lawyer we could have done with his opinion today. I don't really think it was a conflict of interest in that sense but anyway that's neither here nor there. Just looking at the cost of running these trials and they go for a long time, it seems stupid not to have a clause like this in our legislation so with that in mind I will be supporting it, of course, there's going to be debate over it in the weeks to come, hopefully there may not be a reason for it, but if there is a reason for argument, well it has been tried and tested in the courts in Australia and it's come up trumps so I don't believe that we are doing anything untoward and it's just tidying up our legislation as it stands

MR GARDNER Mr Deputy Speaker I just personally want to acknowledge that the appropriateness of Mr John Brown's earlier disclosure and his wanting to withdraw from the House. That is certainly an appropriate course of action to take in the matter and I thank him for his openness in disclosing what potentially could be seen as a significant conflict. As far as the bill before us concerned, I acknowledge the views of the other Members around the table as far as I guess what's seen as being a missing part of our Juries legislation insofar as I understand it, all other state and territory jurisdictions within the Commonwealth of Australia have similar provisions within their legislation but in considering its introduction into Norfolk Island at such a time, I've tried to exercise my mind, as to the appropriateness, the fairness of a measure such as this at this time. In earlier discussion Mrs Jack had referred to discussions we have had with independent legal counsel in relation to a number of issues and one of the issues that I posed at that time, was in relation to the likeness of this type of legislation to that which we passed a couple of years ago in relation to the same matter before the court.

Or to be before the court with the passage of our Forensic Procedures legislation in this House and in trying to look at the effect that that has in comparison to the effect that this piece of legislation has. At that time, it was the will of the House to enact legislation to ensure that we are able to put in place mechanisms that would solve the crime. It was nothing directed at a particular person at all, I think more so, just to make sure that the tools were in place so that a crime could be resolved in the best interests of all concerned. With this piece of legislation, again, I don't see it directed at a person, it is more so directed at what's best termed, the public interest to ensure that a trial is able to be conducted, a matter is able to be heard before the court. If these provisions aren't enacted, and were not considered necessary to be enacted, it is possible that at the commencement of the trial or within a week or two weeks or three weeks of the commencement of the trial a full jury was unable to be maintained, in other words, a member of the jury was discharged through, as the Chief Minister has already said, through ill health or some other matter, all that does is basically lead to the aborting of the matter before the court. Then we go through the process of then having to set another day before a judge or before a jury and go through the whole process again. It is not a mechanism that would necessarily mean that somebody might get away with a crime, it's not a mechanism that is proposed to be put in place that specifically targets anybody and that's what I've had to exercise my mind with over the last few hours in my knowledge in trying to come to grips with this. I see it as a perfectly reasonable way of ensuring that the matter will get a hearing before the court and that's it. I'm not a great fan of urgent legislation but I can understand the reasons for it. I think that everyone around this table, I think all those who were involved with the trial about to happen and many people in the community are aware of the logistical nightmare it is to stage such a significant event in the court on Norfolk Island. Certainly many are aware of I guess the ball park figures as far as the cost of running an event such as this in the courts of Norfolk Island and I think the onus is upon us to ensure that public funds are expended and the discharge of justice in Norfolk Island not unreasonably and not in an unfair manner, and I don't believe that it's either unreasonable or unfair and I'm happy therefore to put my full support to this legislation so that the matter can be heard, so the matter can be finalised, and we can all get about our business. Thank you

SPEAKER

Any further debate Honourable Members

MR T BROWN

Thank you Mr Speaker with everything in life, timing is crucial and unfortunately that is the main problem I have with this at the moment is timing. I agree that at present we have a deficiency in the legislation. I would have preferred that we go down the route of having the reserved jurors as to potentially having not the twelve, that would potentially get rid of any complaints from the defence, but at the moment I'm having a lot of trouble supporting this. From the sounds of it I'll be Robinson Crusoe in that anyway so it won't matter, but mainly due to the timing, and I've only received the bill today. Like everyone else I'm assuming. I've only had legal advise over the telephone from one person. I haven't been able to go and get legal advise from anyone else about it. As most people know in any court case there's usually two lawyers and they've got a different view on just about everything. It's hard to know just from that exactly where we stand. Unfortunately I can't support it. Thank you Mr Speaker

SPEAKER

Any further debate Honourable Members. The question is that the Bill be agreed to in principle Honourable Members and I put that question

QUESTION PUT

AGREED

MR T BROWN

NO

Thank you. The Bill is agreed to in principle

Is it the wish of the House to dispense with the detail stage. Thank you. We dispense with the detail stage. I look to you Chief Minister

MR BUFFETT

Mr Speaker I move that the Bill be agreed to

SPEAKER

Thank you Mr Buffett. Is there debate on the question that the Bill be agreed to. Being no further debate I put that question then that the bill be agreed to

QUESTION PUT

AGREED

MR T BROWN

NO

Mr Brown would you like the House called. The ayes have it and the Bill is so agreed to

### **FIXING OF THE NEXT SITTING DATE**

Thank you Honourable Members that concludes the Notices of our paper today that we've had a special meeting for so I look now to Mr Tim Brown Boudan for a motion in terms of our next sitting day

MR T BROWN

Mr Speaker I move that the House at its rising adjourn until Wednesday 14 February 2007, at 10.00 am.

SPEAKER

Thank you Mr Brown. Is there any debate. The question is that the Motion be agreed to.

QUESTION PUT

AGREED

The motion is agreed, we've fixed our next sitting day

### **ADJOURNMENT**

MR SHERIDAN

do now adjourn

Thank you Mr Speaker I move that the House

SPEAKER

Thank you Mr Sheridan. Is there any participation in adjournment debate Honourable Members. There being no debate I put the question that the House do now adjourn

QUESTION PUT

AGREED

Therefore Honourable Members this House stands adjourned until Wednesday 14 February 2007, at 10.00 am

