



**NORFOLK ISLAND LEGISLATIVE ASSEMBLY
13TH NILA HANSARD – 27 OCTOBER 2010**

**CEREMONIAL SITTING
to mark THE 50TH Anniversary of the
Supreme Court of Norfolk Island**

**SEREMOENYEL SETEN
f' maak d' fiftieth Aenewersri u'd'
Suupriim Kort 'Norf'k Ailen**

SPEAKER Good morning Honourable Members, please be seated. We will remain seated while we await the arrival of our dignitaries

Honourable Members, we welcome into the Chamber our distinguished guests, The Hon. Chief Justice Peter Jacobson, The Hon Justice Gary Downes and The Hon Justice Bruce Lander. While we are all standing I invite the Reverend Canon Broughton to lead us in prayers

PRAYER

REV CANON BROUGHTON Let us pray. God our Father, grant to our Government and all who serve in public life, wisdom and skill, imagination and energy. Protect them from corruption and the temptation of self service and help us to commit ourselves to the common good that our Island may be a secure home for all peoples through Jesus Christ the Prince of Peace. Amen

Most Gracious God and Father, ruler of the nations, we pray for the Legislative Assembly of Norfolk Island and its Members and officers, direct their work and influence their decisions to the advancement of your glory, the safety and welfare of this island so that peace and happiness, truth and justice, may be established among us, through Jesus Christ our Lord. Amen

SPEAKER Thank you Reverend Broughton. Honourable Members and guests please be seated

JUSTICE JACOBSON Thank you Madam Speaker. Thank you Chaplain. Thank you Chief Minister and Members of the Legislative Assembly. It's an honour to be here today to participate in the celebrations which mark the 50th anniversary of the appointment of the first Judge of the Supreme Court of Norfolk Island. A fuller version of what I'm about to say will be available, not on the Norfolk Island website, but in the ceremonial sitting which will be held in the Court commencing at 12 o'clock, during which I'll trace in a little bit of detail the history of the establishment of the Supreme Court and the administration of justice in Norfolk Island. There are five essential points which emerge from the history. The first is the close relationship between the form and shape of the administration of justice and history of Norfolk Island. The second is the relationship between the executive Government and the administration of justice. At their inception the two were very much intertwined. Eventually they adopted the course of modern democratic societies by following separate pathways which provide for independent judiciary. The third is the development of the roll of the judiciary. Although independent the judiciary is not remote in upholding the rule of law. The judiciary

displays a close interest in and appreciation of the history of Norfolk Island, as the Administrator said this morning in Church, justice is very much rooted in the community. The fourth point is the emergence of the role of the Administrator. In earlier times there was a Governor who was usually the Governor of New South Wales who also served as Governor of Norfolk Island and who seemed at least for some time, to have virtually unfettered authority. Today, the Administrator is the essential arm of the Government of Norfolk Island appointed by the Commonwealth and acting with the advise of the executive council. The fifth and last point which emerges, although not the last chronologically, is the arrival of the settlers from Pitcairn and the reference to them in legislative instruments as part of a "distinct and separate settlement". The high water mark of the self governance of Norfolk Island is to be found in legislation enacted in 1979. Consistently with the principles of separation of powers and the role of an independent judiciary it is not for the courts to comment on how self government is to be applied. The role of the judiciary is to interpret the law and to apply it. It is of course for the executive Government to make the laws which we merely interpret and apply in delivering our judgments without fear or favour. That is not to say that we remain aloof from the affairs of Government. There is an important relationship between the judiciary and the Government, each being separate arms of the government of Norfolk Island as you can see by today's proceedings in which we all recognise the important milestone of the establishment of the Supreme Court of Norfolk Island. Thank you

SPEAKER Thank you very much Chief Justice Jacobson. Honourable Members may I on your behalf formally welcome to the floor of the House Chief Justice Jacobson, Justice Downes and Justice Lander. It is wonderful to have you with us here on this auspicious occasion, and also to welcome to the public gallery our invited guests, ladies and gentlemen. Chief Minister could I just look to you for one moment on a matter of procedure please

MR BUFFETT Madam Speaker I note that Mr King is not with us this morning, may I seek leave on his behalf

SPEAKER Thank you Chief Minister, is leave granted Honourable Members. Leave is so granted Honourable Members

Honourable Members, we have gathered today in the Legislative Assembly Chamber to mark the 50th Anniversary of the Supreme Court of Norfolk Island which was constituted in 1960 with the appointment of the first Justice of the Supreme Court, Justice Richard Eggleston. Justice Eggleston's role in the Supreme Court, as you will all know, came to prominence in the decision of *Newbery V. The Queen* (1965) where His Honour held that Norfolk Island was a territory placed under the authority of the Commonwealth pursuant to section 122 of the Constitution. In order to know where we're going, we have to understand where we've been and so to set the scene today of the judicial path this Island has travelled, I have chosen to take us back in history to the time of commencement of this, the Third Settlement of Norfolk Island, which commenced with the arrival of the 194 men, women and children from Pitcairn Island on the "Morayshire". They arrived, a self governing people, with a code of laws reduced to writing in 1838. It was their Constitution – the *Codex Pitcairnensis* – which included provision for an elder or magistrate who must be native born to be elected by free votes of every native born on the island, male and female, who shall have attained the age of eighteen years; or of persons who have resided five years upon the island. Not only did they give the vote to women, they also set down that education should be compulsory for all children and established the first RSPCA laws in that cats must not be killed. A farseeing people indeed and certainly putting in place legislation that led the way for the rest of Australia to follow. The arrival of the Pitcairners saw a need for recognition of the way this new society of people should be governed on Norfolk Island; and so it was that on 24th June 1856 that the following Instructions were Given at Court at Buckingham Palace for the Governor for the time being of Norfolk Island who at that time was Sir William T. Denison. And I quote in part from the Instructions from Buckingham Palace -

“WHEREAS by an Order made by Us in Council bearing even date with these Presents, we did order that, from and after the date of the proclamation of that Order as therein directed, the said island called Norfolk Island should be and the same was thereby separated from the said Colony of Van Diemen’s Land, now called Tasmania, and erected into a distinct and separate Colony, the affairs of which shall, until further Order is made in that behalf by Us, be administered by a Governor to be for that purpose appointed by Us with the advice and consent of our Privy Council: And whereas by the said Order in Council it is further provided that, from the date aforesaid, the said Governor of the said Colony of Norfolk Island shall have full power and authority to make laws for the order, peace and good government of the said island, subject nevertheless to such Rules and Regulations as we at any time by instruction or instructions, with the advice of our Privy Council, under our Sign Manual and Signet, may think fit to prescribe in that behalf:

NOW WE do hereby declare the following to be the Rules and Regulations so mentioned and referred to in the said Order in Council. In framing such laws as aforesaid you are to observe, as nearly as the circumstances will admit, the rules laid down by our Instructions under our Sign Manual and Signet addressed to you from time to time as Governor of New South Wales: And whereas the inhabitants of the said island are chiefly emigrants from Pitcairn’s Island in the Pacific Ocean, who have been established in Norfolk Island under our authority, and who have been accustomed in the territory from which they have removed to govern themselves by laws and usages adapted to their own state of society, you are, as far as practicable, and as far as may be consistent with the regulation next preceding, to preserve such laws and usages, and to adapt the authority vested in you by the said recited Order in Council to their preservation and maintenance.....”

Governor Denison visited the Island and drew up a code of 39 laws dated 14 October 1857, which included the appointment of a Chief Magistrate and two Assistants or Counsellors who were to be elected annually by the community. And as they say Honourable Members, the rest is history and, with the passage of time in 1960, the Supreme Court of Norfolk Island, being the Superior Court of Record of the Territory, was established under the Norfolk Island Act of 1957 and continues to this day.

I now look to the Chief Minister, the Hon David Buffett to take history forward for us this morning

MR BUFFETT

Thank you Madam Speaker. First of all I recognise the address made by the Chief Justice to us this morning, and I acknowledge your Address, recognising the 50th Anniversary of the Supreme Court of Norfolk Island and I recognise with pleasure those that you have welcomed in this Chamber. The Chief Justice of the Supreme Court of Norfolk Island, Hon. Chief Justice Jacobson, with his brother Judges, The Hon. Justice Downes and The Hon. Justice Lander. Mrs Downes and Mrs Lander, are also present in the Chamber, and I greet them with equal pleasure this morning. This is really a benchmark Sitting. We all know that Norfolk Island, in its total history has had courts, and tribunals and judicial entities, in some number. We don’t have any records of the judicial system of the Polynesian settlement, which was a settlement established in this place, for a much longer period than the present European arrangement to date. There is however respectable documentation of the European convict and penal settlements and their legal processes in this Island. Much of it of course, occupied with entities of the then various colonies in this hemisphere and now incorporated into the Commonwealth of Australia. This convict and penal period and 1788 to 1856 is the period I am referring to here, and in mentioning the 1788 mark, I mention in Norfolk Island that means only forty days after Sydney Cove was established, so very early in the piece but this period was significantly recognised, in August just past, with the inscription of eleven Convict sites, that is ten within Australia and the Kingston and Arthurs Vale Historic Area here in Norfolk Island. All of those twelve sites on to the World Heritage Register. Today’s Ceremonial Sitting recognises a judicial entity, in the period which immediately followed this convict era. The period commenced by the descendants of the settlers arriving from Pitcairn Island as you have described to us Madam

Speaker, in 1856. It is the Island's fourth settlement. I mention that with some emphasis because traditionally until recently in terms of the Polynesians, we've been counting them one, two, three from the Penal settlements. The fourth settlement. Their laws and their system of justice really didn't originate from the date of their arrival here in 1856. Yes, as you equally pointed out Madam Speaker, their laws were revised within eighteen months of their arrival here, but retained some key components established earlier, in their former home of Pitcairn Island. Two were benchmark laws in themselves and you referred to them. May I elaborate them. Education was compulsory upon the Pitcairners arrival here in 1856 and continued to be enshrined in their revised laws and this statutory provision was well ahead of other British entities, and certainly ahead of Britain itself which enacted statutory provisions to this effect in 1880. The second of the benchmarks was securing the vote for women. The Statutes record that it was not the suffragettes of Britain who first secured the vote for women. The first claim is made by New Zealand. 1893. The self-governing colony of South Australia granted women the vote in 1894. Britain itself not until 1919, and then only for women over 30 years. I'm not too sure of the reason for the over thirty bit but there we are. But here is the point. The vote for women was secured in Pitcairn Island in 1838. Some 55 years before New Zealand where the first claim is made, and it continued upon the 1856 migration to Norfolk Island. The Governor at the time was Sir William Denison and he revised the Norfolk Island laws and promulgated those revised laws and I think I heard you made mention of that also Madam Speaker, in October 1857 retaining the vote for women, and he recorded in his two volume memoirs published in 1870 that he did so, and he said words to this effect, that in doing so, he trusted his Imperial Masters would not accuse him of "petticoat government". I rather thought "petticoat government" was a reasonably recent term but here was Denison using it in 1857. His judgement as Governor was apparently not found wanting as he was subsequently appointed Governor of Madras; after his term as Governor of Norfolk Island and of New South Wales. Madam Speaker you are looking at me and on the slight chance that you may be thinking to call me to order on a matter of relevance, I point out another interesting aspect of this earlier era of the newly arrived Pitcairn Settlers in Norfolk island and that is, and the Chief Justice referred to this also, the combined roles of the Elected Chief Magistrate and his two equally elected councillors; that is their role to administer the Executive Arm of Government and also perform the judicial functions and responsibilities within the Island and that wasn't unusual in those times and it was in existence here. Separation of Powers really didn't occur in this place until the early 1900's. We of course perform quite differently today. This elected legislature here has a responsibility to think through, consider, propose and eventually enact legislation. Ministers, derived from the elected Parliament have the responsibility of Executive day to day government and both functions are separated from the demanding and respected judicial tasks, performed by Magistrates and Justices, including of course the Chief Justice and the Justices of the Supreme Court of Norfolk Island. The Court which particularly interests us today is of course The Supreme Court of Norfolk Island, as has been earlier pointed out, constituted in 1960, pursuant to the provisions of the Norfolk Island Act 1957, and Act of the Parliament of the Commonwealth of Australia. This is the Court which celebrates its half-century this year. This is the Court established as the Court of Superior Record, and has served this Island well in its administration of justice. The roll, r-o-l-l in this particular instance, of Justices is impressive, commencing as others have pointed out this morning with Mr Justice Eggleston, appointed on this very day, 50 years ago, on the 27th October in 1960. Distinguished Justices have followed: Mr Justice Joske; Mr Justice Dunphy, was the Senior Justice upon our commencement of self-government in 1979. He sat where the Parson is now sitting at the Inaugural Sitting of the Legislative Assembly. Mr Justice Evatt; Mr Justice Fox, who was the first appointed Chief Justice; Mr Justice St John; Mr Justice Morling; Mr Justice Beaumont; Mr Justice Wilcox; Mr Justice Weinberg; Justice Susan Kiefel, the first female Justice of the Norfolk Island Supreme Court now significantly elevated to the High Court of Australia and presently of course, mentioned earlier, Chief Justice Jacobson; Justice Downes and Justice Lander. All have come to us from the Bench of the Australian Federal Court, and I record warmly, thanks to the principals of that Court for their professional care towards the interests of this Court, the Supreme Court of Norfolk Island, including facilitating attendance at these 50th Anniversary celebrations. I take the liberty, Madam Speaker, of quoting Mr Donald R. Wright, sometime Crown Counsel in Norfolk Island, a Secretary to Government and a respected continuing legal practitioner. He copied me a letter just in the last few days in which

he in part wrote this, "... the Court has been served by judicial officers of the very highest quality and the Norfolk Island community has been well-served by the Court in terms of access to justice over the half century since it was established...".

In acknowledging the Justices of the Court, may I also extend my appreciation to the officers of the Court including the office of Registrar and Deputy Registrar. Madam Speaker, I note with appreciation your own service of some four plus years as Deputy Registrar of the Supreme Court of Norfolk Island. I particularly note, the record of service of Margaret Evans, who is in her forty second year of service in the Administration of Norfolk Island and the major number of those years have been in the precinct of the Court Offices. Since January 1997 she has held the appointment of Deputy Registrar of the Supreme Court of Norfolk Island. Madam Speaker, I offer compliments to the Chief Justice, the Justices and officers of The Supreme Court of Norfolk Island, and their predecessors, and record the thanks of this Parliament here this morning and the Government of Norfolk Island, for their sterling contribution to the delivery of justice in Norfolk Island throughout 50 years.

SPEAKER Thank you Chief Minister and I'm sure I am sharing the views of all around this table in thanking you for that stirring address. Could I now invite Justice Downes, to come and say a few words to us, thank you

JUSTICE DOWNES Madam Speaker, Chief Minister, Mr Attorney, other Ministers, Members of the Legislative Assembly. It's a very great privilege to me to have been invited to address the Legislative Assembly on the occasion of the 50th anniversary of the Supreme Court of Norfolk Island. I count it a great privilege to be here on this rather lovely day and to be able to take part in the ceremonies. Thank you Madam Speaker and Chief Minister for your remarks which I am sure will be warmly supported by all of the judges of the court. I think this must be the first occasion on which the three arms of Government in Norfolk Island, the legislature, the executive and the judiciary, have sat together at the one place, at the one time. Ordinarily they are only horizontally separated but here on this occasion all the judges of the court and nearly all of the Members of the Legislative Assembly are together along with the Chief Minister as head of the Administration so it seems to me to be, and I again would agree wholeheartedly with the Chief Minister, something of an historic occasion. The privilege of talking to you for a few minutes this morning is added to by presenting to me also a great pleasure for a number of reasons and I just take a minute or two if I can to cover them. The first of course is my pride in being a judge of the Supreme Court of Norfolk Island. As the Chief Minister has said, a court which has had some very distinguished judges over the years. I am fortunate enough to have known every single one of them with the exception of Sir Richard Eggleston and I'm not sure that I might not have appeared before him at some time and that it slipped my mind, but I did know all of the others, and at least three of them I would count as close friends. And they are of course Justice Beaumont, who was a very close friend of mine, Justice Morling and Justice Wilcox who I first met when I was about eleven or twelve so it's a great pleasure for me to be able to be here as a Member of the court and be able to take part in these proceedings. The second reason why it's a particular pleasure is to be able to celebrate in a way my association through the court with Norfolk Island in which I've always had a significant interest and I think that it's part in the history of the South Pacific puts it in really quite a unique position in the world. The four settlements here that the Chief Minister mentioned, mark it apart from just about every other country in the world. The first settlement only as the Chief Minister mentioned, a few weeks after the first fleet entered Botany Bay. I'm not sure that a lot of people perhaps in the Australian mainland understand that Norfolk Island was settled with Botany Bay, not as some kind of occasion that took place afterwards. Then there was the second of course the harsh penal settlement that in one sense is perhaps good for tourism sometimes but a rather dark period in the history of Norfolk Island. Then there's the remarkable settlement of the Bounty descendents. That's always conjured up something in my mind that Queen Victoria in a sense gave to the struggling group of people on Pitcairn Island, a new home that was more or less kind of ready to be occupied I guess in a way and it must have been an electric time in England

when the reports came back to England of this community of Christians. It must have seemed quite extraordinary in the middle of the Pacific who at first site must have seemed to be natives because after all the women were Tahitian and the children were half Tahitian and what must have gone through England as a result of the thinking about this group in the remote Pacific who were Christian, was quite extraordinary, so in any event that was the start of the Third settlement and of course there was before all of that as the Chief Minister mentioned, the mysterious but much longer Polynesian settlement here and we've looked at some of the archeological diggings relating to that, so that's another reason for a great pleasure. The third reason it gives me great pleasure to talk to you is because of my personal connection with Norfolk Island and I think that most of you know my relationship with Bev Simpson who was Bev Downes and her father of course was my grandfather, so that's another connection and the final one I only really learnt about yesterday but in the committee room opposite there is a lot recorded and I happen to live with my wife Brenda and we lived for a very long time in Mosman and I see that Mosman through the joint association with the Sirius, Lieutenant Philip King's means of making the first European settlement here, brings us together in that way, so that's another reason for my pleasure in being here. Well I just conclude my remarks if I may be saying that I think that Norfolk Island has been served very well by the Supreme Court of Norfolk Island. It's a very good combination I think that suits itself to a place like Norfolk Island because you have the benefit of having some distinguished and skilled judges but because they come here not as occasionally as Members of a large court, but are limited to two or three judges at a time, you have the opportunity to have judges who get to know something about the community of Norfolk Island and the culture of Norfolk Island and although the law is the law and needs to be objectively enforced, it never does a judge any harm to have some understanding of the circumstances in which he is judging so as the Supreme Court of Norfolk Island enters into the second half of its first century, I hope it will continue to serve Norfolk Island well and in particular I hope it will continue to serve Norfolk Island in a period of prosperity and good Government. Thank you

SPEAKER And on behalf of those gathered, I thank you too Justice Downes for that very stirring address to us today. And now I would like to invite Justice Lander to join us in saying a few words please

JUSTICE LANDER Madam Speaker and with your leave Chief Minister, Mr Attorney, Ministers, Members of the Legislative Assembly. I had prepared some remarks which I intend to deliver but before I do I think I should say something about what the Chief Minister said and record a point of disappointment. I'm from South Australia. We are a boastful lot. We have always boasted of being the first place to give the vote to women is South Australia. It's a serious matter of disappointment that I'm told today that we now have to boast that we're the second place to give the vote to women. Like Justice Downes I deem this an honour and a privilege to address this Legislative Assembly today. This is an historic occasion when all three branches of Government have met together for the same purpose. Democratic institutions such as this are built on Parliaments which represent the will of the people which they represent and an Assembly such as this functions by reserving to the executive the power to carry out the enactments passed by this Legislative Assembly and the executive retains that power only so long as the executive retains the support and the confidence of an Assembly such as this. The judiciary which is the third branch of Government is appointed by the executive. One of its most important functions of course is to decide disputes between the people of the state of which the judiciary represents, but there is a more important function of the judiciary than to simply decide cases involving the citizens of the state. It is often overlooked that one of the most important functions of the judiciary is to carry out the responsibility of ensuring that Parliaments laws are carried through and Parliament's intentions which are represented by those laws, are carried into effect. The judiciary has the responsibility of ensuring that the executives discharges its responsibilities according to law and the judiciary has the added responsibilities of ensuring that the people which the Assembly represents are protected from capricious

or arbitrary Government on the part of the executive. The judiciary does that by requiring the executive to respect the Rule of law. It is the Rule of Law which is the glue which binds together the three branches of Government and there fore holds together the society which this Legislative Assembly represents. As the Chaplain said in Church this morning. No one is above the law. Everyone is subject to the law. As long as that basic rule is recognised by the executive, by the Parliament and this Legislative Assembly and by the judiciary, the democratic institutions which this Legislative Assembly represents will be protected. As I said in opening, it is an honour and a privilege to be able to address this Legislative Assembly today and it's also an honour and a privilege to be a Member of the Supreme Court of Norfolk Island and to discharge the responsibilities to which I've referred. I am very grateful Madam Speaker that you and this Legislative Assembly has honoured the judiciary of Norfolk Island by asking all Member of the Supreme Court of Norfolk Island to address this Legislative Assembly today.

SPEAKER

We thank you Justice Lander and on behalf of my colleagues I thank all three Justices for their stirring words today. Honourable Members that concludes the ceremonial sitting this morning and I understand that we will shortly be adjourning downstairs to a ceremonial sitting of the Supreme Court of Norfolk Island.

This House now stands adjourned until Wednesday, the 3rd November 2010 at 10 o'clock

