

**NORFOLK ISLAND
THIRTEENTH LEGISLATIVE ASSEMBLY
MINUTES OF PROCEEDINGS
WEDNESDAY 6 APRIL 2011**

**NORF'K AILEN
DIISEM MENETS LARNEN WATHING HAEPN
INAA
THERTIINTH LEJESLIETEW 'SEMBLE
WENSDI 6 IEPRL 2011**

1 The Legislative Assembly met at 10.05 am, the Speaker, Hon Robin Adams JP, took the Chair and read Prayers

2 **CONDOLENCES**

Mr Snell recorded the passing of –

**Kathleen Marion LeCren
May Quintal
Brian Douglas Everett**

As a mark of respect to the memory of the deceased all Members stood in silence

3 **QUESTIONS WITHOUT NOTICE (10.13 AM)**

Mr King moved –

THAT the House take note of an answer by Chief Minister to a Question Without Notice from Mr Snell on the Chinese Tourism Market

Debate adjourned to a later time in the sitting to be determined by Speaker in consultation with Members

Time for questions without notice having expired, on motion of Mrs Ward, time for questions without notice was extended by 30 minutes (11.43 AM)

4 **ANSWER TO QUESTION WITHOUT NOTICE BY CHIEF MINISTER**

Debate resumed (Mr King) on the question –

THAT the House take note of an answer by Chief Minister to a Question Without Notice from Mr Snell on the Chinese Tourism Market

Debate ensued

Question put and agreed to on the voices

5 **ANSWERS TO QUESTIONS ON NOTICE**

Responses were provided to:

123 Mrs Ward to ask the Minister for Finance and The Attorney-General –

In relation to the Review of Telecommunications Competition report, tabled in the last sitting of the House, can the Minister confirm that a request for quotation was issued and three written quotes were obtained as required under the Administration Policy and Guidelines for the Procurement of Goods and Services, and that the cost of \$27,000 was paid from Telecom and Assembly budgets?

129 Mr King to ask the Minister for Finance and The Attorney-General –

Given that his Ministerial colleague advised the House in September last, in relation to the New Zealand Telecom debt, that the debt was not fully recognised in an accounting sense because an invoice had not been received, what other significant amounts as yet un-invoiced are not reflected in the Administration's accounting records?

131 Mr King to ask the Chief Minister –

Having now been provided with a relevant copy of Minister Nobbs' email to the Chamber of Commerce how does the Chief Minister justify his Minister's criticism of the Chamber's support of the

Territories Law Reform Bill when the Norfolk Island Government has committed in a formal agreement with the Commonwealth to public support of the Bill and its implementation?

132 Mr King to ask the Minister for Tourism, Industry & Development –

Does the removal of the SPIN signage at the Telecom office mark the end of any fanciful notion that Norfolk Island was ever able to afford to participate and does it indicate the elimination of any financial commitment entered into by the former government of Mr Nobbs?

133 Mr King to ask the Minister for Tourism, Industry & Development –

Can the Minister advise if Norfolk Telecom has sufficient working capital to allow it to maintain pace with changing technology; to acquire new innovative hardware; to provide the necessary expenditure for research and development and expected market place activities and to enable the community access to advanced services?

134 Mr King to ask the Chief Minister –

Can the Chief Minister advise whether he has identified those elements or features of the integration Road Map that are capable of being implemented more quickly in the interest of providing earliest possible economic relief and stimulus?

Deputy Speaker Snell took the chair – 12.15 PM

Speaker Adams resumed the chair – 12.22 PM

135 Mr King to ask the Chief Minister –

Is it not a fact that landing charges previously paid by travellers as a provision for Australian government loan repayment and future re-sheeting of the pavement as well as water assurance charges, previously paid by users as a provision towards upgrade and expansion of the scheme, are now paid direct into general revenue and should now be regarded as taxes?

136 Mr King to ask the Chief Minister –

What is the extent of Norfolk Island's capacity to contribute to the extent reflected in the integration Road Map; what are its limitations and to what extent will progress with implementation of the Road Map be impeded by a lack of capacity?

137 Mr King to ask the Chief Minister –

Can the Chief Minister advise what community services have been identified as being among those most likely to suffer or be curtailed due to the continuing decline in public finances?

138 Mr King to ask the Chief Minister –

Can the Chief Minister state to the House the statutory authority that supports the maintenance of an on-going master/servant relationship between an employment agent and the holder of a temporary entry permit after the former has placed the latter in an employment position?

139 Mr King to ask the Minister for Community Services –

Can the Minister state to the House the statutory authority that supports the retention over a prolonged period, of a portion of somebody's wages, by an employment agent that has placed that person in an employment position?

140 Mr King to ask the Chief Minister –

Can the Chief Minister state the statutory authority which provides the expected immigration; industrial relations and social protections to the holder of a temporary entry permit who is forced to maintain other than a normal master/servant relationship?

141 Mrs Ward to ask the Minister for Tourism, Industry & Development –

Is it a fact that under the Australian *Civil Aviation Act 1988*, the Norfolk Island route is defined as domestic and therefore Our Airline does not require the Norfolk Island Fire Service? If so, how will this Government justify the continuation of an annual half million dollar operation to satisfy one flight per week from New Zealand?

142 Mrs Ward to ask the Minister for Community Services –

Given that the Minister spoke at our last sitting in support of the Road Map, outlining access to better health services and support for vulnerable citizens, and in the knowledge that our current level of service is unsustainable, how does he envisage that reforms will enable and ensure sustainability in the long term?

143 Mrs Ward to ask the Minister for Community Services –

At the last sitting of the House the Minister said he was delighted to see the development of a proper waste management strategy listed on the Road Map. Is it not a fact that a strategy already exists; it is the lack of finance and political will that is the problem and what foreseeable financial capacity does the Government have to continue implementing the existing strategy?

144 Mrs Ward to ask the Minister for Tourism, Industry & Development –

What positive action has been taken by the Minister to provide opportunity for local fisherman to develop a deep-water commercial fishing industry and have any barriers in relation to this matter been discussed with the Commonwealth in recent weeks?

145 Mrs Ward to ask the Chief Minister –

Will the Chief Minister advise the House of the Norfolk Island and Commonwealth Government's considered position on the recommendations made by Ms Lynden Ayeliffe in her report titled 'Kingston and Arthur's Vale Historic Area (KAVHA) Governance Review', tabled by him at the 16 June 2010 sitting of this House?

146 Mrs Ward to ask the Chief Minister –

What action has the Government taken to ensure that the community is fully aware of the fact that people are encouraged to participate in the Road Map discussion paper process by the 28th of April. Where and how can the Road Map be obtained; where can people lodge submissions and how will comments be analysed and recorded by both Governments?

147 Mr Snell to ask the Chief Minister –

Would the Chief Minister please explain and provide details of the unusual police activity on Norfolk during the last fortnight, in particular:

- a) the reason for a 24 hour guard opposite the scene of fire in Taylors Road; who authorised this and at what cost to the community;
- b) the reason for the "Rambo-type" operation to destroy material which had been legally imported for quarrying purposes; who authorised this and at what cost to the community and can the Chief Minister explain why this material could not be "bunkered" for future use, particularly in view of the Island's pressing and ongoing need for quarried rock ;
- c) can the Minister confirm that all proper care was taken for the protection of the natural habitat at the disposal site and that all community members, particularly those living in the area were given adequate warning to safeguard themselves and livestock before disposal action took place;
- d) was there an assessment conducted on the possible damage to the cliff and surrounding area;
- e) was there an assessment on how many birds and or chicks would be killed because of this action; and
- f) are there any other police matters that the community should be aware of?

148 Mr Snell to ask the Chief Minister –

Can the Chief Minister, at this time, give any assurance that the extension of the Commonwealth Migration Act 1958 to Norfolk Island as recommended under the Norfolk Island Road Map, will protect Norfolk Island from illegal refugees seeking residency in Australia?

149 Mr Snell to ask the Minister for Tourism, Industry & Development –

Minister can you advise –

- a) if the Air Services Consultant Report highlighted any areas of management or scheduling or charter operation details and in particular any new way forward with tourism numbers recovery that this House and the community should be informed of; and
- b) how the Australian Government working with the Norfolk Island Government on ways to establish alternative revenues to airborne tourism

150 Mr Snell to ask the Minister for Tourism, Industry & Development –

- a) Minister can you inform this house and the community as to what you consider as the immediate benefits to Commerce and Industry that could occur as a direct result of intergovernmental discussions and what, if any, possible economic stimulus to industry and tourism as proposed in the Road Map can we expect.
- b) The Road Map identifies "remove barriers to business investment on Norfolk Island, including allowing Australian citizens to operate new businesses". Aside from a time consuming and expensive redevelopment of planning laws, what consideration is given or is to be given to ensure the protection and best outcomes for our economy and community?
- c) Can the Minister give any assurance that if the tax and regulatory provisions currently enjoyed on Norfolk Island were to change in line with what is proposed in the Road Map, businesses on Norfolk Island will be consulted to ensure that they will be able to compete competitively with any new business which may be introduced?

151 Mrs Griffiths to ask the Minister for Tourism, Industry & Development –

Aside from requesting the Commonwealth, can the Minister outline any steps he is taking or intends to take to reduce our debt to Telecom NZ?

152 Mrs Griffiths to ask the Minister for Tourism, Industry & Development –

Considering that our telecommunications sector has, for some years, faced difficulties in a number of areas including: inadequate legislation, conflict, and an acute shortage of resources, does the Minister have any intention of addressing any or all of these issues in the life of this Assembly?

153 Mrs Griffiths to ask the Minister for Tourism, Industry & Development –

Can the Minister outline any progress he's made, or barriers he's identified, in leasing our telephone number range?

The Speaker suspended the sitting at 1 pm until 2.30 pm

The House resumed at 2.32 pm, the Speaker taking the Chair**6 PRESENTATION OF PAPERS**

The following papers were presented:

- 1) Chief Minister, Mr Buffett – **Legal Aid Report from 1 July to 31 December 2010**
- 2) Chief Minister, Mr Buffett – **Virement of Funds authorised by executive member under Public Moneys Act 1979**
- 3) Chief Minister, Mr Buffett – **Commonwealth Finance Minister's (Norfolk Island) Orders 2011**
- 4) Minister for Tourism, Industry & Development, Mr Nobbs – **Inbound passenger statistics for February 2011 and March 2011**

7 MESSAGES FROM THE OFFICE OF THE ADMINISTRATOR

The Speaker reported –

Message No. 9 from the Administrator under section 21 of the *Norfolk Island Act 1979* advising that on 22 March 2011 he reserved for the pleasure of the Governor-General the Healthcare (Amendment) Bill 2010

Message No. 10 from the Administrator under section 21 of the *Norfolk Island Act 1979* advising that on 22 March 2011 he declared his assent to the Court of Petty Sessions (Amendment) Act 2011 (Act No 2 of 2011)

8 EMPLOYMENT ACT 1988 - RE-APPOINTMENT OF MEMBER TO THE EMPLOYMENT CONCILIATION BOARD

Minister for Community Services, Mr Sheridan, pursuant to notice, moved -

THAT for the purposes of subsection 65(2) of the *Employment Act 1988*, this House resolve to re-appoint –

Richard Graham Massicks

being a person with relevant qualifications and experience, to the Employment Conciliation Board for the period 17 April 2011 to 16 April 2014

Debate ensued

Question put and agreed to on the voices

9 MATTER OF PUBLIC IMPORTANCE PROPOSED BY THE CHIEF MINISTER AT 9 MARCH 2011 SITTING

Mrs Griffiths, pursuant to notice, moved - –

THAT the House take note of the statement made by the Chief Minister as a 'Matter of Public Importance' at the 9 March 2011 sitting relating to Norfolk Island's long-term sustainability and the proposed Road Map

Paper Tabled:

Ms Adams tabled an article in *The Parliamentarian Issue Two 2010* entitled 'The Elders Parliament'

Debate ensued

Question put and agreed to on the voices

10 NORFOLK ISLAND GOVERNMENT TOURIST BUREAU ACT 1980 - RE-APPOINTMENT AND APPOINTMENT OF MEMBERS

Minister for Tourism, Industry & Development, Mr Nobbs, pursuant to notice, moved -

THAT this House resolve –

1. for the purposes of subsection 4(5) of the *Norfolk Island Government Tourist Bureau Act 1980* that the Minister re-appoint —

Morgan Borry Evans

as a member of the Norfolk Island Government Tourist Bureau for the period 21 April 2011 to 30 June 2011; and

2. for the purposes of section 4 of the *Norfolk Island Government Tourist Bureau Act 1980* that the Minister appoint —

Duncan Harvey Evans

David Bell

Glen Albert Buffett; and

Charisse Clarke

to be members of the Norfolk Island Government Tourist Bureau for the period 21 April 2011 to 30 June 2011

Debate ensued

Question put and agreed to on the voices

11 MUSEUM TRUST ACT 1987 - RE-APPOINTMENT OF MEMBERS OF THE MUSEUM TRUST

Chief Minister (Mr Buffett), pursuant to notice, moved -

THAT this House resolve for the purposes of subsections 5(1) and (2) of the *Museums Trust Act 1987* that the Minister re-appoint the following as members of the Norfolk Island Museum Trust:

**Ronald Coane Nobbs;
Jodie Therese Williams; and
Elizabeth Anne McCoy**

for the period 21 April 2011 to 20 April 2013.

Debate ensued

Question put and agreed to on the voices

12 OMBUDSMAN BILL 2011

Chief Minister, Mr Buffett, pursuant to notice, presented Bill and moved –

THAT the Bill be agreed to in principle

Paper Tabled:

Chief Minister tabled the Explanatory Memorandum to the Bill

Debate ensued

Debate adjourned (Mr Buffett) and the resumption of debate made an Order of the Day for a subsequent day of sitting

13 AIRPORT (AMENDMENT) BILL 2011

Resumption of debate (Minister for Tourism, Industry & Development, Mr Nobbs) from 9 March 2011 on the question – That the Bill be agreed to in principle

Question put

Bill agreed to in principle on the voices

Leave granted to dispense with the detail stage

Mr Nobbs moved –

THAT the Bill be agreed to

Debate ensued

Question put and agreed to on the voices

14 NORFOLK ISLAND GOVERNMENT TOURIST BUREAU (AMENDMENT) BILL 2011

Resumption of debate (Minister for Tourism, Industry & Development, Mr Nobbs) from 9 March 2011 on the question – That the Bill be agreed to in principle

Debate ensued

Deputy Speaker Snell took the chair – 4.15 PM

Speaker Adams resumed the chair – 4.32 pm

Debate ensued

Mr King moved –

THAT debate be adjourned and the resumption of debate made an Order of the Day for a subsequent day of sitting

Question put

The House voted –

Ayes 0

Noes 5

Abstentions 0

Mr Snell

Ms Adams

Mr Sheridan

Mrs Griffiths

Mr Buffett

Mr Nobbs

Mrs Ward

Mr King

Mr Anderson

Motion negatived

Question put – That the Bill be agreed to in principle

Bill agreed to in principle on the voices

Detail stage:

Mr Nobbs moved detail stage amendments dated 5 April 2011, namely –

Question – That the amendments be agreed to – put and agreed on the voices

Question – That the clauses as amended be agreed to – put and agreed on the voices

Question – That the remainder of the Bill be agreed to – put and agreed on the voices

Mr Nobbs moved –

THAT the Bill as amended be agreed to

Question put and agreed to on the voices, Mr King and Mrs Griffiths dissenting

15 SOCIAL SERVICES ACT 1980 – LUMP SUM PAYMENTS

Notice of motion withdrawn by leave from the Notice Paper at the request of Mr. King

16 EMPLOYMENT (AMENDMENT) BILL 2010

Resumption of debate (Minister for Community Services, Mr Sheridan) from 9 March 2011 on the question – That the Bill be agreed to in principle

Question put

Bill agreed to in principle on the voices

Detail stage:

Mr Sheridan moved detail stage amendments dated 8 March and tabled at the sitting of the House on 9 March 2011

1. That the title of the Bill be changed from “2010” to “2011” in the heading and in section 1.
2. That the long title of the Bill be changed to—

“A Bill
for

An Act to amend the *Employment Act 1988* to remove eligibility for worker's compensation in respect of work related stress arising from or caused by reasonable employer management decisions or proposed termination from employment or disciplinary action; and to establish a statutory basis for the Employment Liaison Officer as the manager for the Employment department and supervisor of employment inspectors and workplace related matters under the Employment Act as well as being the primary decision maker under the Worker's Compensation Scheme and related purposes.”.

3. For Item 1, substitute—

(1) Repeal the definitions “disease” and “work-related accident” and substitute—
“ ‘work related accident’ means a situation or event occurring at a work place or arising out of, or in the course of, an employee’s work that results in death or significant injury.”.

(2) Insert the following definitions—

“ ‘disease’ means

(1) (a) an ailment suffered by an employee; or

(b) an aggravation of such an ailment;

that was contributed to, to a significant degree, by the employee’s employment.

(2) In determining whether an ailment or aggravation was contributed to, to a significant degree, by an employee’s employment, the following matters may be taken into account—

(a) the duration of the employment;

(b) the nature of, and particular tasks involved in, the employment;

(c) any predisposition of the employee to the ailment or aggravation;

(d) any activities of the employee not related to the employment;

(e) any other matters affecting the employee’s health.

(3) This definition does not limit the matters that may be taken into account.”.

“ ‘employee’ means any person who works in the employer’s business in any capacity and includes the employer if working in the employer’s own business;”.

‘injury’ means—

(a) a disease suffered by an employee;

(b) an injury (other than a disease) suffered by an employee, that is a physical or mental injury arising out of, or in the course of, the employee’s employment; or

(c) an aggravation of a physical or mental injury (other than a disease) suffered

by an employee (whether or not that injury arose out of, or in the course of, the employee’s employment) that is an aggravation that arose out of, or in the course of, that employment,

but does not include a disease, injury or aggravation suffered as a result of reasonable administrative action taken in a reasonable manner in respect of the employee’s employment.

Note: reasonable administrative action is defined in subsection (1A).”.

“ ‘significant degree’ means a degree that is substantially more than material.”.

4. Item 2 is amended by deleting all words following paragraph (f) of the proposed new subsection 26(1A), and inserting—

“and in this subsection ‘reasonable’ means action that at the time—

(i) was lawful;

(ii) was not irrational, absurd or ridiculous;

(iii) was relative or related to the conduct or behaviour giving rise to that action;

(iv) was taken pursuant to the regulatory rules applicable to the employee; and

(v) was taken in circumstances of fairness to the employee, and includes action done by or on behalf of an employer by a person who has a reasonable belief at the time that the thing done was reasonable (as described above) but nothing in this subsection affects the right of an employee to challenge the reasonableness of an action or for a decision to be made on appeal that an injury was not suffered as a result of reasonable administrative action.”.

5. Delete Item 3 and substitute—

“3. **New section inserted**

Following section 39, insert—

‘Employment Liaison Officer

39A. (1) For the purposes of this Act the position of Employment Liaison Officer is established.

(2) The Employment Liaison Officer—

(a) is appointed by the Chief Executive Officer in accordance with the *Public Sector Management Act 2000*;

(b) has the day to day management and control of the scheme established by subsection 39(4) including the administration of claims;

(c) is subject to the directions of the Minister and the Chief Executive Officer but not in connection with any matter concerning the investigation and determination of a claim by an employee of the Administration or a public sector agency or a territory instrumentality;

(d) is the responsible officer for the purpose of certifying that an employment contract entered into in accordance with section 11, complies with the Act and the Regulations;

(e) is responsible for the management and control of inspectors, including the power of direction to comply with, or perform a duty required to be performed by, this Act;

(f) shall exercise such other functions powers and responsibilities in respect of any provision or provisions of this Act or the Regulations as may be required or permitted to be exercised thereby or as may be lawfully delegated or directed by the Chief Executive Officer or the Minister; and

(g) may, by instrument in writing, delegate a power or function under this Act to an inspector or another employee of the Administration other than this power of delegation or a power or function delegated to him or her by the Minister or the Chief Executive Officer.’ ”.

6. Replace Item 4(2) by the following—

“At the end of paragraph (b), insert—

‘ ; or if

(c) the incapacity, injury, illness or mental condition of an employee is attributable to work-related stress caused by or arising out of, disaffection or disagreement arising out of or in connection with a decision or action or proposed decision or proposed action of an employer that is both lawful and reasonable in the circumstances.’ ”.

7. Insert new Items as follows—

(1) **“6. Correction of section reference**

Amend subsection 30(4) by substituting for ‘section 18’—
‘section 17’ ”.

(2) **“7 Replacement of subsection 28(4)**

For subsection 28(4) substitute—

‘(4) Subject to this section, damage to the body or mind of an employee caused exclusively by—

(a) disease, infection or the ageing process; and

(b) is not caused by or arise from a work-related accident,

does not constitute incapacity for the purposes of this Part.’ ”.

“8. New section 45A.

Following section 45, insert—

‘Powers of the Employment Liaison Officer in matters of misconduct

45A. (1) The Employment Liaison Officer may on his or her own motion or must, if requested by an employee or the employer of the employee, investigate and determine whether in his or her opinion the claim by an employee is shown on the balance of probabilities to be a claim that should be disallowed under section 45.

(2) In making a determination under subsection (1) the Employment Liaison Officer shall determine, where a matter falls within paragraph 45(c), if the decision or action or proposed decision or proposed action of the employer was lawful and reasonable in the circumstances.

(3) A determination of the Employment Liaison Officer under this section must be provided in writing together with the reasons for his or her determination, to the employee concerned, and the employer.’ ”.

“9. New definition in section 48

Immediately before the definition “incapacity” in section 48(1), insert—

‘bullying’ means repeated unreasonable behaviour directed towards an employee or group of employees that creates a risk to health and safety and may include or involve—

(i) publicly humiliating someone, verbal abuse or spreading malicious rumours or gossip;

(ii) physical bullying such as the use of physical actions to bully, such as hitting, poking, tripping or pushing or repeatedly and intentionally damaging someone’s belongings;

(iii) the use of negative words, repeatedly and intentionally to upset someone, such as name calling, insults, homophobic or racist remarks, and verbal abuse;

(iv) social bullying such as lying, spreading rumours, playing nasty jokes, mimicking a person or deliberately excluding a person;

(v) psychological bullying where someone (or a group of people) repeatedly and intentionally use words or actions which cause psychological harm and includes intimidating a person manipulating people and stalking a person;

(vi) cyberbullying where someone (or a group of people) uses technology to verbally, socially or psychologically bully a person and may take place in chat rooms, through social networking sites, emails or mobile phones.’ ”.

“10. Amendment of section 49

Following paragraph 49(2)(a), insert —

‘(aa) provide and maintain a place of work that is free of bullying and to take such steps as may be necessary to prevent or stop bullying that may take place;’ ”.

“11 Amendment of section 55

(1) Amend subsections 55(1) and (2) by inserting before the words ‘an inspector’ wherever appearing, the words ‘the Employment Liaison Officer or’;

(2) For subsection 55(3), substitute—

‘(3) Where the Employment Liaison Officer or an inspector receives a complaint under subsection (1) or (2), the Employment Liaison Officer or the inspector shall, as soon as practicable, investigate the complaint.

(4) The Employment Liaison Officer to whom a complaint has been referred may require an inspector to investigate the complaint.’ ”.

“12. Amendment of section 76

Following paragraph 76(1)(c), insert—

‘(ca) a complaint or grievance arising out of an unsuccessful worker’s compensation claim made by the employee; or’ ”.

Paper Tabled:

Mr Sheridan moved -

THAT the detail stage amendments be taken as read, printed into Hansard and agreed to as a whole, namely -

Debate ensued

Question – That the amendments be agreed to – put and agreed on the voices

Question – That the clauses as amended be agreed to – put and agreed on the voices

Question – That the remainder of the Bill be agreed to – put and agreed on the voices

Mr Sheridan moved –

THAT the Bill as amended be agreed to

Question put and agreed to on the voices

17 FIXING OF NEXT SITTING DAY

Mr Snell moved -

**THAT the House at its rising adjourn until
Wednesday the 4th May 2011 at 10 am**

Debate ensued

Question put and agreed to on the voices

18 ADJOURNMENT

Mrs Griffiths moved –

THAT the House do now adjourn

Deputy Speaker Snell took the chair – 5.01 pm

Debate ensued

Paper Tabled:

Ms Adams tabled an article entitled ‘Consensus Government in the Northwest Territories – Guiding Principles and Process Conventions’ and requested that the Guiding Principles number 1 to 10 be included in Hansard

Question – That the motion be agreed to - put and agreed to on the voices

AND THEN the House at 5.08 pm adjourned until Wednesday 4th May 2011 at 10.00 am

Gaye Evans
Clerk to the Legislative Assembly

MEMBERS PRESENT: All Members were present