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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE HOUSE OF REPRESENTATIVES

JUDICIAL APPOINTMENT (WESTERN SAMOA) BILL 1980

EXPLANATORY MEMORANDUM

(Circulated by the Minister representing the Attorney-General,
The Honourable Ian Viner, M.P.)

JUDICIAL APPOINTMENT (WESTERN SAMOA) BILL 1980

Purpose

The purpose of the Bill is to approve the acceptance by the Honourable Robert James Baldwin St John, a federal judge, of the office of Chief Justice of the Supreme Court of Western Samoa and to enable him to retain his Australian appointments and his entitlements in respect of those appointments (e.g. pension and long leave).

St John J. was sworn in as Chief Justice of the Supreme Court of Western Samoa for a term of two years, subject to reappointment, on 7 July 1980.

Clause 1 - Short Title

This clause provides for the title of the Bill.

Clause 2 - Commencement

This clause provides for the Bill to come into operation on the day on which it receives Royal Assent. St John J. was sworn in as Chief Justice of the Supreme Court of Western Samoa on 7 July 1980 and clause 4 of the Bill will operate retrospectively to that date. It is therefore desirable that the Bill come into operation as soon as possible.

Clause 3 - Interpretation

This clause provides that, unless the contrary intention appears, 'Judge' means a Judge of the Federal Court of Australia, of the Supreme Court of the Australian Capital Territory, of the Australian Industrial Court or of the Supreme Court of Norfolk Island. These are the Australian judicial offices held by St John J.

Clause 4 - Acceptance of appointment as Chief Justice of the Supreme Court of Western Samoa

Sub-clause (1) provides that section 4 applies to the appointment of St John J. as Chief Justice of the Supreme Court of Western Samoa that took effect in Western Samoa on 7 July 1980.

Sub-clause (2) provides that approval is given to the acceptance by St John J. of the appointment as Chief Justice of the Supreme Court of Western Samoa. The sub-clause goes on to provide that acceptance does not affect, and shall be deemed not to have affected his office as a Judge. Retrospective operation is necessary since the appointment took effect on 7 July 1980.

Sub-clause (3) provides that if, with the approval of the Governor-General, St John J. accepts an extension of the appointment that acceptance does not affect his office as a Judge.

Sub-clause (4) provides that service by St John J. as Chief Justice of the Supreme Court of Western Samoa during any period which he held or holds office as a Judge shall count as service in that office. Service as Chief Justice of the Supreme Court of Western Samoa will, therefore, count for, for example, the Judges' Pensions Act 1968 and the Judges (Long Leave Payments) Act 1979.

Clause 5 - Waiver of salary not to affect application to certain Acts

This clause provides that any waiver by St John J. of his entitlement to receive salary in respect of his Australian appointments is to be disregarded for the purposes of any application to him of the Judges' Pensions Act 1968 or the Judges' (Long Leave Payments) Act 1979.

Western Samoa will pay St John J. in respect of the Western Samoan appointment. St John J. has agreed to waive his entitlement to Australian salary during that appointment.

The effect of the clause is that, notwithstanding the waiver of entitlement to Australian salary, the Australian salary is to be the base for the calculation of any entitlement to pension or payment in lieu of long leave.

Clause 6 - Entitlement to Pension

This clause provides that for the purposes of the Judges' Pensions Act 1968, St John J. shall be taken not to have retired as long as he holds office as Chief Justice of the Supreme Court of Western Samoa. The result is that he will not be entitled to Australian pension so long as he holds that office.