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The Parliament of the Commonwealth of Australia

SENATE

Norfolk Island Amendment Bill 1981

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister Representing
the Minister for Home Affairs and Environment, Senator
the Hon. Peter Baume.)

Outline

The main purpose of the Bill is to bring the constitution of the Supreme Court of Norfolk Island into line with the Supreme Courts of the Australian Capital Territory and the Northern Territory by providing for a Chief Judge, who will exercise all the present powers of the Senior Judge.

The opportunity has also been taken to provide that future appointees as judges of the Court should retire at age 70 whether or not they are obliged to retire at that age from an Australian Court. Judges of the Supreme Court of Norfolk Island must be appointed from persons who are Judges of other Courts created by the Parliament.

The Bill also clarifies the original intention that a Judge of the Supreme Court of Norfolk Island ceases to be a Judge of the Court if he ceases to be a Judge of another Court created by the Parliament.

Notes on Clauses

Clause 1 : Short title, &c

Self-explanatory. The Principal Act is the Norfolk Island Act 1979.

Clause 2 : Interpretation

Amends section 4 of the Principal Act, inserts a definition of 'Chief Judge', and amends the definition of 'Judge' so that, unless the contrary intention appears, a reference to 'Judge' in the Principal Act includes a reference to the Chief Judge, omits the definition of 'senior Judge'. The seniority of judges will now be provided for by new section 54.

Clause 3 : Constitution of Supreme Court

Amends section 52 of the Principal Act so that the Supreme Court consists of a Chief Judge and such other Judge or such other Judges as are appointed by the Governor-General.

Provides that this amendment shall not affect the continuance in office of a Judge appointed before the commencement of the Act.

Clause 4 : Appointment of Judges

Amends Section 53 of the Principal Act.

Inserts a new sub-section (1A) to allow the Governor-General to appoint a person who is a Judge of another Court created by the Parliament to be the Chief Judge of the Supreme Court. Sub-section (2) is amended to include a reference to the new sub-section (1A). Sub-sections (3), (4), (5) and (6) are added to Section 53.

The proposed sub-section 53(3) will provide that a person shall not be appointed as Chief Judge or as a Judge if he has attained the age of 70 years and sub-section 53(4) will provide that a Judge (including the Chief Judge) ceases to hold office upon attaining the age of 70 years.

The proposed sub-section 53(5) will provide that a Judge (including the Chief Judge) ceases to hold that office if he ceases to hold office as a Judge of another court created by the Parliament.

The proposed sub-section 53(6) will provide that a judge (including the Chief Judge) may resign his office.

The proposed sub-sections 53(4) and (5) will only apply to a Judge who currently holds office if he is appointed Chief Judge. It is only in this event that such a Judge will have to retire at 70 or upon ceasing to hold office as a Judge of another court.

Clause 5 : Acting Chief Judge

This clause will add section 53A to the Principal Act. The proposed section provides that the next senior Judge shall perform the duties and exercise the power of the Chief Judge. While there is a vacancy in the office or the Chief Judge is absent from duty.

Clause 6 : Seniority of Judges

This clause repeals the present section 54 of the Principal Act which provides that Judges have seniority according to the dates of their Commission. The proposed section 54 will provide that the Chief Judge is the senior Judge of the Court and the other Judges have seniority according to the dates upon which their Commission's took effect. Where more than one Commission takes effect on the same date seniority in accordance with the precedence assigned in the Commissions.

Clause 7 : Exercise of Jurisdiction

This clause repeals sub-section 58 (2), which provides that the Senior Judge may make arrangements for exercising the jurisdiction of the Court, and replaces it with a new sub-section 58(2). The proposed sub-section 52(2) will give the Chief Judge the responsibility for arranging the business of the Court.