Date Introduced: 3 April 1979
House: House of Representatives
Presented by: Hon. R.I. Viner, Minister for Employment and Youth Affairs.

Short Digest of Bill

Purpose

To provide for payments in lieu of long leave upon the death in office or retirement of a Justice of the High Court.

Background

The High Court of Australia is created by section 71 of the Constitution. Section 72 provides that Justices shall be appointed by the Governor-General in Council, shall not be removed except by the Governor-General in Council on an address from both Houses praying for such removal on the ground of proved misbehaviour or incapacity and shall receive such remuneration as the Parliament may fix; but the remuneration shall not be diminished during their continuance in office.

Since the passage of Constitution Alteration (Retirement of Judges) 1977 the term of a Justice of the High Court ends at 70 years although Justices may retire earlier. The compulsory retiring age does not affect any of the present members of the Court.

Remuneration for Justices is decided by Parliament in the Remuneration and Allowances Act 1973; there is provision for reports by the Remuneration Tribunal about possible alterations. Pensions for Justices are provided for in the Judges Pensions Act 1968.

There is no provision for the taking of either ordinary vacations or long service or sabbatical leave by High Court Justices in the Constitution or in any legislation.

The practice of making payments to cover long service leave not taken by High Court Justices, and other federal judges, at retirement or death in office has been criticized by Senate Estimates Committees in recent years. On 3 May 1977 the Senate Estimates Committee F was provided with an answer which covered the practice of making such
payments. It was stated that it was not appropriate for Parliament to legislate for a scheme of leave but that it might be desirable to legislate for payments in lieu of leave not taken (Hansard, Estimates Committee F, 3 May 1977, p.247).

The answer showed details of administrative arrangements for long leave for "Commonwealth judges" which was for 12 months after 10 years service and a further 12 months after each successive 10 years service as long as entitlement did not exceed 12 months at any one time. Payment on death or retirement could be a maximum of 12 months salary and lesser periods would be paid at 5.2 weeks salary for each completed year of service. This had been approved by a Cabinet Committee in 1967. These arrangements did not specifically apply to High Court Justices but it was stated that they had applied in practice to the High Court.

This Bill covers payments in lieu of long leave for the High Court. Other courts are dealt with in the Judges (Long Leave Payments) Bill 1979.

Main Provisions

Clause 4 provides for payments at retirement after at least 10 years, or death after any period of service, of 5.2 weeks salary for every year of service less any periods of long leave, with a maximum of 52 weeks salary. Payment is made to the Justice or to his widow, dependants or legal personal representative (clause 5). Clause 6 makes the necessary appropriation of Consolidated Revenue.

Clause 7 provides that unless the Governor-General directs otherwise the payments are not to be made to a Justice who has been removed from office.

26 April 1979

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