



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES

Main Committee

**SUPERANNUATION LEGISLATION
AMENDMENT BILL 2004**

Second Reading

SPEECH

Wednesday, 1 December 2004

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

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Questioner	Responder
Speaker Fitzgibbon, Joel, MP	Question No.

Mr FITZGIBBON (Hunter) (10.51 am)—The Superannuation Legislation Amendment Bill 2004 is not as interesting as the legislation just debated by the House—I suspect we will not be hearing any such colourful contributions during this debate as we heard from the member for O'Connor during the previous debate—but it is an important bill. It makes changes to the rules governing the two main superannuation schemes for public servants. They are the Commonwealth Superannuation Scheme and the Public Sector Superannuation Scheme. The bill deals with the determination of superannuation salary: the level of remuneration that is to be used in calculating superannuation benefits on retirement or resignation.

Given the complexity of many of the salary packages for the individuals who will be affected by these changes, it is important that the superannuation salary be properly set, otherwise it creates an opportunity for unjustified windfall benefits. In the absence of legally authorised determinations, it is possible for a salary package to be rearranged to the recipient's benefit and a challenge made to the validity of a determination.

The legislation will affect a small number of superannuation scheme members: senior public servants such as departmental secretaries and statutory office holders whose superannuation salaries for the purposes of calculating benefits on retirement or resignation from the Public Service are determined by individuals or entities other than the schemes themselves. These other individuals or entities include the Remuneration Tribunal, ministers and other office holders in the Commonwealth parliament, and employing bodies that have been authorised to make such decisions by the Remuneration Tribunal Act.

The legislation is needed because the determination of superannuation salary under the current law can only be done by the Remuneration Tribunal. The problem of unauthorised individuals or entities determining superannuation salary has arisen because the Remuneration Tribunal has in some cases delegated its authority, which it was not entitled to do, and because some individuals and entities assumed they had legal authority when they did not. The following two problems arise from the current situation. Firstly, it leaves the government open to litigation over the determination of superannuation salary, because the determination has no authority. Secondly, there is a loophole that could be exploited which results in an employee receiving a superannuation benefit far above that justified by the level of contributions made by that employee during their employment.

This opportunity to exploit the current system arises because the superannuation salary is determined at commencement of employment and is based on the salary package at the time. The setting of the superannuation salary is meant to prevent employees changing the packaging arrangements so that they can cash out at a higher rate of salary that does not reflect the contributions they have made to their superannuation. The lack of legal authority for the determination of superannuation salary means that it is possible for an employee to avoid it and indeed challenge it in the courts. This legislation gives legal authority to these entities to determine superannuation salary and effectively closes that loophole. The legislation includes provision to protect past determinations made in good faith but without proper legal authority. Labor therefore supports the provisions in this bill.