



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



THE SENATE

SUPERANNUATION LEGISLATION AMENDMENT BILL 2004

CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) AMENDMENT BILL (NO. 2) 2004

Second Reading

SPEECH

Thursday, 2 December 2004

BY AUTHORITY OF THE SENATE

SPEECH

Date Thursday, 2 December 2004
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Questioner
Speaker Ellison, Sen Chris

Source Senate
Proof No
Responder
Question No.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.58 am)—I move:

That these bills be now read a second time.

I seek leave to have the second reading speeches incorporated in *Hansard*.

Leave granted.

The speeches read as follows—

Superannuation Legislation Amendment Bill 2004

This Bill proposes amendments to the Superannuation Act 1976 in respect of the Commonwealth Superannuation Scheme (CSS) and the Rules for the administration of the Public Sector Superannuation Scheme (PSS).

The purpose of the Bill is to make specific provision for the superannuation salary for Departmental Secretaries and certain Australian Government office holders who are members of the CSS or the PSS.

The CSS and the PSS currently allow superannuation salary for some office holders to be determined by the Remuneration Tribunal where the Tribunal also determines the remuneration or other terms and conditions of the office holder.

The amendments contained in the Bill are designed to allow superannuation salary also to be set in a broader range of remuneration determinations. This includes determinations made by a Minister or a Presiding Officer of the Senate or House of Representatives in respect of a person who is appointed under one of various Acts of Parliament or a determination of remuneration made under the Remuneration Tribunal Act 1973.

The Bill validates some such determinations of superannuation salary that have been made in the past while also ensuring that no benefit that has been paid or is continuing to be paid will be reduced because of the amendments in the Bill.

The Bill was originally introduced into the House of Representatives on 11 August 2004, but lapsed when Parliament was prorogued for the general election. The Bill that is being re-introduced today is essentially the same as the lapsed Bill, except that it now extends to all determinations made under the Remuneration Tribunal Act and validates certain determinations of superannuation salary already made under that Act.

Classification (Publications, Films and Computer Games) Amendment Bill (No. 2) 2004

The Classification (Publications, Films and Computer Games) Amendment Bill No 2 (the Bill) will make minor technical amendments to the Classification (Publications, Films and Computer Games) Act 1995.

The amendments are designed to remove any doubt as to the validity of classification decisions made by the Classification Board or the Classification Review Board in response to deficient or defective applications for classification by law enforcement agencies, or (in the case of applications for review) applications by persons entitled to make such applications under section 42 of the Classification Act.

The Bill is designed to ensure that prosecutions for child pornography and related offences do not fail for technical reasons related to applications for classification.

While the Government is of the view that decisions made by the Classification Board and the Classification Review Board are valid even where there has been a fault in the application process, the Bill addresses a potential legal argument that a decision made in response to a defective application is invalid.

The Bill is designed to ensure that applications for classification from law enforcement agencies that have not met all the technical requirements of the Act will not result in a subsequent classification decision being invalid.

The amendments contained in the Bill will apply to classification decisions made before the commencement of these amendments, and are in that sense retrospective in their operation.

However, it is clear that this retrospectivity is appropriate and justified and will not lead to any substantive injustice.

Any errors that may have been made in the application process were purely technical and cast no doubt whatsoever on the correctness of the classification decision, which rested on the examination of the relevant product not the formalities of the application.

There is no legitimate reason why a person should be able to escape prosecution, conviction and punishment for a serious child pornography offence in those circumstances.

The Bill also removes any doubt as to the validity of decisions made or any later action taken by the Board, the Review Board or the Director in respect of the decisions validated by the Bill.

The full rigour of the classification decision making process will remain unchanged.

The Government is committed to the elimination of child pornography and this Bill will ensure that a person cannot avoid prosecution or conviction based on a technicality.

Debate (on motion by **Senator George Campbell**) adjourned.

Ordered that the bills be listed on the *Notice Paper* as separate orders of the day.