

Passed by both Houses



New South Wales

Parliamentary Contributory Superannuation Amendment (Criminal Charges and Convictions) Bill 2017

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2017



New South Wales

Parliamentary Contributory Superannuation Amendment (Criminal Charges and Convictions) Bill 2017

Act No , 2017

An Act to amend the *Parliamentary Contributory Superannuation Act 1971* with respect to the suspension or termination of superannuation entitlements of former members who are charged with or convicted of serious offences after ceasing to be a member; and to make a related amendment to the *Crimes (Sentencing Procedure) Act 1999*.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Parliamentary Contributory Superannuation Amendment (Criminal Charges and Convictions) Act 2017*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Section 3 is taken to have commenced on 23 May 2017.

3 Approval of amendments by Parliamentary Remuneration Tribunal not required

Section 4 of the *Parliamentary Contributory Superannuation Act 1971* does not apply to or in respect of this Act.

4 Repeal of Act

- (1) This Act is repealed on the day following the date of assent to this Act.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Parliamentary Contributory Superannuation Act 1971 No 53

[1] Section 19AA Member or former member charged with or convicted of serious offence

Omit section 19AA (1). Insert instead:

- (1) This section applies in respect of a person:
 - (a) who ceases to be a member while proceedings for a serious offence are pending against the person, or
 - (b) who ceased to be a member if proceedings for a serious offence are instituted against the person for conduct that occurred when the person was a member.

[2] Section 19AA (2)

Insert “However, the trustees may lift the suspension and reinstate the person’s entitlement to a pension pending the finalisation of the proceedings if satisfied that the suspension is not in the public interest.” after “the former member.”.

[3] Section 19AA (4), (4A) and (4B)

Omit section 19AA (4). Insert instead:

- (4) If the finalisation of the proceedings results in the person being convicted of a serious offence:
 - (a) the person ceases to have any entitlement to receive a pension or any further payment of a pension under this Part, and any pension already paid is to be repaid to the Fund, and
 - (b) any election under section 20 (Right to convert pension to lump sum entitlement) in respect of the pension (since the person last became a member) is of no effect and is taken never to have been made, and any lump sum payment made under this Part pursuant to any such election is to be repaid to the Fund, and
 - (c) the person’s net contributions are to be refunded to the person, except as otherwise provided by this section.
- (4A) If the person, before being convicted of the serious offence, had been in receipt of a pension or had received a lump sum payment pursuant to an election under section 20, the trustees may refund net contributions by deducting the amount of the refund from any pension already paid, or any lump sum payment, that the person is required to repay to the Fund under subsection (4).
- (4B) If the conviction of the person is quashed by a court after the finalisation of the proceedings for the serious offence, the trustees must, on application by the person, reinstate the person’s pension and repay to the person any amount of pension, or any part of the lump sum, that the person has repaid to the Fund.

[4] Section 19AA (6)

Omit the subsection. Insert instead:

- (6) If a person’s entitlement to a pension is reinstated following the lifting of a suspension or following the quashing of the person’s conviction:
 - (a) the reinstatement has effect from immediately before the entitlement to pension was suspended or terminated and as if the entitlement had not been suspended or terminated, and

- (b) an election may be made under section 20 (2) within 3 months after the entitlement is reinstated.

[5] Section 19AA (7)

Omit “subsection (4) (b)”. Insert instead “subsection (4) (c)”.

[6] Section 19AA (8)

Omit the second sentence relating to the appeal period. Insert instead:

The *appeal period* is:

- (a) the period within which an appeal may be lodged (but excluding any extension to that period that a court may grant), or
- (b) the period of 12 months after the conviction or acquittal, whichever is the earlier.

[7] Section 19AA (8A)

Insert after section 19AA (8):

- (8A) Criminal proceedings that result in a person being convicted or acquitted are still pending for the purposes of this section until they are finalised for the purposes of this section.

[8] Section 19AA (10)

Insert in alphabetical order:

cease to be a member means cease to be a member and to be entitled to salary.

[9] Section 20 Right to convert pension to lump sum entitlement

Insert “or 19AA” after “section 25” in section 20 (6), (9) and (10) wherever occurring.

[10] Section 23A Right of certain spouses or de facto partners to convert part of pension entitlement to lump sum entitlement

Insert “(except section 19AA)” after “this Part” in section 23A (2).

[11] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Parliamentary Contributory Superannuation Amendment (Criminal Charges and Convictions) Act 2017

[12] Schedule 1, clause 11 Criminal charges and convictions—section 19AA as originally enacted

Insert “(as originally enacted)” after “Section 19AA” in clause 11 (1).

[13] Schedule 1, clause 11A

Insert after clause 11:

11A Criminal charges and convictions—2017 amendments to sections 19AA etc

The amendments made to sections 19AA, 20 and 23A (and to the *Crimes (Sentencing Procedure) Act 1999*) by the *Parliamentary Contributory Superannuation Amendment (Criminal Charges and Convictions) Act 2017* extend to:

- (a) any serious offence committed before the commencement of those amendments, and

- (b) any conviction before the commencement of those amendments, and
- (c) a person who ceased to be a member before the commencement of those amendments (and to any entitlement of the person to a pension or lump sum that accrued or was paid before that commencement).

Schedule 2 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92

Section 24C

Insert after section 24B:

24C Loss of parliamentary pension to be disregarded in sentencing

In sentencing an offender who is a member or former member of Parliament, the court must not take into account, as a mitigating factor in sentencing, the loss of the offender's entitlement to a pension under the *Parliamentary Contributory Superannuation Act 1971* because of the conviction for the offence.