



New South Wales

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

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

At present, a member of Parliament elected before the closure of the Parliamentary Contributory Superannuation Scheme in 2007 is disqualified from receiving any pension under that Scheme if the person ceases to be a member:

- (a) because of a conviction for a serious offence, or
- (b) while proceedings for a serious offence are pending and is later convicted of the offence.

A serious offence is an infamous crime or an offence punishable by imprisonment for life or for a term of 5 years or more (including, by the operation of section 21 (3) of the *Interpretation Act 1987*, a common law offence).

The object of this Bill is to amend the *Parliamentary Contributory Superannuation Act 1971* to provide for the same disqualification from receiving a pension if the person is charged with and convicted of a serious offence after ceasing to be a member for conduct that occurred while the person was a member.

In addition, the Bill amends the *Crimes (Sentencing Procedure) Act 1999* to provide that a court, when sentencing a member or former member of Parliament for a serious offence, must not take into account, as a mitigating factor in sentencing, the loss of the person's entitlement to a parliamentary pension because of the conviction for the offence.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 removes the necessity for a certificate of approval of this Bill by the Parliamentary Remuneration Tribunal.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Parliamentary Contributory Superannuation Act 1971 No 53

Schedule 1 [1] amends section 19AA to extend the disqualification from receiving a pension to a person who is charged with and convicted of a serious offence after ceasing to be a member for conduct that occurred while the person was a member.

Schedule 1 [2] amends section 19AA to provide that a pension that is automatically suspended under that section when a former member is charged with a serious offence may be reinstated by the trustees of the Parliamentary Contributory Superannuation Fund (*the Fund*) if they are satisfied that the suspension of the pension while proceedings are pending is not in the public interest.

Schedule 1 [3] amends section 19AA to provide that, on conviction of a former member for a serious offence, the person ceases to be entitled to a pension or (if already in receipt of a pension) to any further payment of a pension, and is entitled instead to a refund of the net contributions made by the former member to the Fund. In addition, provision is made for the repayment by the former member of money paid before the conviction as a lump sum conversion of the former member's pension entitlement. **Schedule 1 [5]** makes a consequential amendment.

Schedule 1 [3] amends section 19AA to enable the trustees of the Fund, if a court quashes the conviction of a former member for a serious offence, to reinstate the person's pension and repay any lump sum payment repaid to the Fund as a result of the conviction. **Schedule 1 [4]** makes a consequential amendment.

Schedule 1 [6] amends the provision of section 19AA that declares that criminal proceedings for serious offences are not finalised until there is no further opportunity to appeal a conviction or acquittal for the offence so as to provide that the proceedings are to be regarded as finalised in any event after the period of 12 months following the conviction or acquittal. However, pension may be fully restored under the amendments made by Schedule 1 [3] if a conviction is quashed after that 12-month period.

Schedule 1 [7] makes it clear that a person does not cease to be a member until the person ceases to be entitled to salary as a member.

Schedule 1 [8] amends section 20 to extend the power of the trustees to defer an election by a former member to convert a pension entitlement to a lump sum payment if the trustees are of the opinion that the former member is likely to have his or her pension cease or suspended under section 19AA (as amended by the proposed Act).

Schedule 1 [9] amends section 23A to clarify that the loss of pension entitlement applies only in respect of the conviction of former members for serious offences and not in respect of serious offences committed by the spouses or partners of former members.

Schedule 1 [10] enables regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [12] provides that the amendments made by the proposed Act extend to:

- (a) any serious offence committed before the commencement of the proposed Act, and
- (b) any conviction for a serious offence before that commencement, and

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

Schedule 1 [11] makes a consequential amendment.

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

Schedule 2 ensures that the loss of pension entitlement is not taken into account by a court as a mitigating factor when sentencing a member or former member of Parliament for a serious offence.



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New South Wales

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

No. , 2017

A Bill for

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*.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Parliamentary Contributory Superannuation Amendment (Criminal Charges and Convictions) Act 2017</i> .	3 4
2 Commencement	5
(1) This Act commences on the date of assent to this Act, except as provided by subsection (2).	6 7
(2) Section 3 is taken to have commenced on 23 May 2017.	8
3 Approval of amendments by Parliamentary Remuneration Tribunal not required	9
Section 4 of the <i>Parliamentary Contributory Superannuation Act 1971</i> does not apply to or in respect of this Act.	10 11
4 Repeal of Act	12
(1) This Act is repealed on the day following the date of assent to this Act.	13
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	14 15

Schedule 1	Amendment of Parliamentary Contributory Superannuation Act 1971 No 53	1
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[1] Section 19AA Member or former member charged with or convicted of serious offence		3
		4
Omit section 19AA (1). Insert instead:		5
(1) This section applies in respect of a person:		6
(a) who ceases to be a member while proceedings for a serious offence are pending against the person, or		7
		8
(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.		9
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[2] Section 19AA (2)		12
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.”.		13
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		15
[3] Section 19AA (4), (4A) and (4B)		16
Omit section 19AA (4). Insert instead:		17
(4) If the finalisation of the proceedings results in the person being convicted of a serious offence:		18
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(a) the person ceases to have any entitlement to receive a pension under this Part or, if in receipt of a pension on conviction, to any further payment of the pension, and		20
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(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		23
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(c) the person’s net contributions are to be refunded to the person, except as otherwise provided by this section.		28
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(4A) If the person, before being convicted of the serious offence, had received a lump sum payment pursuant to an election under section 20:		30
		31
(a) the trustees may refund net contributions by deducting the amount from a lump sum payment the person is required to repay to the Fund under subsection (4), and		32
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(b) the trustees may make any other deduction from a lump sum the person is required to repay to the Fund for the purpose of ensuring that the person is dealt with in the same manner as if the person had not elected to convert pension to a lump sum.		35
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(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 part of the lump sum the person repaid to the Fund.		39
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[4] Section 19AA (6)	1
Omit the subsection. Insert instead:	2
(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:	3
(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	4
(b) an election may be made under section 20 (2) within 3 months after the entitlement is reinstated.	5
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[5] Section 19AA (7)	10
Omit "subsection (4) (b)". Insert instead "subsection (4) (c)".	11
[6] Section 19AA (8)	12
Omit the second sentence relating to the appeal period. Insert instead:	13
The <i>appeal period</i> is:	14
(a) the period within which an appeal may be lodged (but excluding any extension to that period that a court may grant), or	15
(b) the period of 12 months after the conviction or acquittal,	16
whichever is the earlier.	17
	18
[7] Section 19AA (10)	19
Insert in alphabetical order:	20
<i>cease to be a member</i> means cease to be a member and to be entitled to salary.	21
[8] Section 20 Right to convert pension to lump sum entitlement	22
Insert "or 19AA" after "section 25" in section 20 (6), (9) and (10) wherever occurring.	23
[9] Section 23A Right of certain spouses or de facto partners to convert part of pension entitlement to lump sum entitlement	24
Insert "(except section 19AA)" after "this Part" in section 23A (2).	25
	26
[10] Schedule 1 Savings, transitional and other provisions	27
Insert at the end of clause 1 (1):	28
<i>Parliamentary Contributory Superannuation Amendment (Criminal Charges and Convictions) Act 2017</i>	29
	30
[11] Schedule 1, clause 11 Criminal charges and convictions—section 19AA as originally enacted	31
Insert "(as originally enacted)" after "Section 19AA" in clause 11 (1).	32
	33
[12] Schedule 1, clause 11A	34
Insert after clause 11:	35
11A Criminal charges and convictions—2017 amendments to sections 19AA etc	36
The amendments made to sections 19AA, 20 and 23A (and to the <i>Crimes (Sentencing Procedure) Act 1999</i>) by the <i>Parliamentary Contributory Superannuation Amendment (Criminal Charges and Convictions) Act 2017</i> extend to:	37
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|-----|---|-------------|
| (a) | any serious offence committed before the commencement of those amendments, and | 1
2 |
| (b) | any conviction before the commencement of those amendments, and | 3 |
| (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). | 4
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Schedule 2	Amendment of Crimes (Sentencing Procedure)	1
	Act 1999 No 92	2
Section 24C		3
Insert after section 24B:		4
24C	Loss of parliamentary pension to be disregarded in sentencing	5
	In sentencing an offender who is a member or former member of Parliament,	6
	the court must not take into account, as a mitigating factor in sentencing, the	7
	loss of the offender's entitlement to a pension under the <i>Parliamentary</i>	8
	<i>Contributory Superannuation Act 1971</i> because of the conviction for the	9
	offence.	10