



New South Wales

# Parliamentary Contributory Superannuation Amendment (Criminal Charges and Convictions) Bill 2006

## Explanatory note

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

## Overview of Bill

At present, a member of Parliament vacates his or her seat if the member is convicted of an offence punishable by life or imprisonment for 5 years or more, or of an infamous crime (section 13A of the *Constitution Act 1902*). In that case, section 19 (8) of the *Parliamentary Contributory Superannuation Act 1971* disqualifies the former member from receiving any pension that the former member would have been entitled to under that Act and provides instead for a refund of the member's superannuation contributions.

The object of this Bill is to amend the *Parliamentary Contributory Superannuation Act 1971* to provide the same disqualification from receiving a pension if the person ceases to be a member while relevant serious offence proceedings are pending and is later convicted. In addition, the former member's pension under that Act is suspended while any such criminal proceedings are pending, but the suspension is lifted if the proceedings do not lead to a conviction for the offence.

The Bill will apply to a person who ceased to be a member before the commencement of the proposed Act, but only if criminal proceedings were pending against the person on the commencement of the proposed Act.

## 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** is a formal provision that gives effect to the amendments to the *Parliamentary Contributory Superannuation Act 1971* set out in Schedule 1.

**Clause 4** removes the necessity for a certificate of approval of this Bill by the Parliamentary Remuneration Tribunal.

## Schedule 1 Amendments

**Schedule 1 [1]** inserts section 19AA into the Principal Act to give effect to the object set out in the above Overview.

**Schedule 1 [2]** enables regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

**Schedule 1 [3]** provides that proposed section 19AA applies to a former member against whom proceedings were pending when the person ceased to be a member and on the commencement of the proposed Act.

First print



New South Wales

# Parliamentary Contributory Superannuation Amendment (Criminal Charges and Convictions) Bill 2006

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New South Wales

# Parliamentary Contributory Superannuation Amendment (Criminal Charges and Convictions) Bill 2006

No. , 2006

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## 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.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Parliamentary Contributory Superannuation Amendment (Criminal Charges and Convictions) Act 2006</i> .	3 4
<b>2 Commencement</b>	5
(1) This Act commences on the date of assent to this Act, except as provided by subsection (2).	6 7
(2) Section 4 is taken to have commenced on 15 November 2006.	8
<b>3 Amendment of Parliamentary Contributory Superannuation Act 1971 No 53</b>	9 10
The <i>Parliamentary Contributory Superannuation Act 1971</i> is amended as set out in Schedule 1.	11 12
<b>4 Approval of amendments by Parliamentary Remuneration Tribunal not required</b>	13 14
Section 4 of the <i>Parliamentary Contributory Superannuation Act 1971</i> does not apply to or in respect of this Act.	15 16

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## Schedule 1 Amendments

	1
(Section 3)	2
<b>[1] Section 19AA</b>	3
Insert after section 19:	4
<b>19AA Person ceasing to be a member while criminal proceedings pending</b>	5 6
(1) This section applies in respect of a person who ceases to be a member while proceedings for a serious offence are pending against the person.	7 8 9
(2) Any entitlement of such a person as a former member to receive a pension under this Part is suspended while proceedings for the serious offence are pending against the former member.	10 11 12
(3) If the finalisation of the proceedings results in the person not being convicted of any serious offence, the suspension of pension entitlement is lifted and the person's entitlement to a pension is reinstated.	13 14 15 16
(4) If the finalisation of the proceedings results in the person being convicted of a serious offence:	17 18
(a) the person ceases to have any entitlement to receive a pension under this Part, and	19 20
(b) the person's net contributions are to be refunded to him or her.	21 22
(5) If proceedings for a serious offence cease to be pending before the proceedings are finalised, the suspension of pension entitlement is lifted and the person's entitlement to a pension is reinstated.	23 24 25 26
(6) If a person's entitlement to a pension is reinstated following the lifting of a suspension:	27 28
(a) the reinstatement has effect from immediately before the suspension began and as if the entitlement had not been suspended, and	29 30 31
(b) an election may be made under section 20 (2) within 3 months after the entitlement is reinstated.	32 33

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Schedule 1 Amendments

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(7)	While a former member's entitlement to a pension is suspended under this section, the trustees may authorise payment to the former member from the Fund of an advance on the refund of the former member's net contributions under subsection (4) (b). However, if the suspension of the former member's entitlement to a pension is lifted, any such advance is to be repaid or recouped by the trustees by deduction from any pension or other payment due to the former member on the lifting of the suspension.	1 2 3 4 5 6 7 8
(8)	Criminal proceedings are not considered <i>finalised</i> for the purposes of this section until the end of the appeal period and until any appeal against conviction or acquittal, lodged within the appeal period, has been determined or has lapsed or been withdrawn. The <i>appeal period</i> is the period within which an appeal may be lodged, but does not include any extension of a period that a court may grant.	9 10 11 12 13 14 15
(9)	This section extends to proceedings taken outside New South Wales.	16 17
(10)	In this section: <i>net contributions</i> means the amounts deducted under this Act or the former Act from salary paid to the person less any amount previously refunded to him or her (under this section or otherwise) and less the amount of any reduction resulting from a determination under section 26D. <i>serious offence</i> means:	18 19 20 21 22 23 24
	(a) an offence committed in New South Wales that is punishable by imprisonment for life or for a term of 5 years or more or an offence committed elsewhere than in New South Wales that, if committed in New South Wales, would be an offence so punishable, or	25 26 27 28 29
	(b) an infamous crime.	30
<b>[2]</b>	<b>Schedule 1 Savings, transitional and other provisions</b>	31
	Insert at the end of clause 1 (1):	32
	<i>Parliamentary Contributory Superannuation Amendment (Criminal Charges and Convictions) Act 2006</i>	33 34



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<b>[3] Schedule 1, clause 11</b>	1
Insert after clause 10:	2
<b>11 Criminal charges and convictions—section 19AA</b>	3
(1) Section 19AA extends to a person who ceased to be a member before the commencement of that section (and to any entitlement of the person to a pension that accrued before that commencement), but only if proceedings for a serious offence were pending against the person:	4
(a) when the person ceased to be a member, and	5
(b) on that commencement.	6
(2) If the person's entitlement to such a pension is suspended:	7
(a) any election under section 20 (Right to convert pension to lump sum entitlement) in respect of the pension is of no effect and is taken never to have been made, and	8
(b) any lump sum payment made under this Part pursuant to any such election is to be repaid to the Fund.	9
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