

## Legislative Council Hansard – 31 May 2017 – Proof

**PARLIAMENTARY CONTRIBUTORY SUPERANNUATION AMENDMENT (CRIMINAL CHARGES AND CONVICTIONS) BILL 2017***Second Reading***The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) ( 16:12 ): I move:**

That this bill be now read a second time.

Members of Parliament elected prior to the 2007 election are entitled to a pension under the Parliamentary Contributory Superannuation Act 1971. It has always been the case that a member will lose his or her pension entitlement if convicted of a serious offence while in office. A serious offence is an infamous crime or an offence punishable by imprisonment for life or for a term of five years or more. This includes, by operation of section 21 (3) of the Interpretation Act 1987, a common law offence. Following amendments to the Parliamentary Contributory Superannuation Act 1971 in 2006, members also lose their pension entitlement if they are charged with a serious offence while in office but resign before the proceedings are finalised and are later convicted of that offence.

Currently, however, members will not lose their pension if they resign from office before being charged with a serious offence, even if they are later convicted of that offence. This means that a member who has engaged in criminal activity while in office can protect his or her pension by resigning from office before charges are laid. Former members should only be entitled to a publicly funded pension if they have discharged their parliamentary duties lawfully and acted as law-abiding citizens during their time in office. There is no reason why members convicted of a serious offence committed during their time in office should be in a better or worse position simply because of whether and when they resigned. This bill closes the loophole in the current Act. The amendments will mean that any former members convicted of a serious offence committed during their time in office will lose their pension entitlement irrespective of whether they left office before or after charges were laid.

I now turn to the detail of the bill. Most of the proposed amendments to the Parliamentary Contributory Superannuation Act 1971 are set out in schedule 1 to the bill. Clause 1 in schedule 1 amends section 19AA (1) of the Act. The amendments extend the pension disqualification to a person who is charged with and convicted of a serious offence after ceasing to be a member for conduct that occurred while that person was a member. Clause 2 amends section 19AA (2) of the Act. This section currently provides that a former member's entitlement to receive a pension is suspended while proceedings for a serious offence are pending against the person. Clause 2 amends the provision to provide that the trustees of the fund may reinstate the person's pension pending the finalisation of the proceedings if the trustees are satisfied that the suspension is not in the public interest. This may be the case if, for example, the suspension of the former member's pension would prejudice his or her right to receive a fair trial.

Clause 3 in schedule 1 amends section 19AA (4) of the Act. This section provides that, where the finalisation of proceedings results in the former member being convicted of a serious offence, the person ceases to have any entitlement to receive a pension under the Act. Sections 19AA (4) and 19AA (4A) make provision for the repayment to the fund of any pension amounts previously taken by the former member as a lump sum. Section 19AA (4B) provides that, if a former member's conviction is quashed by a court after the proceedings have been finalised, the former member's pension entitlement will be reinstated on application by the person. The trustees would also be required to repay any part of a lump sum payment to the person repaid to the fund under section 19AA (4B).

Clauses 4 and 5 in schedule 1 make consequential amendments to the pension reinstatement and suspension provisions in sections 19AA (6) and 19AA (7). Clause 6 amends the provision in section 19AA (8) declaring when criminal proceedings are considered to be finalised for the purposes of the pension disqualification provisions. The proceedings will be considered finalised when there is no further opportunity to appeal a conviction or acquittal or—and this is important—in any event, after a period of 12 months after the conviction or acquittal. Clause 7 in schedule 1 inserts a new definition in section 19AA (10) to make it clear that a person does not cease to be a member for the purposes of the pension disqualification provisions until the person ceases to be entitled to a salary as a member.

Clause 8 makes amendments to section 20 to extend the trustee's power to defer an election by a former member to receive his or her pension in a lump sum. The trustees may defer the effect of an election if they form the view that the member is likely to have his or her pension cease or suspended within 12 months of the former member becoming entitled to a pension. Clauses 9, 10 and 11 make minor amendments to section 23A and to savings, transitional and other provisions of the Act. Clause 12 in schedule 1 inserts a new section, 11A, to schedule 1 to the Act. It provides that the amendments proposed by the bill apply to any serious offence committed before the commencement of the provisions, any conviction before the commencement of the provisions, and to any person who ceased to be a member before the commencement of the provisions.

Schedule 2 to the bill inserts a new provision into the Crimes (Sentencing Procedure) Act 1999. A new section 24C provides that, in sentencing a member or former member, the court must not take into account, as a mitigating factor in sentencing, the loss of the person's pension entitlement because of the conviction for the offence. This provision operates in the same way as existing section 24B of the Crimes (Sentencing Procedure) Act 1999, which provides that a court must not take into account any order under proceeds of crime legislation as a mitigating factor in sentencing.

Lastly, I note that clause 3 of the bill provides that section 4 of the Parliamentary Contributory Superannuation Act 1971 does not apply to, or in respect of, this bill. Section 4 provides that the Parliamentary Remuneration Tribunal must approve any amendments to the Act. This is a measure to ensure that members of Parliament do not consider amendments that might benefit them without first having those amendments independently reviewed by the tribunal. Given that the amendments proposed by this bill are not intended to benefit members, it is appropriate that the bill proceed without first obtaining the approval of the tribunal.

Once again, the object of this bill is to amend the Act to extend existing pension disqualification provisions to any former member charged with and convicted of a serious offence after ceasing to be a member, for conduct while the person was a member. The bill addresses an anomaly in the current Act, which allows former members who have engaged in serious criminal activity to protect their pension by resigning from Parliament before being charged. It will ensure that community concerns about former members' access to pension entitlements in cases involving serious criminal conduct are addressed. I commend the bill to the House.