



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.