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TE·AKA·MATUA·O·TE·TURE

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# REVIEW OF THE CIVIL LIST ACT 1979

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The Law Commission is an independent, publicly funded, central advisory body established by statute to undertake the systematic review, reform and development of the law of New Zealand. Its purpose is to help achieve law that is just, principled, and accessible, and that reflects the heritage and aspirations of the peoples of New Zealand.

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Ministerial Services, Department of Internal Affairs

Inland Revenue Department

Remuneration Authority

Rob Taylor, Official Secretary to the Governor-General.

# Call for submissions

Submissions or comments on this Issues Paper should be sent to the Law Commission by **Friday 5 September 2008**, to ***Rachel Hayward***, Senior Legal and Policy Adviser.

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Any enquiries can be made to ***Rachel Hayward***, **04 473 3453**.

There are a number of questions set out in Appendix A, on which we would welcome your views. Your submission can be set out in any format but it is helpful to specify the number of the question you are discussing.

This Issues Paper is available at the Commission's website: [www.lawcom.govt.nz](http://www.lawcom.govt.nz)

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# Review of the Civil List Act 1979

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# Introduction

- 1 New Zealand has had a Civil List Act since 1858. Although the form and provisions of the various Civil List Acts have changed over the years to reflect changes in New Zealand's Constitution and the structure of government, essentially the primary purpose of the Act in all its forms has been to provide for the appropriation of funds to pay for the salaries and allowances of the Governor or Governor-General, members of Parliament and members of the Executive.
- 2 The present Civil List Act was enacted in 1979. It was substantially amended by the passage of the Constitution Act in 1986, but the focus of this reform was on section 9(1) of the Act, which provided for the appointment of Ministers.<sup>1</sup> The Civil List Act was not reviewed comprehensively at that time, nor has it been since. A number of the provisions in the Act are outdated, some of the language is archaic, and certain provisions are now redundant or overlap with other legislation, creating unnecessary complexity. Even the term "the Civil List" has become meaningless to most New Zealanders.
- 3 Given that the Civil List Act 1979 involves the remuneration and entitlements of members of Parliament and the Executive, an independent review of the Act was considered desirable, and in August 2007, the Government asked the Law Commission to undertake a review of the provisions and operation of the Act.
- 4 The questions asked in this paper, and the options suggested for reform of the Civil List Act, are mostly technical in nature. The options we canvas are evolutionary rather than revolutionary: in our view real progress has been made in recent years towards ensuring greater transparency and accountability of payments authorised under the Civil List Act 1979, particularly in the area of funding for entitlements of members of Parliament which are covered by the Speaker's determination. However the law needs to be clearer if it is to be more accessible. One of the Law Commission's principal statutory functions is to advise ways in which the laws of New Zealand can be made as understandable and accessible as possible.<sup>2</sup> Despite its relatively obscure status, the Civil List Act 1979 contains important provisions that should be both accessible and comprehensible. The proposals on which we seek comment are intended to clarify the legislative framework, and to continue to improve transparency.

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1 The passage of the Constitution Act 1986 resulted from recommendations made by a committee established following the constitutional crisis in July 1984 – Department of Justice *Constitutional Reform, Reports of an Officials Committee* (Wellington, 1986), 3. This is discussed further in Chapter 1 of this issues paper.

2 Law Commission Act 1985, s5(1)(d).

- 5 One option which we do not raise for consideration in this Issues Paper is making a fundamental change to the way in which parliamentary entitlements are determined. As we explain in Chapter 1, when the Remuneration Authority (Members of Parliament) Amendment Bill was originally introduced in 2002, it proposed that the Remuneration Authority should be responsible not only for the determination of salary and certain allowances for members of Parliament and the Executive, but also for determining all work-related expenses, including travel, accommodation, attendance and communications services. That proposal was rejected by the Standing Orders Committee when it reported on the Bill, and the present mechanism, whereby the Speaker and the Minister responsible for Ministerial Services make those determinations, was introduced instead.<sup>3</sup>
- 6 The Speaker raised the issue of having these entitlements set by an independent body in a report on a visit to the Australian Parliaments in 2007.<sup>4</sup> As she noted, an independent body that determines members' salaries, allowances and other entitlements allows members and presiding officers to stand aside completely from the determination process, and addresses the need for transparency of the application of public funding. However it has not been universally accepted because of the long-held right of Houses of Parliament to regulate and manage their own internal processes.<sup>5</sup>
- 7 We do not propose to re-open the debate as to the best method of determining parliamentary entitlements in this review. Rather we have focussed on the operation of the existing determination method under the Civil List Act 1979, and how it might be improved in the context of the existing framework.
- 8 The Law Commission welcomes your feedback on the issues and options discussed in this Issues Paper. Specific questions for consideration are set out in Appendix A, on page 46. The closing date for submissions is **Friday 5 September 2008**. Details of how submissions may be made appear at the front of the Issues Paper.

3 Remuneration Authority (Members of Parliament) Amendment Bill, no. 229-2, (the commentary).

4 *Review of parliamentary administrative and statutory framework, Report on the Speaker's visit to Australian Parliaments*, Office of the Speaker, March 2007.

5 *Ibid*, 6.

# Chapter 1

## History of the Civil List Act

### UNITED KINGDOM

- 1.1 In the United Kingdom, the Civil List is a grant from Parliament out of the Consolidated Fund to cover official expenditure of the Royal Household.<sup>6</sup> It meets the central staff costs and running expenses of the Queen's official household. The Civil List is provided under the terms of the Civil List Acts 1952, 1972 and 1975 in return for the surrender by the Queen of income from the Crown Estate and other hereditary revenues.<sup>7</sup> In practice however the Civil List accounts for only a small percentage of government expenditure on the monarchy: certain expenses connected with the maintenance of the royal palaces and royal travel are now met by separate grants in aid voted annually by Parliament.<sup>8</sup>
- 1.2 The term "the Civil List" dates back to the late seventeenth century, when there was a division between military and non-military (or civil) expenditure.<sup>9</sup> The Civil List Act of 1698 was an attempt to settle the conflict between Crown and Parliament for control of finance. Under the Act, Parliament assumed responsibility for the debt and the armed forces, while the Crown was granted Civil List revenues (primarily customs and excise) for life, from which it was to meet the costs of the civil government and the royal establishments.<sup>10</sup> The Civil List served an important constitutional role, supporting the independence and influence of the Crown without unduly disturbing the sovereignty of Parliament, because it supplied the Crown with a financial provision not subject to parliamentary control.<sup>11</sup>

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6 David Feldman (ed) *English Public Law* (Oxford University Press, 2004) para 3.89.

7 The Civil List *Annual Report 2005* [www.royal.gov.uk](http://www.royal.gov.uk) (accessed 13 February 2008).

8 A W Bradley and K D Ewing *Constitutional and Administrative Law* (14ed, Pearson Education Ltd Harlow, England, 2007) 244.

9 Adam Tomkins "Crown Privileges" in Maurice Sunkin and Sebastian Payne (ed) *The Nature of the Crown: A Legal and Political Analysis* (Oxford University Press, 1999) 178.

10 E A Reitan, "The Civil List in Eighteenth-Century British Politics: Parliamentary Supremacy versus the Independence of the Crown" *The Historical Journal* IX, 3, (1966) 318-319.

11 *Ibid*, 318

- 1.3 During the eighteenth century, Parliament became increasingly jealous of the Civil List as it was the only significant arm of public finance over which Parliament had no control.<sup>12</sup> With each new monarch there was a new Civil List agreement, each of which gradually increased Parliament's role. In 1760, on the accession of George III, the Civil List revenues were finally handed over to Parliament, and in return, the monarch received a fixed provision each year for meeting the expenses of the royal household.<sup>13</sup> This provision itself became known as the Civil List.
- 1.4 Continued concerns about the ways in which the Civil List was being misused ultimately led to Edmund Burke's Economical Reform Act of 1782, which provided for closer scrutiny of Civil List expenditure, and for the list to be divided into various known classes which would further assist Parliament in overseeing it. Thus after 1782, the original conception of a Civil List independent of parliamentary account was no longer tenable.<sup>14</sup>
- 1.5 The development of the monarch's privileges and immunities in the field of taxation has been described as the result of a curious mixture of legal opinion and political compromise.<sup>15</sup> The basic legal presumption which underlies the Crown immunity from taxation is that the Crown is not generally bound by statute, unless Parliament says so either expressly or by necessary implication.
- 1.6 When income tax was introduced in 1799, to finance the Napoleonic wars, the King did not pay it, apparently on the ground that for the King to have paid would have amounted to nothing more than moving money around from one pocket to another.<sup>16</sup> In 1800, when legislation was passed which allowed the monarch to own property as a private person,<sup>17</sup> the Act expressly provided that the Crown's private estates would be subject to the same taxes, rates, duties and assessments as for any subject of the realm. Such taxes were to be paid out of the Privy Purse, but no similar tax arrangement applied to the remainder of the Crown's real and personal property.
- 1.7 Income tax was abolished in 1816, and when it was re-introduced in 1842, Queen Victoria paid tax on nearly all her income. Her successor, Edward VII, tried unsuccessfully to escape paying income tax on his Civil List.<sup>18</sup> The government resisted this move, but began gradually reducing the things the Civil List had

12 Ibid 321.

13 George III did not hand over to Parliament revenues from the Duchy of Lancaster, which remain the primary source of revenue for the Monarch's privy purse – Adam Tomkins "Crown Privileges", above n 9, 178. Nor does the surrender of revenues include the income from the Duchy of Cornwall – Philip A Joseph *Constitutional and Administrative Law in New Zealand* (3ed, Brookers, Wellington 2007) 630.

14 Adam Tomkins "Crown Privileges", above n 9, 179.

15 Ibid 183.

16 Ibid, 179.

17 Crown Private Estates Act 1800 (UK) s 6.

18 Adam Tomkins "Crown Privileges", above n 9, 180.

to cover, and began paying for these out of other public funds. This is a trend which has continued to the present day.<sup>19</sup> The Civil List was relieved of income tax again in 1910.<sup>20</sup>

- 1.8 By 1952, the accepted legal position was that all three major categories of the Queen's money, (the Civil List, the Privy Purse, and the Queen's private expenditure and her own private financial resources), were regarded as being immune from tax.<sup>21</sup> However in 1992, it was announced that the Queen had undertaken to pay income tax on her private income with effect from 1993.<sup>22</sup> Since 1993 she has also reimbursed the Treasury for the annuities paid to all members of the royal family except herself, the Queen Mother (during her lifetime) and the Duke of Edinburgh.<sup>23</sup> The Prince of Wales also volunteered to pay income tax on his private income from the Duchy of Cornwall. The Civil List continues to be disregarded for tax purposes.

#### THE CIVIL LIST IN NEW ZEALAND

#### Nineteenth Century

- 1.9 The New Zealand Constitution Act 1852 (UK) granted the colony of New Zealand representative government. It created six provinces, each with a legislative assembly and executive, and a central legislature, called the General Assembly, which consisted of the Governor, an appointed Legislative Council, and an elected House of Representatives. It also set out the basis of what would later become the first Civil List Act. Section 64 of the New Zealand Constitution Act 1852 (UK) provided:

There shall be payable to Her Majesty every year, out of the revenue arising from such taxes, duties, rates and imposts, and from the disposal of such waste lands of the Crown in New Zealand, the several sums mentioned in the Schedule to this Act, such several sums to be paid for defraying the expenses of the services and purposes mentioned in such Schedule, and to be issued by the Treasurer of New Zealand in discharge of such warrants as shall be from time to time directed to him under the hand and seal of the Governor...

- 1.10 The sums payable set out in the Schedule were as follows:

Governor	£2,500
Chief Justice	£1,000
Puisne Judge	£800
Establishment of the General Government	£4,700
Native Purposes	£7,000

19 Ibid.

20 Ibid, 181.

21 Ibid, 183.

22 H.C. Deb. Vol 214 cols 982 – 83, 26 November 1992. The changes are explained in detail in a report from the royal trustees dated February 1993, and published as a House of Commons paper – H.C. (1992 – 93) 464.

23 A W Bradley and K D Ewing, above n 8, 244.

- 1.11 Section 65 of the New Zealand Constitution Act 1852 (UK) provided that the General Assembly of New Zealand could alter all or any of the sums mentioned in the Schedule, and the appropriation of these sums, but every Bill passed altering the salary of the Governor or the sum described as being for Native purposes had to be reserved for the Queen's approval. The sums set out in the Schedule were amended by the Civil List Act 1858, which also added payments for a private secretary for the Governor, and for a second Puisne Judge. The Civil List Act 1858 was in turn amended by the Civil List Acts of 1862 and 1863, which changed the sums payable in the Schedule.
- 1.12 In 1873, the Civil List Act 1863 was amended again, with more detailed appropriations being set out in the legislation, including salaries for judges, the Prime Minister and ministers, and travel allowances for members of the Executive Council of the Colony.<sup>24</sup> In the same year, the Governor's Salary and Allowances Act 1873 set out more detailed provisions for the payment of salary and allowances to the Governor, in lieu of the payments previously set out in the Civil List Act 1863. This Act provided for an allowance in lieu of travelling expenses of the Governor and his family, officers and servants, and provided for payment of half salary to the person appointed to be Governor in certain circumstances from the date at which he embarked for New Zealand. The Act also provided for payment to an officer provisionally administering the Government during the incapacity or absence of the Governor, or during a vacancy of the office.<sup>25</sup>
- 1.13 Until 1884, members of the House of Representatives received an honorarium for their attendance, but the amount of the honorarium was a contentious issue, generating debate around the effect of the honorarium on the type of person entering politics, the element of sacrifice that should attend parliamentary office as a public service, and the level at which the honorarium exceeded reimbursement and became a payment for services rendered.<sup>26</sup> In 1884, the Parliamentary Honorarium and Privileges Act formalised the existing provisions, and provided for allowances to be paid to members of the Legislative Council or the House of Representatives for attendance at meetings of the General Assembly, based on the distance they lived from the building where the General Assembly was summoned.<sup>27</sup> Section 5 of the Act provided for deductions for absenteeism for more than five sitting days in any session, unless the absence was caused by illness or other cause which the Speaker confirmed by certificate as being unavoidable. The Act also provided for a travel allowance, to cover the reasonable costs of the journey to and from the meeting of the General Assembly.

24 The Civil List Act 1863 Amendment Act 1873.

25 The Act was subsequently repealed and replaced by the Governor's Salary and Allowances Act 1900.

26 Adrienne Von Tunzelman *Membership of the New Zealand Parliament: a study of conditions, 1854 – 1978*, Research Paper (M.P.P.) Victoria University of Wellington, 1982, 59 – 60.

27 Members residing at a distance exceeding three miles in a direct line from the building were entitled to an allowance of £210 for every session attended, and members residing within three miles in a direct line were entitled to an allowance of £140 – section 3. If there were two sessions of Parliament in a year, the money payable for attendance at the second session was halved – section 4.

- 1.14 During the next 20 years, various payments provided for in the Civil List Acts of 1863 and 1873 began to be replaced by other enactments. For example, the Ministers' Salaries and Allowances Act 1887 repealed the provisions of the Civil List Act 1863 Amendment Act 1873 in relation to salaries and allowances of ministers of the Crown, and set out new salaries and allowances for the Prime Minister and members of the Executive Council.<sup>28</sup> In 1904, the Supreme Court Judges' Salaries Act 1904 provided for a payment of salaries to judges, "in lieu of the sum granted by the Civil List Act 1863."
- 1.15 In 1892, the Payment of Members Act repealed the Parliamentary Honorarium and Privileges Act 1884. The new Act continued to provide for deductions for absence, and travelling expenses, but members were now to be paid monthly, in equal amounts during recesses as well as during the session. This has been described as the first formal acknowledgement of the fact that a member's parliamentary responsibilities extended beyond the period of his attendance at the House, and that constituency demands occupied most of his time and involved expense during the long recesses.<sup>29</sup>

### Twentieth Century

- 1.16 In 1908, a number of enactments were consolidated into the Civil List Act 1908. This Act now provided for payments of salary and allowances to the Governor, the Attorney-General, and the Executive Council and Ministers.<sup>30</sup> The Second Schedule to the Act provided for sums to be paid out of the Consolidated Fund for judges' salaries, native purposes, and the establishment of the General Government, with details provided in the Schedule as to how the sums were to be divided between the Prime Minister and the various ministerial offices.
- 1.17 In the same year, the Legislature Act 1908 provided for payments of salaries and travelling allowances to members of the General Assembly for their attendance in discharge of their parliamentary duties, and salaries for the Speaker and the Chairman of Committees of both the Legislative Council and the House of Representatives, and certain officers of Parliament.<sup>31</sup> Section 245 of the Act provided for deductions from payments to the members of the General Assembly for absenteeism for more than 14 sitting days (except for illness or a cause certified as unavoidable by the Speaker).

28 This Act was amended in 1900, and the number of ministers to whom salaries were appropriated was increased – Ministers' Salaries and Allowances Amendment Act 1900.

29 Adrienne Von Tunzelman *Membership of the New Zealand Parliament: a study of conditions, 1854 – 1978*, above n 26, 68. The 1892 Act was amended in 1901, and the 1901 Act was repealed and replaced by the Payment of Members Act 1904. In 1908 this was consolidated in the Legislature Act.

30 The Civil List Act 1908 consolidated the following enactments: the Civil List Act 1863, and its amending Act of 1873; the Governor's Salary and Allowances Acts of 1873 and 1900; the Attorney-General's Act 1876; the Ministers' Salaries and Allowances Act 1887, and the amending Act of 1900; the Supreme Court Judges Salaries Act 1904; and sections 2 and 3 of the Parliamentary and Executive Titles Act 1907.

31 Legislature Act 1908, ss 243 – 251.

- 1.18 The Civil List Act 1908 was repealed and replaced by the Civil List Act 1920.<sup>32</sup> That Act also repealed and replaced sections 243 to 251 of the Legislature Act 1908, drawing payments to members of the General Assembly for attendance and payments of travelling expenses into the Civil List Act, and continuing the provision for deduction for extended absenteeism.
- 1.19 In his recent work about New Zealand's Governors and Governors-General, Gavin McLean comments that throughout the 20th century, New Zealand governments preferred to increase peripheral concessions and allowances rather than ask Parliament to amend the Civil List Act. As a result, the Governor-General's official salary, set at £5000 in 1873, stayed unchanged until 1957, and the total Civil List salary/allowances package for the Governor-General changed only once between 1900 and 1946. Instead, the Civil List emoluments were supported by what McLean describes as a labyrinth of minor grants and obscure concessions, such as wages for a vegetable gardener, payments for blankets, china and linen, electricity, fuel and gas.<sup>33</sup> In 1949, the Government took over payment of the wages of the domestic household staff of Government House, providing the biggest boost yet in the funding of the office.<sup>34</sup>
- 1.20 In 1944 the Finance Act (No. 3) provided a separate and substantial tax-free expense allowance for members of the House of Representatives.

### The Civil List Act 1950

- 1.21 The Civil List Act 1950 marked a significant consolidation and amendment of the Civil List Act.<sup>35</sup> In the parliamentary debates of the time, much of the discussion focussed on the new mechanism inserted by section 27 of the Act, which provided for salaries and allowances of members of Parliament to be fixed by Order in Council on the recommendation of a Royal Commission, where previously they had been set at intervals by legislation.<sup>36</sup> The first Royal Commission was in 1951, and its report and those of subsequent Commissions were tabled in the House.<sup>37</sup> An amendment to the Civil List Act in 1955 provided for Royal Commissions to be appointed within three months of every general election.<sup>38</sup>

32 The Act repealed and replaced the Civil List Act 1908, sections 243 to 251 of the Legislature Act 1908, section 3 of the Legislature Amendment Act 1913, the Civil List Amendment Act 1915, section 21 of the Appropriation Act 1915, section 32 of the Appropriation Act 1917, sections 35, 40 and 41 of the Appropriation Act 1918, and section 22 of the Finance Act 1919. Salaries of judges had already been removed from the Second Schedule to the Civil List Act in 1913, by section 3(2) of the Judicature Amendment Act 1913.

33 Gavin McLean *The Governors: New Zealand's Governors and Governors-General* (Otago University Press, Dunedin, 2006) 206.

34 Ibid 254. The Governor-General still bore the cost of the military secretary, the ADCs, the lady-in-waiting and the lady's maid.

35 The Civil List Act was amended in 1936 to create the position of Parliamentary Under-Secretary – Civil List Amendment Act 1936.

36 Parts II, III and IV of the Act provided specific sums for salaries and allowances, but section 27(3) of the Act provided that any Order in Council in force should operate in place of those salaries.

37 Subsequent Royal Commissions sat in 1955, 1959, 1961, 1964, 1968, 1970 and 1973.

38 Civil List Amendment Act 1955, s 2.

- 1.22 The 1950 Act codified the convention that a Minister of the Crown must be a member of Parliament, but rigidified the conventional rule by making actual membership of the House at the time of appointment a condition of office.<sup>39</sup>
- 1.23 In 1957, the Act was amended by the inclusion of a power for the Minister of Finance to grant exemptions from any tax, duty, rate, levy or fee to the Governor-General and his wife and dependents, and to members of his personal staff and their wives or dependents.<sup>40</sup> This exemption had significant financial implications. For example, in an age of heavy tariff protection and high prices, second hand cars could be sold for as much in New Zealand as they cost new in Britain.<sup>41</sup>
- 1.24 In 1964, the Act was amended to provide for an annuity for former Prime Ministers and the widows of former Prime Ministers,<sup>42</sup> giving effect to a recommendation made by the Royal Commission on Parliamentary Salaries and Allowances.<sup>43</sup> In making its recommendations, the Royal Commission declared its conviction that the country should give tangible recognition for the great services rendered by the Prime Minister, and noted that the wife of a Prime Minister shares his political life so fully that some recognition should be given her as well. The Commission also noted that the office of Prime Minister attracts to it obligations of a social nature that do not disappear entirely with retirement, but continue to involve him in extra expense.<sup>44</sup> It recommended a minimum period of two years for qualification, and this was reflected in the legislation.
- 1.25 During the late 1960s and early 1970s, inflation forced more frequent reviews of the salary and allowances under the Civil List Act.<sup>45</sup> In 1970, the Act was amended to allow for annual adjustments of parliamentary salaries in relation to the movement of wages outside the State Services.<sup>46</sup>

### 1970s

- 1.26 In 1974, regulation 31 of the Wage Adjustment Regulations suspended sections 27 and 27A of the Civil List Act 1950, and the provisions of Parts II, III and IV of the Act fixing the salaries and allowances of members of the House of Representatives. The regulations established the Higher Salaries Commission, and included in its functions the consideration and determination of those salaries and allowances. Regulation 24 gave the Commission the power of final determination, so an Order in Council was no longer required to fix the rate of salary or allowance.

39 Civil List Act 1950, s6. See Philip A Joseph *Constitutional and Administrative Law in New Zealand*, above n13, 8.5.1(4).

40 Civil List Act 1950, s4A.

41 Gavin McLean, *The Governors: New Zealand's Governors and Governors-General*, above n 33, 256.

42 Civil List Amendment Act 1964, further amended by the Civil List Amendment Act 1973.

43 30 September 1964

44 Report of the Royal Commission on Parliamentary Salaries and Allowances [1964] III AJHR H.50, 27.

45 Civil List Amendment Acts 1965, 1970, 1971, 1972.

46 Civil List Amendment (No.2) Act 1970. This section was subsequently repealed by s34 of the Higher Salaries Commission Act 1977.

- 1.27 In 1975, a section was added to the Civil List Act to provide for payments to spouses or dependent children of members of Parliament dying in office.<sup>47</sup> In 1977, the Act was amended to provide for an annuity for former Governors-General and their widows.
- 1.28 In 1977, the Higher Salaries Commission was set up under its own statute, the Higher Salaries Commission Act 1977.<sup>48</sup> Unlike the procedure under the Wage Adjustment Regulations, the new Act returned to a more transparent process, providing that the Commission's determinations in respect of the salaries and allowances of members of the House were to be published in the Gazette no more than two weeks after the determination was given to the Prime Minister.<sup>49</sup>

### Civil List Act 1979

- 1.29 The present Civil List Act was enacted in 1979. There have been minor amendments made to the Act since then, (for example, updating the Act to take account of the Relationships (Statutory References) Act 2005), but the most significant amendments took place in 1986 and 2003.<sup>50</sup>

### Constitution Act 1986

- 1.30 In July 1984, something approaching a constitutional crisis occurred when the outgoing Prime Minister was unwilling to recommend urgent financial measures to the Governor-General that the incoming Government saw as essential. There was no means by which the successful party could immediately form a government to take responsibility for these measures. An impasse was eventually avoided, but the Government subsequently established a committee to examine the rules relating to the transfer of power and to make proposals for reform, and also to examine all statutes having a constitutional character with a view to bringing together and modernising the appropriate part of New Zealand's statutory constitutional law.<sup>51</sup>
- 1.31 The critical question which arose after the general election of July 1984 was when a new government could be sworn in. The incumbent Government had clearly been defeated, but was still legally in office. By convention it was required to follow the advice of the incoming Government. Could it have sought to resign immediately, rather than implement a policy with which it strongly disagreed, or, if it had refused to follow the advice, could it have been dismissed by the Governor-General? The Officials Committee found that both alternatives depended upon whether it could be immediately replaced by a new ministry, which would require immediate appointment of new Ministers, as it is a clear constitutional rule that the Governor-General must never be left without Ministers to advise him, and to take responsibility for that advice.<sup>52</sup>

47 Civil List Amendment Act 1975.

48 The Commission was renamed the Remuneration Authority in 2002, by the Remuneration Authority (Members of Parliament) Amendment Act 2002.

49 Higher Salaries Commission Act 1977, s16(1).

50 The Act was also amended by the Civil List Amendment Act 1985, which changed the provisions relating to payment of salary, allowance and annuities to the Governor-General.

51 Department of Justice *Constitutional Reform, Reports of an Officials Committee* (Wellington, 1986), First Report, 3.

52 Ibid, para 4.5.

- 1.32 At that time, the operative provision for appointment of new Ministers was section 9(1) of the Civil List Act 1979, which provided:

No person shall be appointed as a Minister of the Crown or as a member of the Executive Council unless that person is at the time of appointment a member of Parliament.

- 1.33 This was also reflected in the provisions of the Letters Patent Constituting the Office of the Governor-General of New Zealand.<sup>53</sup> Thus it was critical to know exactly when a person became and ceased to be a member of Parliament, which was the subject of disagreement in July 1984. To resolve this issue, the Officials Committee recommended that section 9 of the Civil List Act 1979 should be amended to provide that any person can be appointed a Minister of the Crown on the condition that that person becomes a member of Parliament within three months.<sup>54</sup> This proposal was not acceptable to the Government, which instead favoured legislation more closely in line with the principle that members of the Executive Council and Ministers of the Crown should be members of Parliament.<sup>55</sup> This approach was enacted as section 6 of the Constitution Act 1986, which provides:

(1) A person may be appointed and may hold office as a member of the Executive Council or as a Minister of the Crown only if that person is a member of Parliament.

(2) Notwithstanding subsection (1) of this section,—

(a) A person who is not a member of Parliament may be appointed and may hold office as a member of the Executive Council or as a Minister of the Crown if that person was a candidate for election at the general election of members of the House of Representatives held immediately preceding that person's appointment as a member of the Executive Council or as a Minister of the Crown but shall vacate office at the expiration of the period of 40 days beginning with the date of the appointment unless, within that period, that person becomes a member of Parliament; and

(b) Where a person who holds office both as a member of Parliament and as a member of the Executive Council or as a Minister of the Crown ceases to be a member of Parliament, that person may continue to hold office as a member of the Executive Council or as a Minister of the Crown until the expiration of the 28th day after the day on which that person ceases to be a member of Parliament.

- 1.34 The Officials Committee recommended that section 10 of the Civil List Act 1979, which provided for the Governor-General to fix the order of precedence of Ministers, should be repealed, on the grounds that it did not require a statutory basis, and in practice the Governor-General did not play an active role.<sup>56</sup>

53 SR 1983/225. Clause VIII provided: "The Executive Council shall consist of those persons who, having been appointed to the Executive Council from among members of Parliament in New Zealand are, for the time being, our responsible advisers."

54 Department of Justice *Constitutional Reform, Reports of an Officials Committee*, above n 51, First Report, para 6.27.

55 *Ibid*, Second Report, para 3.16.

56 *Ibid*, para 3.18.

- 1.35 The provisions of the Civil List Act 1979 relating to the appointment and powers of Parliamentary Under-Secretaries were repealed, and the relevant provisions were amended and incorporated into sections 8 and 9 of the Constitution Act 1986.<sup>57</sup>

### Sections 20A and 20B

- 1.36 In 2003, sections 20A and 20B were added to the Civil List Act 1979.<sup>58</sup> This amendment followed a report by the Controller and Auditor-General in 2001 into concerns about parliamentary salaries, allowances and other entitlements.<sup>59</sup> The report concluded that a lack of distinction between expenses and remuneration was one of the main sources of public confusion and disquiet about MPs' remuneration.<sup>60</sup> The Parliamentary Service Commission established an independent review group to review the report, and in March 2002 recommended a regime based on one of the options put forward by the Controller and Auditor-General.<sup>61</sup>
- 1.37 The bill introduced to the House as a result provided for the Remuneration Authority to determine the extent of all work-related expenses, including the provision of travel, accommodation, attendance and communication services.
- 1.38 This suggestion was rejected by the Standing Orders Committee in its report on the Remuneration Authority (Members of Parliament) Amendment Bill. It described the proposed arrangement as problematic, as it would shift the responsibility for making all decisions about such services to a body that was not directly involved with the details of parliamentary operations.<sup>62</sup>

We note that the Authority does not determine the work-related services for any of the occupations for which it determines the salary. Moreover, it is not desirable that an outside agency be empowered to constrain the capacity of members to travel, as such travel is an essential aspect of the functioning of the House and select committees. A non-parliamentary body should not be responsible for determining what services should be funded as parliamentary business.

- 1.39 The Standing Orders Committee recommended that the bill be amended so that responsibility for determining travel, accommodation, attendance and communications services was clearly retained by the Speaker and the Minister responsible for Ministerial Services. The result was the introduction of sections 20A and 20B of the Civil List Act 1979. These sections will be considered in detail later in this Issues Paper.

57 Ibid, para 3.19 – 3.22.

58 These sections were inserted by section 4(1) Remuneration Authority (Members of Parliament) Amendment Act 2002.

59 Office of the Auditor General *Parliamentary Salaries Allowances and other entitlements Final Report July 2001* [www.oag.govt.nz](http://www.oag.govt.nz) (accessed 16 March 2008).

60 Ibid, para 615.

61 Remuneration Authority (Members of Parliament) Amendment Bill, no. 229-2, (the commentary).

62 Ibid page 4.

# Chapter 2

## Appropriations and the Civil List Act

### APPROPRIATIONS AND AUTHORISATIONS Legal and financial authority

2.1 One of the key features of the Civil List Act 1979 is that it contains permanent appropriations for certain expenditure, namely the salaries and allowances of the Governor-General, Ministers and members of Parliament.

2.2 There are two aspects to any governmental action involving the expenditure of public money:

The first aspect is the legal authority of the Government or its agents to take the proposed action (in respect of which the expenditure or expenses are to be incurred) at all. This legal authority may be an inherent legal power possessed by the Government, it may be one conferred by statute, or it may be a combination of these.

The second aspect is the authority to expend public money for the purpose of performing that action should this be required. Ministers do not have authority to make payments out of public funds, even for activities that may otherwise be lawful, without parliamentary authority. A payment made out of public funds without parliamentary authority is unlawful. Authority to expend public money can only be obtained by Parliament making an *appropriation* for the action which it is proposed to take or otherwise authorising the payment.<sup>63</sup>

2.3 An appropriation is a statutory authority from Parliament allowing the Crown or an Office of Parliament to incur expenses or capital expenditure. Appropriations are specified by amount, scope and period.<sup>64</sup> In terms of period, appropriations may be annual, multi-year, or permanent. Permanent appropriations are also known as permanent legislative authorities. Most appropriations are annual appropriations, meaning they are for only one financial year. If an annual appropriation is not used in the financial year, it lapses.<sup>65</sup>

63 David McGee, *Parliamentary Practice in New Zealand*, (3ed, Dunmore Publishing Ltd, Wellington 2005) 453.

64 New Zealand Treasury, *A Guide to the Public Finance Act*, August 2005, [www.treasury.govt.nz](http://www.treasury.govt.nz) (accessed 8 July 2008), 18. The scope of an appropriation determines the permitted uses to which it can be put, and any conditions on that use.

65 Public Finance Act 1989, s10(1).

- 2.4 Permanent appropriations are authorised by legislation other than an Appropriation Act, and they continue in effect until revoked by Parliament. Examples of permanent appropriations include appropriations for the salaries of the Auditor-General and his or her deputy,<sup>66</sup> the Ombudsmen,<sup>67</sup> or the Commissioner for the Environment,<sup>68</sup> and the government subsidy to various superannuation schemes.<sup>69</sup>
- 2.5 There may be good reasons for permanent appropriations in particular cases. For example, permanent appropriations are generally provided when the Government needs to give an assurance about its ability to make payments, such as debt repayment, or when Parliament wishes to signal a commitment not to interfere in certain transactions, such as the salaries of the judiciary.<sup>70</sup> In the latter case, a permanent appropriation has a high symbolic value, demonstrating the independence of the judiciary from financial pressure by placing the authority to pay judicial salaries on a permanent basis, rather than leaving them to be voted annually.<sup>71</sup> However, in general, permanent appropriations are deprecated as reducing Parliament's annual control of public expenditure,<sup>72</sup> which is a process that operates as one of our main constitutional controls. As a matter of principle, there must be limits on the kinds of payments that Parliament provides for through a permanent appropriation.

### Permanent appropriations in the Civil List Act 1979

- 2.6 There are a number of permanent appropriation provisions in the Civil List Act 1979. The first appears in section 2 of the Act, and operates as a catch-all provision:

#### **Grants for civil purposes**

The several sums specified in this Act and the several sums determined or fixed under this Act shall be payable in every year out of public money and (except as by this Act expressly provided) without further appropriation than this section.

- 2.7 By virtue of this section, the following matters provided for in the Civil List Act 1979 are permanent appropriations:
- (a) the salary and allowance of the Governor-General (section 3);
  - (b) the annuity for former Governors-General and their spouses or partners (section 4);

<sup>66</sup> Public Audit Act 2001, Sch.3, cl.5.

<sup>67</sup> Ombudsmen Act 1975, s 9(1).

<sup>68</sup> Environment Act 1986, s 9.

<sup>69</sup> Government Superannuation Fund Act 1956, s 95.

<sup>70</sup> New Zealand Treasury, *A Guide to the Public Finance Act*, above n64, 24. Permanent appropriations for judicial salaries appears in section 9A of the Judicature Act 1908, section 6 District Courts Act 1948, and section 13 Te Ture Whenua Maori Act 1993.

<sup>71</sup> David McGee, *Parliamentary Practice in New Zealand*, above 63, 456.

<sup>72</sup> Ibid.

- (c) the provision for travelling expenses of the Governor-General (section 6);
  - (d) the annuity for former Prime Ministers and their spouses or partners (section 22).
- 2.8 There are other provisions in the Civil List Act 1979 that create permanent appropriations. Section 16 of the Act provides for the remuneration of Ministers and other members of Parliament, and section 16(3) provides that this is a permanent appropriation.
- 2.9 Section 20B(4)(b) of the Act creates a permanent appropriation in relation to some, but not all, of the methods by which services determined under section 20A may be funded. We will return to consider this section in Chapter 4, when we examine the operation of the determination process under section 20A.
- 2.10 Section 23 of the Act provides for payments to spouses or partners or dependent children of members of Parliament who die in office. Section 23(2) makes this a permanent appropriation.
- 2.11 In the Law Commission's view, the permanent appropriation for the salary, allowance, annuity and travelling expenses of the Governor-General is appropriate and desirable both for its symbolic value and for reasons of independence similar to those underlying permanent legislative authorities for judicial salaries.
- 2.12 Different reasons operate in relation to the payment of salary and allowance to Ministers and members of Parliament. As discussed in the previous chapter, originally these payments were set at intervals by legislation, but in the 1950s, this was replaced by a new process, by which they were fixed by Order in Council on the recommendation of a Royal Commission. This was eventually replaced by the current mechanism, whereby the Higher Salaries Commission (now the Remuneration Authority) fixes the salaries and allowances. In our view it is appropriate that, having removed the determination process from the political arena, the appropriation for those payments is a permanent one, rather than being a matter for Parliament to pass annually.
- 2.13 Given the provisions of section 2 of the Act, is it necessary for sections 16, 20B and 23 to expressly state that the payments under those sections are permanent appropriations?

## Section 25: Appropriation of money for benefits and privileges

- 2.14 During consultation, questions arose about the purpose and effect of section 25 of the Civil List Act 1979. Section 25 of the Act provides:

### **25 Appropriation of money for benefits and privileges**

- (1) The appropriation by Parliament of money for the purpose of providing benefits or privileges of a specified kind for—
- (a) The Governor-General or a former Governor-General; or
  - (b) The Prime Minister or a former Prime Minister; or
  - (c) Other Ministers of the Crown; or
  - (d) Parliamentary Under-Secretaries; or
  - (e) Members or former members of Parliament; or

- (f) Members of the families (including a spouse or partner, surviving spouse or partner, or issue) of any of the persons specified in paragraphs (a), (b), (c), (d), or (e) of this subsection,—
- shall be sufficient authority for the grant of such benefits or privileges, and where money is so appropriated it shall not be necessary as a condition for the lawful expenditure of any money so appropriated that the appropriation be implemented by any statutory authority other than this section.
- (2) Nothing in this section shall authorise the payment of any money to any member of Parliament or to any member of the family of any member of Parliament.
- (3) The operation of this section shall not be limited in its application to any benefits or privileges by reason merely of the fact that, with respect to any specified benefits or privileges, there may, in addition to the authority conferred by this section, be an express statutory authority:
- Provided that nothing in this subsection shall be construed to authorise the expenditure of any money contrary to the express provisions of any Act.
- 2.15 What is meant by “benefits or privileges of a specified kind”? These words are not defined in the Act. They also appear in the Appropriation (Continuation of Interim Meaning of Funding for Parliamentary Purposes) Act 2007, at section 3, but again without being defined.
- 2.16 Does the phrase include salaries and allowances provided for in the legislation? Does it include the services payable to members of Parliament in determinations issued by the Speaker or the relevant Minister under section 20A? What is the effect of section 25(2), which appears at first sight to contradict sections 25(1) (e) and (f)?
- 2.17 It is helpful to go back to when this section was first introduced into the Civil List Act, by section 10 of the Civil List Amendment Act 1936 (although it was limited at that time in its terms to members or former members of the General Assembly or members of their families). The marginal note for the section stated “Specific statutory authority not required for expenditure of moneys appropriated by Parliament for purpose of providing *travelling-facilities and other privileges* for members of General Assembly and their families” (emphasis added). Section 10 itself made no specific reference to travelling facilities, but it appears that these were the sorts of benefits and privileges that the section was intended to cover.
- 2.18 That reading also assists in understanding subsection 2 of the current provision, which also appeared in the 1936 legislation. In our view the intention of subsection 2 is to make it clear that subsection 1 only authorises Parliament to appropriate money for the purpose of providing benefits and privileges for listed people and their families, not for making payments directly to them. Thus the payment of salaries and allowances to members of Parliament, for example, requires specific legislative authority, and cannot be made on the basis of section 25. This authority is contained in section 16 of the Civil List Act 1979. However, the wording of section 25 allows for a degree of ambiguity, and we consider that it should be amended to make the meaning clear.

- 2.19 Section 25 predates the insertion of sections 20A and 20B of the Act, which set out the process for determining travel and other services for members of Parliament and of the Executive. There is some confusion as to whether these services are also included in the benefits or privileges referred to in section 25. The determinations provide the lawful authority for these services to be provided, and so section 25 is not necessary for those services, but it does seem that there may be a degree of overlap. Again, redrafting section 25 would be helpful in this regard.
- 2.20 Section 25 is still necessary in our view, to provide authority for a number of payments made to former Governors-General, Prime Ministers, and their spouses or partners. We return to consider this later in chapter 5.

# Chapter 3

## Part 1 of the Act: the Governor-General

- 3.1 The Governor-General is appointed by the Queen in her capacity as Sovereign of New Zealand, and is her representative in New Zealand.<sup>73</sup> The appointment is made on the advice and recommendation of the government of the day.<sup>74</sup> Each Governor-General has detailed terms of appointment which are signed by the Governor-General designate and the Prime Minister, having been negotiated with the Governor-General designate by the Clerk of the Executive Council on the Prime Minister's behalf. The term of appointment is usually five years.
- 3.2 The office of Governor-General was constituted by the Letters Patent of 11 May 1917, when the existing office of the Governor was reconstituted to give it "the greater gubernatorial glory that Dominion status and equality with the other Dominions were thought to require."<sup>75</sup> The 1917 Letters Patent were revised and modernised by the Letters Patent Constituting the Office of Governor-General of New Zealand dated 28 October 1983,<sup>76</sup> which were intended to up-date and "patriate", or bring home, the office.<sup>77</sup>
- 3.3 The Civil List Act 1979 deals with the following matters in relation to the Governor-General:
- (a) the payment of a salary and allowance (section 3);
  - (b) annuities for former Governors-General and their spouses or partners (section 4);
  - (c) compensation for lost or adversely affected superannuation rights (section 5);
  - (d) travelling expenses (section 6);

<sup>73</sup> Constitution Act 1986, s2(2).

<sup>74</sup> By convention the Leader of the Opposition is consulted.

<sup>75</sup> Professor FM Brookfield "The reconstituted office of Governor-General" [1985] NZLJ 356.

<sup>76</sup> Philip A Joseph *Constitutional and Administrative Law in New Zealand* (3ed, Brookers, Wellington, 2007) 733-4. The 1983 Letters revoked the former instruments, the Letters Patent and Royal Instructions of 11 May 1917. They were further amended in 1986 and 2006.

<sup>77</sup> Alison Quentin-Baxter, *Review of the Letters Patent 1917 Constituting the Office of Governor-General of New Zealand*, Wellington, Cabinet Office, June 1980. The Royal Title used at the beginning of the 1983 letters refers to the Queen of New Zealand and Her Other Realms and Territories. The Seal of New Zealand is used, and the Letters are counter signed by the Prime Minister. See also RQ Quentin-Baxter, *The Governor-General's constitutional discretions: an essay towards a re-definition* (1980) 10 VUWLR 289.

- (e) a power to grant exemptions from taxation to the Governor-General and his or her spouse and dependent children, and any member of his or her personal staff (or their spouse or dependent children) if that staff member is resident in New Zealand solely for the purpose of their duties as a member of staff (section 7); and
- (f) the payment of the salary of the Administrator of the Government, where one is required (section 8).

## TERMS OF APPOINTMENT

3.4 As well as the provisions of the Civil List Act 1979, each new Governor-General agrees terms of appointment with the Government before taking office. The terms of appointment broadly set out what the Government will provide for the Governor-General to undertake the role for the specified term, and the parameters of that support, based both on the provisions of the Civil List Act 1979, and established practice.<sup>78</sup> In general terms the terms of appointment cover the following matters:

- (a) **Remuneration:** reflecting the provisions of the Civil List Act 1979. The terms of appointment also cover the method of payment, and the annual adjustment of the allowance in accordance with the Consumer Price Index. Items that may be charged to the Governor-General's allowance are specified in a schedule to the terms of appointment;
- (b) **Commencement:** the terms reflect the Civil List Act provisions;
- (c) **Official residences:** the terms of appointment provide for the provision of official residences and grounds, their upkeep, maintenance and security by Government, together with domestic, personal and support services to use the Government Houses as private residences, and to host state occasions, other ceremonies and functions, and undertake the role of Governor-General;
- (d) **Travel:** the terms of appointment provide for an agreed period of extended private overseas leave. Official and private travel within New Zealand, and official travel overseas, are met from the permanent legislative authority provided in section 6 of the Civil List Act 1979. The terms of appointment also provide for cars to be provided and maintained for the use of the Governor-General and spouse, and cars are also hired for official use;
- (e) **Entertainment:** the Government meets the cost of all expenses incurred by the Governor-General in entertaining a Head of State or other guests of Government. The costs of other official and private entertainment are met by the Governor-General from the allowance;
- (f) **Gifts:** the Government meets the cost of gifts associated with a state visit in New Zealand and overseas. Retention of gifts on leaving office follow a similar model to that applying to Ministers;
- (g) **Security:** the terms of appointment provide for personal and protective security arrangements for the Governor-General and family;
- (h) **Support on assumption and vacation of office:** The terms of appointment provide for removal and storage, and may include any administrative or briefing support provided before the Governor-General assumes office;

<sup>78</sup> The Department of the Prime Minister and Cabinet has precedents for terms of appointment dating back to the appointment of Sir Keith Holyoake in 1977. They advise that the terms of appointment have changed over time, to reflect changes in other legislation. They may also vary according to the individual circumstances of the particular Governor-General. Particular terms of appointment can be amended by agreement during a Governor-General's term of office.

- (i) **Vacation of office:** the terms of appointment set out the Civil List Act provisions for payment on leaving office, and also include provisions relating to transport which are provided through Ministerial Services.

PROVISIONS  
OF THE CIVIL  
LIST ACT 1979

**Salary and allowance**

- 3.5 Section 3 of the Civil List Act 1979 provides for the payment of salary and an allowance to the Governor-General. Pursuant to section 2 of the Act, these sums are paid out of public funds without further appropriation by Parliament. The Governor-General's salary is fixed by the Remuneration Authority, and protected by legislation. It cannot be reduced during his or her commission.<sup>79</sup> The Governor-General's allowance is paid at a rate fixed from time to time by Order in Council.<sup>80</sup>

*Income tax exemption*

- 3.6 The salary and allowance paid under section 3 are exempt from income tax under the Income Tax Act 2007,<sup>81</sup> and the salary is calculated on this basis.<sup>82</sup> The exemption also applies to the salary of any person acting as the Administrator of the Government under section 8 of the Civil List Act 1979.<sup>83</sup>
- 3.7 Should the Governor-General continue to be exempt from paying income tax? In our preliminary consultation for this Issues Paper, there was no opposition to the exemption being removed. As noted previously, since 1993 the Queen has voluntarily paid income tax on her private income. In Australia, until 2001, the Governor-General and the State Governors enjoyed an exemption from income tax for their official salary and for income derived from overseas, but in 2001, the Government introduced federal legislation to remove the exemption. The two main reasons given were:
- the exemption was introduced at a time when vice-regal appointees customarily came from the United Kingdom and were treated, for tax purposes, the same way as non-diplomatic representatives of foreign governments or organisations; and
  - the Governor-General is the Queen's representative and, since 1993, the Queen has been paying income tax in the United Kingdom.<sup>84</sup>
- 3.8 The salary of the incoming Governor-General was increased to offset the newly imposed liability to income tax.<sup>85</sup>

79 Civil List Act 1979, s 3.

80 Civil List Act 1979, s3(1)(b).

81 Income Tax Act 2007, CW16, previously Income Tax Act 2004, CW12.

82 Civil List Act 1979, s3(1)(a).

83 Income Tax Act 2007, CW 16(b).

84 The Hon Peter Reith, Commonwealth of Australia, Parliamentary Debates (6 June 2001) House of Representatives, Official Hansard, 27340, cited in Bills Digest No. 165 2000-01, Governor-General Legislation Amendment Bill 2001 [www.aph.gov.au](http://www.aph.gov.au) (accessed 5 February 2008).

85 Governor-General Legislation Amendment Act 2001 (Cth). The Act deleted section 51-15 of the Income Tax Assessment Act 1997 (Cth).

- 3.9 In Canada, however, income from the office of Governor-General is still exempt from income tax,<sup>86</sup> “in keeping with the long-standing tradition that the Crown does not tax monies that it pays to itself.”<sup>87</sup>
- 3.10 We note that in New Zealand, a decision to require the Governor-General to pay income tax would be of symbolic rather than financial significance, as in future the Remuneration Authority would not calculate the Governor-General’s salary on the basis that it is tax exempt, as it is presently required to do. The salary would no doubt be increased to take account of the new tax liability.

### *Section 7 exemptions*

- 3.11 Under section 7 of the Act, the Minister of Finance may exempt the Governor-General from paying any public or local tax, duty, rate, levy or fee. This section was introduced into the Act in 1957. The Department of Prime Minister and Cabinet advises that there are no current exemptions under section 7 of the Act.
- 3.12 The question as to whether changes should be made to the exemption power under section 7 raises similar policy considerations as the issue of income tax liability. It too might be seen as a hangover from an era where vice-regal appointees came from overseas. The first New Zealand-born Governor-General, Sir Arthur Porritt, was not appointed until 1967, and he was domiciled in the United Kingdom.<sup>88</sup> The first resident New Zealander to be appointed was Sir Denis Blundell, in 1972. As Governors-General are now invariably New Zealand citizens, is it still appropriate for the exemption power to remain?

### *Commencement and cessation*

- 3.13 Despite the steps that have been taken to patriate the office of Governor-General, the language of the Civil List Act still retains colonial overtones in the sections relating to commencement and cessation of the salary and allowance. This review provides an opportunity to update that language.
- 3.14 Section 3(a) provides for the Governor-General’s salary and allowance to commence on the earliest of the date on which he assumes the duties of his office; or the date on which he “embarks or emplanes for New Zealand”, or, if he is domiciled in New Zealand immediately before appointment, the date on which, as a preliminary to his appointment, “he embarks or emplanes for a destination outside New Zealand to be received in audience by the sovereign.” Section 3(b) provides that the salary and allowance continue to be payable until the date on which he ceases to hold office, or leaves New Zealand with the intention of vacating his office, (whichever is the earlier).
- 3.15 Section 3(a)(iii) reflects an earlier convention of a pre-appointment visit by the designate to the Sovereign. Although no longer a pre-requisite to taking up the office, the practice to date in New Zealand has been for the Governor-General designate to call on the Sovereign.

86 Income Tax Act RS C 1985 c-1 (5<sup>th</sup> Supp.) s81(1)(n).

87 Correspondence from the Office of the Secretary to the Governor-General of Canada, 6 March 2008.

88 Philip A Joseph *Constitutional and Administrative Law in New Zealand*, above n 76, 733.

- 3.16 The question of commencement and cessation also raises a practical issue, related to the special status of the Governor-General. In New Zealand, the appointments of Governors-General are often announced relatively early, with a significant lead-in period. The result is that sometimes the Governor-General designate may find him or herself having to surrender other positions or work which might be seen to conflict with the role of Governor-General, and yet he or she will not receive payment of salary and allowance under the Act until taking up the office some months later. He or she may also incur expenses related to the role prior to swearing in for which the Act makes no provision. On occasions, a refundable advance of the allowance has been provided under the terms of appointment, prior to the swearing in of a Governor-General, but greater flexibility may be desirable.

ADMINISTRATOR 3.17 When the office of Governor-General is vacant, or the Governor-General is unable to perform the functions of office, (for example, because he or she is overseas), the Administrator of the Government must perform those functions instead.<sup>89</sup> Section 8 of the Civil List Act 1979 provides for the payment of a salary to the Administrator.

- 3.18 There is a difference between the descriptions of the Administrator in the Letters Patent and the Civil List Act 1979. The Letters Patent, following an amendment in 2006, authorise the Chief Justice or *the next most senior Judge of the New Zealand judiciary who is able so to act* to be the Administrator. However section 8 of the Civil List Act 1979 provides for payment of a salary to the Administrator “where the Chief Justice, or the President of the Court of Appeal, or, as the case may require, the Senior Judge for the time being of the Court of Appeal” acts as the Administrator. This section was inserted in the Civil List Act 1979 in 1983, before the Supreme Court was established, and it appears to have been overlooked when the Letters Patent were amended. The section should be amended to reflect the wording of the Letters Patent.

- 3.19 In the absence of the Governor-General, expenses incurred by the Administrator of the Government in relation to that role may be charged to the Governor-General’s allowance.

- 3.20 During the period when he or she is acting as Administrator, section 8 of the Civil List Act 1979 provides that the Administrator is paid either at the rate of his or her judicial salary, or a salary at the rate of half the judicial salary and half the rate of the Governor-General’s salary, whichever is the greater. This salary is in substitution for the judicial salary (even if the amount is in fact the same), and is tax exempt.<sup>90</sup> Obviously this tax exempt status depends on the Governor-General’s salary remaining exempt.

- 3.21 In our view, this substitution of salary is unnecessary. It would be less complicated for the Administrator to simply continue to receive his or her judicial salary while carrying out the role of Administrator.

89 Letters Patent Constituting the Office of Governor-General of New Zealand dated 28 October 1983, clause 12; Constitution Act 1986 s3B.

90 Income Tax Act 2007, CW 16, previously Income Tax Act 2004, CW12.

## ANNUITIES

- 3.22 Section 4 of the Civil List Act 1979 provides for the payment of annuities to former Governors-General and their spouses or partners. There are two different rates under the section, both determined by the Remuneration Authority. One applies if the person held office for a total period of less than two years, and the other applies if the person held office for two years or more. In the latter case, the annuity is set at a yearly rate for each complete year, not exceeding five years. Thus even if a Governor-General is asked to extend his or her term, (as Dame Silvia Cartwright was, although for a period less than a complete year), the amount of the annuity is capped. Unlike the salary, the Governor-General's annuity is not tax exempt, but is treated as taxable income.
- 3.23 Why does the Governor-General receive an annuity on leaving office? In part it is to recognise the contribution they have made to the country, but it also recognises the on-going commitments that arise from a Governor-General's former duties. The public nature of the role does not end with the term of office. Former Governors-General continue to be associated with the office long after they have completed their term. This association may place limits on their activities and employment choices, and may impose costly obligations. Former Governors-General may remain patrons of causes that they came to be associated with during their term. They continue to receive considerable correspondence, deliver speeches and attend events.
- 3.24 Under section 4(2) of the Act, where the former Governor-General dies, a surviving spouse or partner is entitled to receive the annuity "until that surviving spouse or partner dies or marries or enters into a civil union or a de facto relationship." A similar provision appears in section 22 in relation to annuities for former Prime Ministers and their spouses.
- 3.25 The rationale for the grant of the annuity to the surviving spouse of a Prime Minister at the time it was introduced is discussed earlier in this report, at paragraph 1.24. It was seen as recognition of the significant role played by that spouse in supporting the office holder.
- 3.26 The same argument applies to spouses of Governors-General. That being the case, why should the annuity end if that spouse remarries or enters a civil union or de facto relationship? This suggests it is based on the assumption that the surviving spouse is financially dependent and requires ongoing financial support after the death of the former office holder, but that if the spouse remarries, that dependence will transfer to the new partner, and the annuity will no longer be required. In a modern context, this view is outdated, even patronising. Moreover, it is at odds with what appears to be the rationale for the grant of the annuity: the support given by the surviving spouse during the office holder's years of service.

OTHER  
ENTITLEMENTS

- 3.27 In Australia, the only statutory entitlement of a former Governor-General is a superannuation benefit provided under the Governor-General Act 1974 (Cth). However, over time a standard package of entitlements has developed which is available to the office holder for life. The extent of these additional benefits is

at the discretion of the prime minister of the day, and they may not be used for commercial purposes. They include domestic air travel and train travel where the travel is for official purposes, and the provision of office accommodation, administrative support, and appropriate security arrangements. The Australian Department of Prime Minister and Cabinet tables information on expenditure incurred by former governors-general on a six-monthly basis.

- 3.28 In New Zealand, as in Australia, there are some additional benefits for former Governors-General which are not provided by legislation. As noted above, the terms of appointment entered into between the Governor-General designate and the Prime Minister now include provisions for transport entitlements to be provided through Ministerial Services after the Governor-General has vacated the office. These include air travel costs for domestic travel, and the use of chauffeur driven cars. Similar provisions exist for former Prime Ministers. As noted in Chapter 2, the legal authority for these entitlements can be found in section 25 of the Civil List Act 1979, and the funds are appropriated annually.
- 3.29 While a similar policy argument can be made to justify these entitlements in New Zealand as in Australia, in our view they should be transparent. At present, they are opaque, although details could be requested under the Official Information Act 1982.

#### LEGISLATIVE BASIS

- 3.30 One of the questions for this review is whether there is a more appropriate legislative structure for those provisions of the Civil List Act 1979 which should continue in force; a structure which makes the provisions more transparent and easy to find. In relation to the Governor-General there is also a question of constitutional significance: would it be more appropriate if the provisions relating to the salary and allowance for the Queen's representative in New Zealand appeared in a statute of their own, rather than being included with the provisions relating to members of Parliament?
- 3.31 At present, as noted above, the office of Governor-General is constituted by the Letters Patent, and provided for in the Constitution Act 1986. The Civil List Act 1979 deals with the payment of salary, allowance and annuities. Before considering other possible legislative vehicles for these provisions, it is helpful to consider how similar provisions relating to the Governor-General are dealt with in Canada and Australia.

#### Canada

- 3.32 In Canada, the office of Governor General is also constituted by Letters Patent,<sup>91</sup> and appointments are made by the Queen, acting on the advice of her Canadian ministers. Section 105 of the Constitution Act 1867 confers power on the Canadian Parliament to fix the Governor General's salary.
- 3.33 The Governor General's Act 1985 provides for the payment of salary and retirement annuities to the Governor General of Canada and surviving spouses.

91 Letters Patent constituting the office of Governor General of Canada, 1947, R.S.C. 1985, Appendix II, No. 31.

## Australia

- 3.34 Section 2 of the Australian Constitution provides for a Governor-General appointed by the Queen to be Her Majesty's representative in the Commonwealth. Section 3 authorises the appropriation of money for the salary of the Governor-General, and provides that the salary of the Governor-General shall not be altered during his continuance in office.
- 3.35 The Governor-General Act 1974 (Cth) sets the salary payable to the Governor-General, and also provides for retirement allowances.

## Options for New Zealand

- 3.36 In our view there are three main options for dealing with the Governor-General's salary, allowance and other entitlements:
- (a) Retain the provisions in a statute that also deals with the remuneration and entitlements of members of Parliament, and members of the Executive, as at present, in an amended Civil List Act 1979;
  - (b) Include the provisions relating to the Governor-General's salary, allowance and other entitlements in a schedule to the Constitution Act 1986;
  - (c) Create a stand-alone statute that contains the provisions relating to the Governor-General's salary, allowance and other entitlements. The current provisions of the Constitution Act 1986 relating to the Governor-General would remain unchanged.
- 3.37 We return to consider these options in the final chapter of this Issues Paper, when we discuss the options for dealing with the Civil List Act 1979 as a whole.

# Chapter 4

## Remuneration of ministers and members of parliament

- INTRODUCTION
- 4.1 Part 3 of the Civil List Act 1979 deals with the remuneration of Ministers of the Crown, Parliamentary Under-Secretaries, and members of Parliament. Section 16(3) of the Act provides that the moneys required for these salaries and allowances do not have to be appropriated annually by Parliament: instead they are a permanent charge on the expenditure of the Government.
  - 4.2 The following issues arise out of a review of the sections which make up Part 3 of the Act:
    - (a) Some sections of the Act create unnecessary legislative complexity, in particular section 20A, in relation to the Speaker's determination;
    - (b) Some sections of the Act are impracticable, for example, section 20.
  - 4.3 In this chapter, we will consider each of the sections of Part 3 of the Act, and identify any issues that arise, and some possible options for dealing with them.

### Salaries and allowances

- 4.4 Section 16 of the Act empowers the Remuneration Authority to fix the salaries and allowances to be paid to members of Parliament, including the Prime Minister, other Ministers of the Crown or members of the Executive Council, Parliamentary Under-Secretaries, the Speaker, the Chairman of Committees of the House, and the Leader of the Opposition, as well as other members of Parliament.

- 4.5 Section 16(2) provides that the Authority can fix different salaries and allowances which take into account the office that a member holds, the electorate he or she represents, and other matters the Authority considers relevant. The current salaries and allowances payable under section 16 are set out in the Parliamentary Salaries and Allowances Determination 2007.<sup>92</sup>

### Sections 17 and 18

- 4.6 As David McGee notes in *Parliamentary Practice in New Zealand*, the periods for which salaries and allowances are paid do not always coincide with the period for which the persons concerned hold office in law.<sup>93</sup> Section 17 of the Civil List Act 1979 provides that when Parliament is dissolved, the people holding the offices of Speaker, and of Chairman of Committees of the House of Representatives,<sup>94</sup> shall be deemed to continue to hold office until the first meeting of the next Parliament, (unless he or she dies before then). The effect of this section is that the Speaker continues to be paid a salary and allowance beyond the dissolution of Parliament until the first meeting of the next Parliament, despite the fact that under the Constitution Act 1986, the Speaker ceases to hold office on polling day,<sup>95</sup> and the Deputy Speaker on the dissolution of Parliament.<sup>96</sup>
- 4.7 Where a member of Parliament is elected, section 18 of the Civil List Act 1979 provides that salaries and allowances payable to members of Parliament shall commence on the day after polling day. This differs from the period of office set out in section 54 of the Electoral Act 1993, which provides that electorate members do not come into office until the day after the day of the return of the writ issued for the election, and that members holding list seats do not come into office until the Chief Electoral Officer makes a return of party-list members who have been elected.
- 4.8 Section 18(3) provides that where any person who was a member immediately before the dissolution of Parliament is not a candidate at the next general election, or is an unsuccessful candidate, their salary continues for three months after polling day (or in the case of a minister, for three months after they cease to hold office). The origins of this provision may be found in the report of the 1961 Royal Commission Upon Parliamentary Salaries and Allowances, which found that the automatic end of payments and allowances to members on the day of their defeat at a general election frequently resulted in hardship. Many members had a carry-over of work, and for a number time was required to obtain employment or to renew their previous occupations or professions.<sup>97</sup>

92 SR 2007/352

93 David McGee *Parliamentary Practice in New Zealand* (3ed, Dunmore Publishing Ltd, Wellington, 2005) 47.

94 The Chairman of Committees is now called the Deputy Speaker – David McGee *Parliamentary Practice in New Zealand*, *ibid* 47.

95 Constitution Act 1986, s13.

96 David McGee *Parliamentary Practice in New Zealand*, above n 93, 47.

97 Report of the Royal Commission Upon Parliamentary Salaries and Allowances [1961] IV AJHR H.50, 16, implemented by s3 of the Civil List Amendment Act 1961. The original recommendation was for one month's pay; this was amended to three months in 1973, in recognition of the fact that general elections are normally held in November, and so the member is forced to seek new employment during the holiday period – Report of the Royal Commission on Parliamentary Salaries and Allowances [1973] IV AJHR H.2. This recommendation was enacted in the Civil List Amendment Act 1973, s3, and was extended to apply to people who were not candidates at the next election by s27 of the Constitution Act 1986.

## Questioned elections – section 19

- 4.9 Section 19 is intended to clarify arrangements for the payment of salary and allowances where the election of a member of Parliament is overturned following an election petition. In that case, member whose election is overturned is still entitled to salary and allowance payments for the period from polling day to the day the election was overturned. However, the new member is entitled to salary and allowance payments backdated to polling day.

## Deductions – section 20

- 4.10 Section 20 of the Civil List Act 1979 provides for deductions from the salaries and allowances payable to members of Parliament. If a member is absent for more than 14 sitting days during any session, (unless the absence is due to a cause exempted under the section, such as illness or a conference), section 20(1)(a) provides for a deduction of \$10 for each day of absence from the payments to be made to that member. Similar provisions can be traced back to as early as 1884, in section 5 of the Parliamentary Honorarium and Privileges Act 1884.
- 4.11 In practice, although section 20 of the present Civil List Act has been used on occasion, it is generally considered to be ineffective. Partly this is because the amount of the deduction is so small, but more fundamentally it is because there is no mechanism in the House of Representatives for monitoring attendance. The Standing Orders used to provide that no member should be absent from the House for more than seven consecutive sitting days without obtaining a leave of absence, and any member absent in contravention of the Standing Order was guilty of contempt.<sup>98</sup> The Serjeant-at-Arms kept a daily record of members' attendance in the House.<sup>99</sup>
- 4.12 However this record of members' attendance is no longer maintained. Since 1985, the Speaker has been able to delegate the power to grant leave of absence to other members. As a result, a central record of attendance became practically impossible to maintain, as each party had delegated authority to grant leave of absence and maintained its own records.<sup>100</sup>
- 4.13 In 1999, the Standing Orders Committee considered the obligation on members of Parliament to attend the House. It described section 20 of the Civil List Act 1979 as “totally ineffective” and suggested that the provisions of section 20 should either be repealed or made effective. It also noted that the record keeping should either be made effective or it should be abandoned, but that making it effective would greatly increase the parliamentary bureaucracy, and would probably require a recentralisation of the granting of leave of absence, a course which the Committee did not favour.
- 4.14 The Committee observed that in general the party system, together with the requirements of the Standing Orders that a certain proportion of a party's membership must be at least within Parliament buildings to vote, operated satisfactorily to maintain attendance at the level that could be expected.

98 SO 62 from the Standing Orders prior to 1996, now revoked.

99 David McGee *Parliamentary Practice in New Zealand*, above n 93, 32.

100 Standing Orders Committee *Review of the operation of the Standing Orders* [1999] AJHR, I.18B, 7.

It acknowledged that a difficulty did arise in relation to independent members because their proxy votes could be exercised even if they were not in Wellington, and accordingly it recommended that for a party vote to be cast, the members must be either present within the precincts of Parliament, or authorised by the Speaker.<sup>101</sup> It recommended that the attendance Standing Orders should be revoked as being ineffective.

- 4.15 Today, as in 1999, while party discipline may operate to ensure attendance among most members, it is not a complete answer, particularly given the increasing numbers of independent members of Parliament.
- 4.16 The Speaker does not intervene unless statutorily required to do so, or as provided in Standing Order 156(4)(d) in relation to the casting of proxy votes for Independent members or a party consisting of one member.<sup>102</sup> We note that pursuant to section 55(1)(a) of the Electoral Act 1993, the seat of any member of Parliament becomes vacant if he or she is absent from the House without permission of the House for one whole session of Parliament, unless it is by virtue of being a head of mission or head of post within the meaning of the Foreign Affairs Act 1988.
- 4.17 During consultation we discussed the deduction provision with the Speaker, most of the whips, and a number of other members of Parliament. All agreed that the present mechanism provided by section 20 of the Civil List Act 1979 is ineffective. All agreed that some kind of mechanism was desirable. However there were no suggestions as to what might be a workable basis for deductions, without becoming oppressive or unwieldy.

### Canada

- 4.18 The situation in Canada is similar to New Zealand. Sections 57 – 59 of the Parliament of Canada Act provide for deductions of \$120 for every day beyond 21 days that a member is absent, though there are exceptions for illness and for “public business”.<sup>103</sup> Standing Order 15 requires members to attend sittings of the House unless otherwise occupied “with parliamentary activities and functions or on public or official business”.<sup>104</sup> The House does not take attendance, so these provisions are difficult to enforce. However, members are required to file a statement with the House’s pay and benefits section every month that the House sits, and to indicate what days they were in attendance, and what days they were unable to attend due to illness or public business.<sup>105</sup>

101 Ibid, 13.

102 Speaker Hon Margaret Wilson (6 December 2006) 636 NZPD 6193.

103 Parliament of Canada Act R.S.C. 1985 c P-1.

104 Standing Orders of the House of Commons, Canada, Consolidated version as of 5 June 2008, [www.parl.gc.ca](http://www.parl.gc.ca) (accessed 5 June 2008).

105 Information provided by Jeremy LeBlanc, Deputy Principal Clerk, Committees Directorate of the House of Commons of Canada.

- 4.19 The same provisions of the Parliament of Canada Act apply to Senators, and the Rules of the Senate also have additional provisions about attendance.<sup>106</sup> However, unlike the House of Representatives, the Senate does record attendance, and the list of Senators present for any portion of a given sitting is listed in the daily Journals.

### Options

- 4.20 We would welcome any submissions suggesting an appropriate mechanism for managing deductions. In the absence of any suitable mechanism, our present view is that section 20 of the Civil List Act 1979 should be repealed and not replaced.

### Sections 20A and 20B: services for members of Parliament and the Executive

- 4.21 Apart from their salary and allowances, members of Parliament are entitled to certain other services to enable them to perform their parliamentary duties. Among these are travel, accommodation, attendance and communications services. For members of Parliament, these services are determined by the Speaker of the House under section 20A of the Civil List Act 1979. Section 20A also provides for the Minister responsible for Ministerial Services to determine travel, accommodation, attendance and communications services for Ministers.
- 4.22 The services may be provided in kind, or by the payment of money by way of reimbursement.<sup>107</sup> The determinations of services by the Speaker and the Minister are published as regulations, but may not be amended or disallowed by the House under the Regulations (Disallowance) Act 1989.<sup>108</sup>
- 4.23 Presently, the determinations incorporate by reference travel, accommodation, attendance and communications services that are set out in separate documents, those for members of Parliament being set out in the “Directions and Specifications for Services and Funding Entitlements for the House of Representatives, its Members and Former Members”,<sup>109</sup> and those for Ministers in a document entitled “Travel, Accommodation, Attendance and Communications Services Available to Members of Executive”.<sup>110</sup>

106 Rules of the Senate of Canada, October 2005, rule 136. Rule 137 provides that a Senator may be absent from sittings of the Senate by reason of public or official business or of being ill, and also for 21 personal leave days per session, subject to any terms and conditions set out in law or provided by the Senate. The deduction to be made from the sessional allowance of a Senator under subsection 57(1) of the Parliament of Canada Act is increased to \$250 per day for every sitting day beyond 21 on which the Senator does not attend a sitting of the Senate.

107 David McGee *Parliamentary Practice in New Zealand*, above n 93, 50.

108 Civil List Act 1979, s20A(8). The relevant determinations are the Executive Travel, Accommodation, Attendance and Communications Services Determination 2003 (SR 2003/308), and the Parliamentary Travel, Accommodation, Attendance, and Communications Services Determination 2007 (SR 2007/318).

109 Date of issue: 1 December 2007.

110 Date of Issue: 1 November 2003.

- 4.24 There is a separate determination, also made under section 20A of the Civil List Act 1979, relating to inter-parliamentary travel, which is administered by the Office of the Clerk, and is intended to enable members to engage on global issues with inter-parliamentary organisations and other parliaments.<sup>111</sup>
- 4.25 As if this statutory scheme were not sufficiently complicated, section 20A is part of a patchwork of provisions dealing with parliamentary funding, and the effect of other legislative provisions must also be taken into account.

### *Services for members of Parliament*

- 4.26 In relation to services for members of Parliament, section 20A should be considered in conjunction with the Parliamentary Service Act 2000, and the Appropriation (Continuation of Interim Meaning of Funding for Parliamentary Purposes) Act 2007.<sup>112</sup>
- 4.27 The Parliamentary Service was established in 1985. Its principal duties are to provide administrative and support services to the House of Representatives and members, and to administer the payment of “funding entitlements for parliamentary purposes” in accordance with directions given by the Speaker.<sup>113</sup> The Parliamentary Service Commission, established under the Parliamentary Service Act 2000, comprises representatives of all the parties in Parliament. Its main function is to advise the Speaker as to the nature of the services to be provided to the House and its members, and the criteria to be applied in allocating funding entitlements for parliamentary purposes.<sup>114</sup>
- 4.28 The expression “funding entitlements for parliamentary purposes” is not defined in the Parliamentary Service Act 2000. It has been subsequently defined, on an interim basis, in section 7 of the Appropriation (Parliamentary Expenditure Validation) Act 2006, and by the Appropriation (Continuation of Interim Meaning of Funding for Parliamentary Purposes) Act 2007. The expression includes funding for the purposes of:
- Members or parties performing their roles and functions as members and parties;
  - Providing travel, accommodation, attendance, and communications services in accordance with a determination by the Speaker under section 20A of the Civil List Act 1979, or a direction by the Speaker under the Parliamentary Service Act 2000, provided communications services do not include electioneering;
  - Providing benefits and privileges of a specified kind for former members and members of their families.
- 4.29 Under section 20A(7) of the Civil List Act 1979, “travel, accommodation, attendance, and communications services” for members of Parliament include:

111 Parliamentary (Official Inter-Parliamentary Travel Programme) Travel and Accommodation Determination 2007, SR 2007/117, and the Specification for Travel, Accommodation, and Related Services Available to Members of Parliament Participating in the Official Inter-Parliamentary Travel Programme, dated 18 May 2007.

112 This Act expires on 1 July 2009.

113 Parliamentary Service Act 2000, s 7.

114 Parliamentary Service Act 2000, s 14.

- The payment of money or allowances for those things;
  - Provision for any member of the family of a member of Parliament for those things;<sup>115</sup>
  - Any other means of meeting the travel, accommodation, attendance, and communications needs or obligations of members of Parliament.
- 4.30 Section 20B provides three ways in which the Speaker can determine the services referred to in section 20A:
- (a) By fixing services or providing a method by which services can be calculated or ascertained;
  - (b) By providing for any monetary amounts to be adjusted according to any percentage movements in any index or survey published by Statistics New Zealand; or
  - (c) By incorporating by reference all or part of any of any other document that sets out any services to be provided to members under the Parliamentary Service Act 2000; any funding entitlements for parliamentary purposes to be provided under that Act; any matters referred to in section 25 of the Civil List Act 1979.
- 4.31 The last method, incorporation by reference, is the only method that has been used for the determination process.

#### *Background to the 2007 determination*

- 4.32 The background to sections 20A and 20B has been discussed in the chapter on the history of the Civil List Act 1979. They were added to the Act in 2003, following a review process prompted by a report by the Controller and Auditor General into concerns about parliamentary salaries, allowances and other entitlements.
- 4.33 Before 2003, many of the entitlements for Members of Parliament were set out in *The Members' Handbook of Services* ("the members' handbook"), a guide for members of Parliament about the services that they receive from the Parliamentary Service, and in minutes of the Parliamentary Service Commission. However neither the entitlements themselves, nor the underlying authorities, were centralised in one place. In 2003, the Speaker issued the first determination under section 20A of the Civil List Act, but it was still not a comprehensive collection of entitlements.
- 4.34 In 2005, the Auditor-General produced a report on election spending, which was critical of the guidelines contained in the members' handbook in relation to parliamentary advertising.<sup>116</sup> While those criticisms were not directly relevant to section 20A of the Civil List Act 1979, the members' handbook was not authoritative, complete, or readily available in relation to members' entitlements either. There was an on-going need to consolidate and clarify entitlements, and to make them more transparent.

<sup>115</sup> "Member of the family" includes a spouse or partner, surviving spouse or partner, or issue: Civil List Act 1979, s 25(1)(f).

<sup>116</sup> Report of the Controller and Auditor-General *Government and parliamentary publicity and advertising* (Office of the Auditor-General) June 2005, 44 – 45.

- 4.35 In preparing the 2007 Directions and Specifications, the Speaker took the opportunity to set out all the rules relating to members' entitlements in one place, together with the principles behind them, (which had previously appeared in the members' handbook), and to make it clear that those principles were over-arching.
- 4.36 Revisions to the Directions and Specifications are on-going. But during consultation for this review, officials and politicians alike described the new determination as a vast improvement on the old system.
- 4.37 The travel, accommodation, attendance and communications services in respect of members of Parliament are set out in Parts 1 to 3 of the Directions and Specifications document. Parts 1 and 2 contain principles and preliminary provisions, and Part 3 contains the detailed entitlements.

*Parliamentary Service Amendment Bill 2008*

- 4.38 There is presently a bill before Parliament to amend the Parliamentary Service Act 2000.<sup>117</sup> Legally, there are no members of Parliament between the close of polling day at a general election and the formal declaration of the election results. However, for many years it has been the practice to make certain travel and accommodation entitlements available to candidates during this period where it is clear that they are likely to be elected, and to continue support and funding entitlements during this period for candidates who were members before polling day. It is doubtful that those practices are authorised by the current legislation: the Civil List Act 1979 does not provide authority to make payments to members-elect during the interregnum period.
- 4.39 The purpose of the Parliamentary Service Amendment Bill is to authorise the Speaker to give directions on the extent to which administrative and support services are to be provided, and the payment of funding entitlements for parliamentary purposes are to be administered, during the period between the polling day and the recognition of candidates as members; and to give authority for the Parliamentary Service to approve expenditure in respect of these candidates in accordance with the Speaker's directions.
- 4.40 The Bill does not refer to section 20A of the Civil List Act 1979, and that process will not be used to provide services for electoral candidates. Instead, we understand that a new part will be added to the Speaker's Directions made under section 7 of the Parliamentary Service Act 2000,<sup>118</sup> and a reference to electoral candidates will be inserted into the annual directions made under section 8.<sup>119</sup>

117 Parliamentary Service Amendment Bill , 211-1 (2008), first reading 20 May 2008.

118 *Directions and Specifications for Services and Funding Entitlements for the House of Representatives, its members and Former Members*, dated 1 December 2007.

119 *Annual Directions to the Parliamentary Service for the Financial Year 1 July 2008 to 30 June 2009* dated 22 May 2008.

## Issues in relation to services for members of Parliament, s20A

- 4.41 As is apparent from the foregoing discussion, this area of the law is very complicated: in our view, unnecessarily so. The Speaker has made considerable progress in clarifying and centralising all the services to which members of Parliament are entitled. It is time that the legislative framework followed suit.
- 4.42 There is considerable overlap between the provisions of the Civil List Act 1979 and the provisions of the Parliamentary Service Act 2000. The legislative relationship is sufficiently complex that it requires a page and a half to explain it in an appendix to the Speaker's Directions.
- 4.43 There is nothing in the Parliamentary Service Act 2000 itself to alert the reader to the fact that section 20A of the Civil List Act exists, or that the phrase "parliamentary purposes" is defined elsewhere. At the least, it would be helpful if the definition appeared in the Parliamentary Service Act 2000 itself.
- 4.44 The interests of transparency would be better served by greater legislative clarity. The way in which the Speaker has gathered together the actual services could be reflected in the legislation, by bringing all the provisions which relate to the determination process into one place. There are two possible ways of doing this:
- (a) Shift those parts of section 20A of the Civil List Act 1979 which relate to the Speaker's determinations into other legislation, for example the Parliamentary Service Act 2000 and the Clerk of the House of Representatives Act 1988; or
  - (b) Collect all the legislative provisions which relate to payment of salary, allowances and other entitlements for members of Parliament and the Executive in one statute.
- 4.45 We discuss these options further in the final chapter of this Issues Paper.

## Services for members of the Executive

### *Executive travel, accommodation, attendance and communications*

- 4.46 Section 20A of the Civil List Act 1979 also provides for the provision of services to members of the Executive. The Minister responsible for Ministerial services must determine any additional or alternative services in respect of Executive travel, accommodation, attendance and communications. Before doing so, he or she must consult with the Commissioner of Inland Revenue about the taxation consequences of the proposed determination, and with the Speaker about the services for which she has jurisdiction.<sup>120</sup>
- 4.47 The current Executive Travel, Accommodation, Attendance and Communications Services Determination came into force in November 2003.<sup>121</sup> The determination incorporates services set out in a document entitled "Travel, Accommodation,

<sup>120</sup> This consultation process applies to all determinations made under section 20A, with the additional requirement on the Speaker to take into account the advice and recommendations, if any, of the Parliamentary Service Commission – s20A(5).

<sup>121</sup> SR2003/308.

Attendance, and Communications Services Available to Members of the Executive”, signed by the Minister Responsible for Ministerial Services on 23 October 2003.<sup>122</sup>

- 4.48 In comparison with the services for members, the Executive determination is slim. The entitlements it contains are of course in addition to those set out in the Speaker’s Directions and Specifications, as Ministers are also entitled to the services available to members of Parliament.
- 4.49 There were no issues raised during consultation in relation to the Executive determination, but given it has not been revised since 2003, it is due for updating. To this end, Ministerial Services is presently reviewing the determination. Unlike the Speaker’s Direction, the legislation in relation to the Executive determination is not unduly complicated. We will consider the options for dealing with this aspect of section 20A in the last chapter.

### Issues in relation to section 20B

- 4.50 As noted above, while section 20B of the Act provides three methods by which services may be determined and funded, in fact only one of these methods has ever been used, section 20B(1)(c) (incorporation by reference).
- 4.51 Section 20B(4)(a) provides that where the services are determined by incorporation by reference, they are payable out of money appropriated by Parliament. However, if the services were determined in one of the other ways provided by section 20B(1) (ie by fixing services, or providing for an adjustment according to an index), then section 20B(4)(b) provides that the services are payable out of public money “without further appropriation than this section.” This section creates a permanent legislative authority.
- 4.52 As discussed in Chapter 2, there should be limits on the kinds of payments that Parliament provides for through a permanent appropriation. It is not apparent to us that the permanent appropriation created under section 20B(4)(b) is either necessary or desirable. The current method of determining and funding services seems to work, and is in keeping with the principle of maximising Parliament’s annual control of public expenditure. Our present view is that this section 20B(4)(b) should be repealed, along with the two alternative, and to date un-used, methods of determining services contained in section 20B(1)(a) and (b). However, we would welcome submitters’ views in this regard.

122 This may be found at [www.parliament.nz](http://www.parliament.nz), under “MPs’ Pay” (accessed 3 June 2008)

# Chapter 5

## Entitlements for former Prime Ministers, and provisions of Part 4 of the Act

### ENTITLEMENTS FOR FORMER PRIME MINISTERS<sup>123</sup>

#### Annuities

- 5.1 As noted in Chapter 1 on the history of the Civil List Act, in 1964 the Royal Commission on Parliamentary Salaries and Allowances recommended that former Prime Ministers who had served more than two years in that office and retired voluntarily or, if still in Parliament, were members only, should be paid an annuity, in recognition both of their service to their country and of their ongoing obligations arising from having held the office. In 1968 the Royal Commission recommended that the annuity extend also to provide for Prime Ministers defeated at the polls, provided they had served the two year minimum.<sup>124</sup>
- 5.2 In 1973, the Royal Commission recommended that the amount payable by way of annuity to a former Prime Minister, as provided in section 7A of the Civil List Act 1950, should be at the rate of \$1000 for each full year he held office as Prime Minister, with a maximum of \$5000. This recommendation, which amounted to a five-year maximum cap on the amount of the annuity, was enacted in the Parliamentary Salaries and Allowances Order 1979, Amendment No. 3.<sup>125</sup>
- 5.3 The annuity appears in section 22 of the current Act, which provides that where a person has held the office of Prime Minister for not less than two years, he or she will receive an annuity at a rate to be fixed from time to time by the Remuneration Authority. The cap enacted in the 1979 Order is not apparent on the face of

123 The Commissioner in charge of this review, Law Commission President Sir Geoffrey Palmer, declares an interest: as a former Prime Minister, Sir Geoffrey benefits from some of the entitlements described in this chapter.

124 Report of the Royal Commission on Parliamentary Salaries and Allowance [1968] IV AJHR H.50, 27.

125 1973/280.

section 22. Where the former Prime Minister has died, the surviving spouse receives an annuity until he or she dies, or marries or enters a civil union or de facto relationship. In our view, it is not appropriate that the payment of the annuity to the surviving spouse should end when that person enters a new relationship, for the reasons set out in paragraph 3.26.

### Travel, use of official cars

- 5.4 In its report, the 1964 Royal Commission recommended that provision should be made for a limited free use of official cars for the former Prime Minister or his widow, as the case may be. The reasons for this provision were the same reasons that justified the introduction of the annuity: recognition of service, and ongoing obligations arising from the office of Prime Minister. In general, the Royal Commission felt this provision should be determined in the light of the particular circumstances.<sup>126</sup>
- 5.5 In 1973, the Royal Commission on Parliamentary Salaries and Allowances recommended that former Prime Ministers should also have the right to unrestricted air travel for life, and the right to use official cars without restriction,<sup>127</sup> with those travel privileges extending to his wife and his widow.
- 5.6 This practice has continued through to the present day, with former Prime Ministers and their spouses, or surviving spouses, being entitled to the use of official cars and travel privileges, though the precise details of each arrangement may vary.<sup>128</sup> The money for these entitlements comes out of Vote Ministerial Services. The authority for these payments appears to be in section 25(1) of the Civil List Act 1979, which provides for the appropriation by Parliament of money for the purpose of providing benefits or privileges of a specified kind for a number of people including the Prime Minister or a former Prime Minister; other Ministers of the Crown; or family members.
- 5.7 Should there be greater transparency around these privileges for former Prime Ministers and their spouses? In Australia, since 2001, every six months the Department of Finance and Administration tables in Parliament the cost of travel and transport for former Prime Ministers (i.e. flights, and self or chauffeur driven vehicles). No such arrangement operates here at present.

### “Family” – section 25

- 5.8 Section 20A(7) of the Act provides that travel, accommodation, attendance and communications services include provision for any member of the family of a member of Parliament, as referred to in section 25(1)(f).
- 5.9 During consultation, we heard concerns expressed by some members of Parliament, through the whips, that the definition of “family” was too narrow to accommodate the realities of modern family life in relation to responsibilities for children. In particular, there was concern that the use of the word “issue” marginalised

126 Royal Commission on Parliamentary Salaries and Allowances [1964] III AJHR H. 50, 28.

127 Report of the Royal Commission on Parliamentary Salaries and Allowances [1973] IV AJHR H.2, 16.

128 Anonymised information provided by Ministerial Services, Department of Internal Affairs.

step-children, or families where children are being fostered or are in a whāngai arrangement.<sup>129</sup> The legal meaning of “issue” is a descendant (not necessarily just a child),<sup>130</sup> and a descendant connotes a relationship by blood.

- 5.10 In our view, however, any restriction which exists in the definition of “family” does not arise out of the Civil List Act 1979 itself. The definition in section 25 is inclusive, not exclusive: section 25(1)(f) refers to members of the families *including* a spouse or partner, surviving spouse or partner, or issue. Stepchildren or foster children are not excluded. If a problem arises, it seems to stem from the way this section has been used in the Directions and Specifications made under section 20A. In the interpretation section of that document, (Part 2.4), “family member” is defined to mean “a spouse, partner, or issue of a member,” a more restrictive definition than that contained in the Act itself.
- 5.11 One possibility is to simply amend the wording of the Speaker’s Directions to reflect the wording of section 25 itself, making the definition of family inclusive. However, this potentially places the Parliamentary Service in the difficult position of determining who is entitled to receive an entitlement, without clear statutory guidance, rather than operating in its statutory role of administering the funding of those entitlements. On this view, the definition of “family” in section 25 should itself be clarified to spell out in clear terms those family members who are entitled to receive an entitlement.

129 A system of customary adoption in accordance with tikanga Māori, which may not involve a legal adoption.

130 *In Re Rhodes* [1959] NZLR 458, 465. The Court held that issue meant descendants of every degree, and was not restricted to children.

# Chapter 6

## Options for reform

### POSSIBLE OPTIONS

- 6.1 This Issues Paper has identified a number of problems with the current Civil List Act 1979, mostly to do with outdated language or provisions, and unnecessary legislative complexity. In this chapter we consider the options for resolving these issues. In our view there are three broad possibilities:
- (a) **Option 1:** Amend and retain the current Civil List Act;
  - (b) **Option 2:** Dismantle the Civil List Act and redistribute any operative provisions into existing statutes, or, in the case of the Governor-General provisions, into a new statute;
  - (c) **Option 3:** Dismantle the Civil List Act. Shift the provisions relating to the Governor-General into a stand-alone statute, and place provisions relating to salary, allowances and other services for members of Parliament and the Executive in a new statute, which would include the relevant provisions of the Civil List Act 1979, and section 8 of the Parliamentary Services Act 2000.

### OPTION 1: AMEND AND RETAIN THE CIVIL LIST ACT 1979

- 6.2 We have identified a number of amendments required to the Civil List Act 1979 that could be made within the current framework of the Act. We set out below the key changes which might be made to the Act if it is retained.

#### Name of the Act

- 6.3 While the name of the Act is rooted in historical tradition, “the Civil List” is no longer a term that is readily recognised in New Zealand, and the title of the Act gives little indication to a modern audience as to its content. If the Act is retained, it could be renamed.

#### Amendments to provisions relating to the Governor-General

- 6.4 The following matters were raised for consideration in the chapter relating to the Governor-General:
- (a) Whether the Governor-General’s salary should continue to be exempt from income tax;
  - (b) Whether section 7 of the Civil List Act 1979, (the Minister of Finance’s power to grant exemptions from public or local taxes, duties, rates, levies or fees) should be repealed;
  - (c) Whether the language of section 3 of the Act should be updated;
  - (d) The description of the people entitled to act as Administrator in section 8 of the Act requires amendment to accord with changes to the Letters Patent;

- (e) Whether there is a need to provide a substituted salary to the Administrator;
- (f) Whether there should be greater transparency around entitlements for former Governors-General;
- (g) Whether there should be a different legislative basis for the provisions in the Civil List Act relating to the Governor-General.

6.5 Of these questions, (a) to (e) could all be dealt with relatively easily by amendments to the Civil List Act 1979. Greater transparency of entitlements could be achieved without legislative intervention, for example by adopting a practice similar to that adopted in Australia of tabling details of expenditure incurred in Parliament on a regular basis.

6.6 The final question raised is one which could not be addressed by amendment to the Civil List Act 1979. Would it be more constitutionally appropriate for the Governor-General's salary, allowance and annuities to be dealt with in separate legislation, such as a Governor-General's Remuneration Act? Arguably a separate Act might better reflect the constitutional importance of the Governor-General's position at the apex of our state, and the gravity and dignity of the office.

### Amendments to Part 3 of the Act – remuneration of Ministers and MPs

6.7 In relation to Part 3 of the Act, the following issues have been identified:

- (a) Section 20, which provides for deductions from the salaries of members of the House in the case of unexplained absence, is ineffective;
- (b) The legislative framework around the process by which the Speaker determines travel, accommodation, attendance and communications services for members of Parliament is unnecessarily complex.

6.8 The first of these issues, the deductions provision, could be adequately addressed by an amendment to the Civil List Act 1979 if a suitable replacement mechanism is devised. If no such mechanism can be found, it would be better to repeal this section, rather than having an inadequate and ineffective provision in the statute.

6.9 The issue raised by the overlap between section 20A of the Act in relation to the Speaker's determination of services for members of Parliament and other legislation is not so easily resolved by amending the Civil List Act 1979. At a minimum, it would be helpful if the definition of "funding for parliamentary purposes" were to be included in the Parliamentary Service Act 2000, rather than sitting outside it. However, this would not assist in clarifying the relationship between the Parliamentary Service Act and the Civil List Act.

6.10 Section 20A also sets out the power for the Minister responsible to make the Executive determination for similar services. As we noted previously, this power does not suffer from the legislative complexity that attends the determination for members of Parliament, but equally, another logical legislative home for it is not readily apparent. If the Civil List Act is retained, this power could remain in that Act.

- 6.11 As noted earlier, section 20B of the Civil List Act provides three different ways in which services may be determined and funded, but only one of these methods, section 20B(1)(c), is actually used. If the Act were to be amended, section 20B should be reconsidered, to determine whether all these alternate methods should continue to be available, and in particular, whether section 20B(4)(b), which creates a permanent legislative authority, should be repealed.

### Amendments to Part 4 of the Civil List Act

- 6.12 In our view there is a need for greater legal clarity and greater transparency of the entitlements for former Prime Ministers and their spouses. This could be achieved without legislative amendment, for example by adopting a practice of regular tabling of this expenditure. However, if the Act is being amended, it provides an opportunity to clarify the legal authority contained in section 25 of the Act. This section could also be amended to impose a statutory obligation to make these entitlements publicly available periodically. (We note, for example, that section 20B(3) of the Act already obliges the Speaker to ensure that a copy of all material incorporated in a determination by reference is available for inspection free of charge, and is published on the Internet.)
- 6.13 The other issue identified in consultation was whether the meaning of “family” under section 25 is too restrictive in relation to children. As noted earlier, in our view this is not a problem which arises out of the wording of the statute, but rather from the way the determination is phrased, as in the latter, the meaning of “family” is not inclusive, as it is in the Act itself. However, it may be appropriate to amend the Act to specify who is entitled to the relevant entitlements.

### Option 1: Advantages and disadvantages

- 6.14 Many of the issues identified with the Civil List Act 1979 could be addressed by amendments to the statute itself. However, amending the Civil List Act would not significantly improve the section 20A process, as a fundamental part of the problem is that that provision is located outside the Parliamentary Service Act 2000. Nor would it recognise the symbolic importance of having the provisions relating to the Governor-General set out in separate legislation.

#### OPTION 2: DISMANTLING THE CIVIL LIST ACT

- 6.15 The second option is to dismantle the Civil List Act, and redistribute the operative provisions into existing statutes, or, in the case of the Governor-General provisions, into a new statute.
- 6.16 To consider this option, we need to first briefly describe the “legislative landscape”, to provide a picture of what other pieces of legislation exist and whether or not they could appropriately contain some of the provisions of the Civil List Act 1979. Some of these statutes have already been referred to in previous chapters.

### *Constitution Act 1986*

- 6.17 The Constitution Act 1986 consolidates the primary elements of New Zealand’s statutory constitutional law. The Act is divided into four principal parts: the Sovereign, the Executive, the Legislature, the Judiciary; and a fifth part containing miscellaneous provisions. Part 2 of the Act, relating to Ministers and Parliamentary Under-Secretaries, replaced earlier provisions of the Civil List Act 1979.

### *Remuneration Authority Act 1977*

- 6.18 This Act (formerly the Higher Salaries Commission Act 1977) establishes the Remuneration Authority and sets out its functions and powers. Under section 12(1)(a) its functions include considering and determining the salaries and allowances of members of the House of Representatives, as required by the Civil List Act 1979. Schedule 1 of the Act sets out corporations and bodies whose highest paid executive officers' remuneration is to be determined by the Authority, and Schedule 4 sets out the list of officers whose remuneration is to be determined by the Authority. The Authority also determines the salaries of judges.<sup>131</sup>

### *Legislature Act 1908*

- 6.19 Most of the provisions of this Act have been repealed over the years. The remaining operative provisions relate to privileges of Parliament. Although acknowledging the provisions to be of constitutional significance, the Officials Committee on Constitutional Reform did not recommend incorporating them into the Constitution Act 1986 in their existing form. The Committee noted that the provisions were in need of reform, and the matter was before the Standing Orders Committee at that time.<sup>132</sup> The Act has not yet been further amended.

### *Parliamentary Service Act 2000*

- 6.20 Section 4 of the Parliamentary Service Act 2000 sets out the purposes of the Act as follows:
- (a) To establish mechanisms for providing services and funding entitlements for parliamentary purposes:
  - (b) To provide for the governance arrangements of the Parliamentary Service, in particular, by making the General Manager of the Parliamentary Service responsible to the Speaker:
  - (c) To reconstitute the Parliamentary Service Commission as a policy body:
  - (d) To provide for regular, independent reviews of the amounts of money appropriated for services and funding entitlements for parliamentary purposes:
  - (e) To provide for the ownership and control of land and other assets held for parliamentary purposes.
- 6.21 As discussed earlier, there is already an overlap between the Parliamentary Service Act 2000 and the provisions of sections 20A and B of the Civil List Act 1979.

### *Clerk of the House of Representatives Act 1988*

- 6.22 This Act establishes the Office of the Clerk of the House of Representatives, and provides for the appointment of the Clerk and other officers.

<sup>131</sup> Remuneration Authority Act 1977, s12B.

<sup>132</sup> Department of Justice, *Constitutional Reform: Reports of an Officials Committee* (Wellington 1986), para 4.13.

### Part 1: Governor-General

- 6.23 If the Civil List Act were to be repealed, the provisions of Part 1 of the Act (with the amendments discussed under Option 1 above) could be:
- (a) Inserted in a schedule to the Constitution Act 1986, or
  - (b) Enacted in a new, stand-alone statute.
- 6.24 The Constitution Act 1986 does not currently contain machinery provisions relating to salary or allowances for any of the offices it describes. We note in this regard that in Australia, while the Constitution provides for the appropriation of money for the salary of the Governor-General,<sup>133</sup> the salary and allowances payable to the Governor-General are set out in separate legislation.<sup>134</sup>

### Part 3: Remuneration of Ministers and members of Parliament

- 6.25 The provisions of this part of the Act could be redistributed (with appropriate amendments) into a number of different statutes. Sections 16 – 19, which relate to salaries and allowances, could be enacted in the Remuneration Authority Act 1977.
- 6.26 Under Option 2, the present lack of clarity and overlap between the Speaker's determination process set out in section 20A and the provisions of the Parliamentary Service Act 2000 would be addressed by redistributing the provisions of sections 20A and B into other legislation. The provisions of section 20A relating to the determination of services for members of Parliament could be shifted to the Parliamentary Service Act 2000.
- 6.27 However, the Parliamentary Service Act 2000 may not be the most appropriate vehicle for the authority for the Parliamentary (Official Inter-Parliamentary Travel Programme) Travel and Accommodation Determination 2007, which is administered by the Office of the Clerk of the House of Representatives, and funded from Vote Office of the Clerk of the House of Representatives. For that reason, that authority might be more appropriately included in the Clerk of the House of Representatives Act 1988.
- 6.28 There are two provisions in Part 3 of the Act which are not easy to logically relocate. Assuming a workable mechanism can be devised for deductions from members' salaries under section 20, where should a section to this effect be situated, if the Civil List Act is dismantled? The provision relates to salary, which might suggest the Remuneration Authority Act 1977, but the key aspect of the section is the deduction power. Logical statutory alternatives are not easy to find. The Legislature Act 1908 is itself in need of reform, and as noted its operative provisions are limited to matters of privilege. The Parliamentary Service Act 2000 is geared towards entitlements administered by the Parliamentary Service, rather than matters of salary.
- 6.29 The second issue has been mentioned earlier: where should the section 20A determination power in relation to Executive services be sited, if the Civil List Act 1979 is to be repealed? It would not be appropriate to include this provision in

<sup>133</sup> Australian Constitution, s 3.

<sup>134</sup> Governor-General Act 1974 (Cth).

the Parliamentary Service Act 2000: it relates only to members of the Executive, and the direction is administered by Ministerial Services, rather than Parliamentary Services.

#### Part 4: Miscellaneous provisions

- 6.30 If Option 2 were adopted, most of the provisions of this Part of the Act could be shifted to the Remuneration Authority Act 1977. The Remuneration Authority already determines the amount of the annuity for former Prime Ministers and their spouses. The provisions of section 25 would need to be replicated across the various statutes to which other sections have been redistributed.

#### Option 2: Advantages and disadvantages

- 6.31 This option would be a better way of clarifying the legislative relationships that surround the determination process than simply amending the Civil List Act 1979. However, in some respects it further fragments the statutory framework operating in the area of remuneration and services for members of Parliament and the Executive. As noted above, there is no existing logical legislative home for the Executive determination power. The question of where to place this provision is a disadvantage of this option.

#### OPTION 3: A NEW REMUNERATION STATUTE

- 6.32 The third option is to dismantle the Civil List Act 1979 and to enact a statute which contains the provisions from Parts 3 and 4 of the Act relating to salary, allowances, annuities and other entitlements of members of Parliament and the Executive, and also includes relevant provisions from other legislation as appropriate. (In this variation, we assume that the provisions from Part 1 of the Act, relating to the Governor-General, will be enacted in a new stand-alone statute.) Such a statute might be called the Ministers and Members of Parliament (Remuneration, Allowances and Financial Support) Act.
- 6.33 We do not suggest including the provisions of the Remuneration Authority Act 1977 that relate to parliamentary pay in this new statute, although the provisions of section 16 of the Civil List Act 1979, which provides for the Remuneration Authority to set the salaries and allowances, would be contained in the new Act. If this option were adopted, the Speaker's power of direction, presently set out in section 8 of the Parliamentary Service Act 2000, could be shifted to the new statute, with section 7 of the Parliamentary Service Act 2000 being amended to refer to the duty of the Parliamentary Service to administer the payment of funding entitlements for parliamentary purposes in accordance with directions given by the Speaker under the new Act.
- 6.34 The main advantage of this option is that it centralises all the provisions relating to matters involving payments to members of Parliament and the Executive.

# Appendix A

## Questions for submission

We welcome your views on the following questions, based on issues discussed in this paper. Please feel free however to make any other comments or submissions in relation to this review. Information on how to make a submission appear on page iv of the Issues Paper.

### Governor-General

- Q1 Is it still appropriate for the New Zealand Governor-General's salary to be exempt from income tax?
- Q2 Should there continue to be a power for the Minister of Finance to grant exemptions from any public or local tax, duty, rate, levy or fee as currently set out in section 7 of the Civil List Act 1979?
- Q3 Does the role of Administrator require a separate salary, or could the Administrator continue to receive his or her judicial salary while carrying out the role of Administrator?

### Section 20 of the Civil List Act 1979

- Q4 Should there be a legislative system of deductions for unexplained and prolonged non-attendance of Parliament?
- Q5 How might a suitable mechanism operate?

### Methods of funding under s20B

- Q6 Should section 20B(4)(b) of the Civil List Act 1979, which creates a permanent legislative authority, be repealed?

### Options for reform

- Q7 Which of the following options in your view presents the most appropriate method of reforming the Civil List Act 1979?
- **Option 1:** Amend and retain the current Civil List Act 1979;
  - **Option 2:** Dismantle the Civil List Act and redistribute any operative provisions into existing statutes, or, in the case of the Governor-General provisions, into a new statute;
  - **Option 3:** Dismantle the Civil List Act. Shift the provisions relating to the Governor-General into a stand-alone statute, and place provisions relating to salary, allowances and other services for members of Parliament and the Executive in a new statute, which would include the relevant provisions of the Civil List Act 1979, and section 8 of the Parliamentary Services Act 2000.

# Appendix B

## Review of Civil List Act 1979 Terms of Reference

The Commission will review the provisions and operation of the Civil List Act 1979. The review will include:

- (a) Consultation with key stakeholders to identify issues;
- (b) Researching law and practice in other comparable jurisdictions;
- (c) Developing a discussion paper for public consultation;
- (d) Making final recommendations to Government; and
- (e) Any other relevant matters.







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