



# REVIEW OF THE CIVIL LIST ACT 1979

THE GOVERNOR-GENERAL



LAW · COMMISSION  
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# REVIEW OF THE CIVIL LIST ACT 1979

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THE GOVERNOR-GENERAL

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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The Hon Simon Power  
Minister Responsible for the Law Commission  
Parliament Buildings  
WELLINGTON

11 December 2009

Dear Minister

NZLC R112 – REVIEW OF THE CIVIL LIST ACT 1979 – THE GOVERNOR-GENERAL

I am pleased to submit to you Law Commission Report 112, *Review of the Civil List Act 1979 – the Governor-General*, which we submit under section 16 of the Law Commission Act 1985.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'Geoffrey Palmer', with a horizontal line underneath.

*Geoffrey Palmer*  
President

## FOREWORD

In July 2008, the Law Commission published an Issues Paper, *Review of the Civil List Act 1979*. That paper set out the history of New Zealand's Civil List Act 1979, and raised a number of options for reform of the legislation. It called for submissions and comment on the options proposed.

The primary purpose of the Civil List Act 1979 is to provide for the appropriation of funds to pay for the remuneration and entitlements of the Governor-General, and members of Parliament and members of the Executive. The Law Commission has decided to present its recommendations in two separate final reports. This report concerns Part 1 of the Civil List Act 1979, which contains the provisions relating to the remuneration and entitlements of the Governor-General.

In response to the Issues Paper, we received submissions from the following individuals and organisations:

- Clerk of the Executive Council
- Clerk of the House of Representatives
- Graeme Edgeler
- Parliamentary Service
- Republican Movement of Aotearoa

We are also grateful to Robert Buchanan for his comments on the matters raised in the Issues Paper.

The Commissioner responsible for this report is Geoffrey Palmer, and the legal and policy adviser is Rachel Hayward. Our thanks to Suzanne Giacometti, Parliamentary Counsel, for all her work in preparing the draft legislation which accompanies this report.



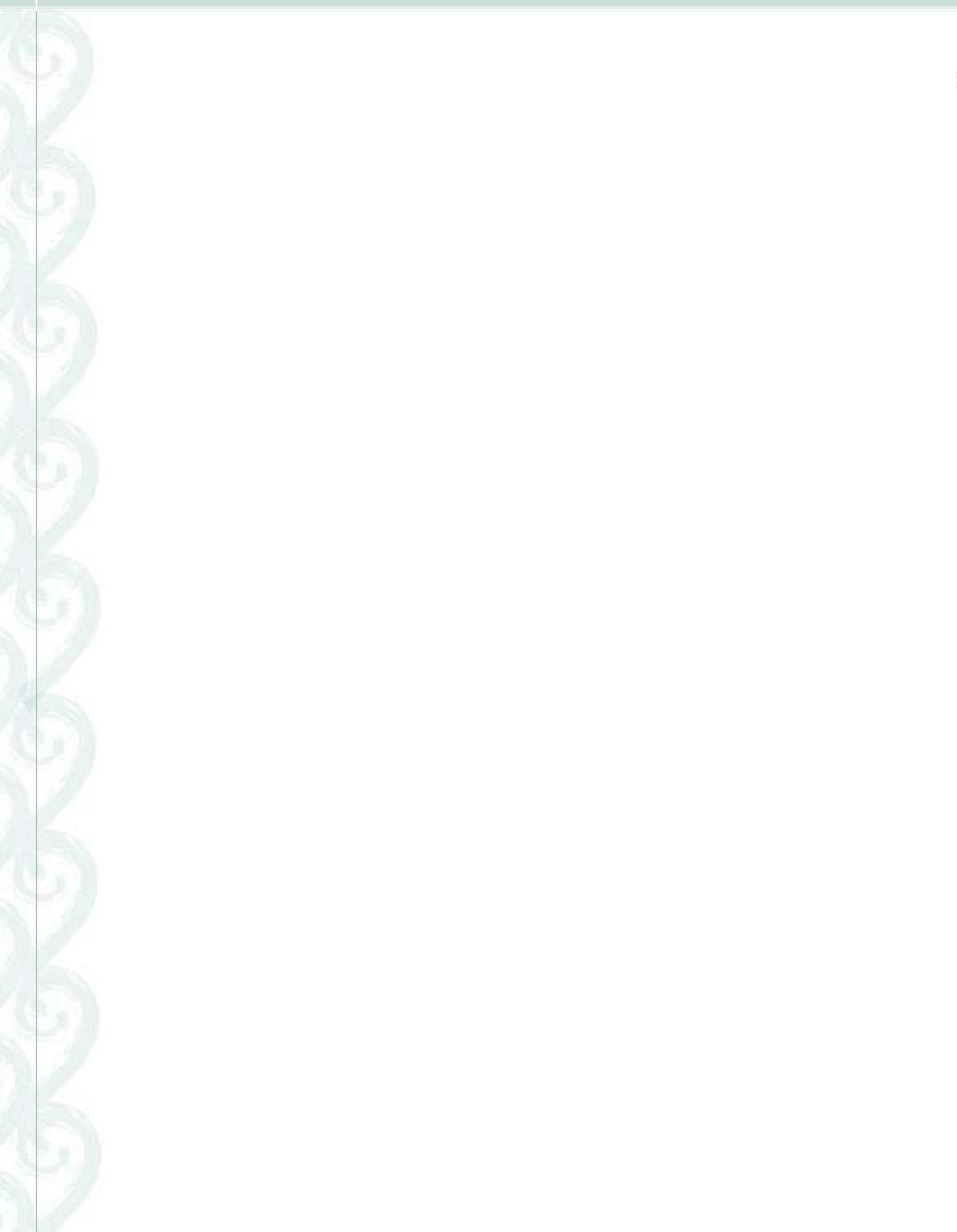
*Geoffrey Palmer*  
President

# Review of the Civil List Act 1979 – the Governor-General

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# Summary

## THE NEED FOR CHANGE

- 1 In this report, the Law Commission presents its recommendations for the reform of the provisions of the Civil List Act 1979 that provide for remuneration and support for the Governor-General. A draft bill reflecting our recommendations accompanies this report.
- 2 This review resulted from a Government reference asking the Commission to consider the operation and provisions of the Civil List Act, which was enacted in 1979 and has not been comprehensively reviewed since. In July 2008, the Commission released an Issues Paper, *Review of the Civil List Act 1979*. We received a small number of submissions, and have undertaken further consultation with key agencies in preparing this final report and the accompanying legislation.
- 3 The issues identified by the Law Commission can be divided into those relating to the remuneration of the Governor-General, which are set out in Part 1 of the Civil List Act 1979, and those relating to remuneration and support for members and former members of Parliament or the Executive, which are set out in Part 3. The Parts operate almost entirely independently, and there are few common issues between them. This raises a fundamental question: should these matters be dealt with in one statute, or would it be more appropriate if the matters relating to the Governor-General appeared in a stand-alone statute?
- 4 The Commission has concluded that it would be preferable if these matters were dealt with in separate statutes. Its recommendations in relation to members of Parliament and Ministers will be the subject of a separate report.

### New legislation for the Governor-General

- 5 The Commission proposes that Part 1 of the Civil List Act 1979, which contains provisions relating to the Governor-General, be repealed and replaced by a modern, stand-alone Act.
- 6 In the Issues Paper, the Commission identified a number of provisions in Part 1 of the 1979 Act where the statutory language required updating, including the provisions relating to commencement and cessation of salary, and the description of people entitled to act as Administrator. But the need for modernisation is not limited to matters of language. In the Commission's view, it is no longer appropriate for the Governor-General's salary to be exempt from income tax. Similarly, there is no longer sufficient justification for a statutory power to exempt the Governor-General from paying any public or local tax, duty, rate, levy or fee. The Governor-General's allowance should continue to be exempt from taxation.

- 7 The Commission recommends changes to the provisions for the funding of the Governor-General's programme within New Zealand, and internationally. The mechanisms provided in the Civil List Act 1979 need to be updated to reflect the nature of the modern programme. The structure of the new appropriations proposed should enhance transparency around the funding and support.
- 8 The Commission also proposes that details of expenditure to provide other benefits and privileges to former Governors-General (in the nature of domestic travel and official cars) should be tabled annually in Parliament.
- 9 The Commission recommends that the changes proposed in the new legislation should take effect for the appointment and term of the next Governor-General.

# Summary

## of recommendations

### LEGISLATIVE FRAMEWORK

- R1 Part 1 of the Civil List Act 1979 should be repealed, and replaced by a new statute providing for the remuneration and support of the Governor-General. The new framework should take effect for the appointment and term of the next Governor-General.

### THE GOVERNOR- GENERAL'S PROGRAMME

- R2 The Governor-General Bill should contain a permanent legislative authority providing funding for the Governor-General's programme within New Zealand.
- R3 The Governor-General Bill should contain a permanent legislative authority providing funding for the Governor-General's international travel programme.

### REMUNER- ATION AND ENTITLEMENTS

- R4 The salary of the Governor-General should no longer be exempt from income tax.
- R5 The allowance paid to the Governor-General should continue to be tax exempt.
- R6 Section 7 of the Civil List Act 1979, providing for the Minister of Finance to exempt the Governor-General from paying any public or local tax, duty, rate, levy or fee, should be repealed and not replaced.
- R7 There should be an annuity paid to former Governors-General, at a yearly rate to be determined from time to time by the Remuneration Authority. If the former Governor-General dies, the surviving spouse or partner of that person must be paid an annuity at half the yearly rate at which the annuity would have been payable to the former Governor-General.
- R8 The terms of appointment of a person as Governor-General may include an agreement for that person or their spouse or partner to be provided with specified benefits or privileges by way of payments in respect of domestic travel or the use of chauffeured cars when he or she no longer holds office as Governor-General. The details of any such benefits or privileges paid to or in respect of any former Governor-General should be presented to the House of Representatives each financial year.
- R9 The Administrator should continue to receive his or her judicial salary while carrying out the role of Administrator.

# Chapter 1

## Statutory framework

### A SEPARATE STATUTE

- 1.1 The Civil List Act 1979 currently deals with payments to the Governor-General and members of Parliament and of the Executive. In the Issues Paper, the Commission asked whether it would be more constitutionally appropriate if the Governor-General's salary, allowances and annuities were dealt with in a separate, stand-alone statute. There was considerable support for this approach in submissions and consultation.
- 1.2 There is symbolic importance in setting out the provisions relating to the Governor-General in separate legislation. The same result cannot be achieved by simply amending the existing Civil List Act. We agree with the Clerk of the Executive Council, who commented in her submission that legislative separation would enhance the perception of the apolitical role of the Governor-General in our constitutional arrangements. It would also align the New Zealand statutory arrangements with those in Australia and Canada.
- 1.3 We considered the option of shifting the provisions of Part 1 of the Civil List Act (which relate to the Governor-General) into a schedule to the Constitution Act 1986. However, the administrative and operational nature of many of these provisions would not fit well with the purpose of the Constitution Act 1986. In our view a stand-alone statute is a more appropriate vehicle.
- 1.4 The draft Bill that we propose should replace Part 1 of the Civil List Act 1979 is attached as an appendix to this report. We discuss the key provisions of the Bill in Chapters 2 and 3.
- 1.5 We recommend that the new legislation should take effect for the appointment and term of the next Governor-General.

### RECOMMENDATION

- R1 Part 1 of the Civil List Act 1979 should be repealed, and replaced by a new statute providing for the remuneration and support of the Governor-General. The new framework should take effect for the appointment and term of the next Governor-General.

APPROPRIATIONS AND AUTHORISATIONS **Legal and financial authority**

- 1.6 One of the key features of the Civil List Act 1979 is that it contains permanent appropriations for certain expenditure, including the salary and allowance of the Governor-General.
- 1.7 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>1</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>2</sup>
- 1.8 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>3</sup> the Ombudsmen,<sup>4</sup> the Commissioner for the Environment,<sup>5</sup> and the government subsidy to various superannuation schemes.<sup>6</sup>
- 1.9 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>7</sup> However, in general, permanent appropriations are regarded as reducing Parliament's annual control of public expenditure,<sup>8</sup> which is a process that operates as one of our main constitutional controls. The creation of a new permanent appropriation therefore requires careful consideration.

1 New Zealand Treasury, *A Guide to the Public Finance Act*, August 2005, [www.treasury.govt.nz](http://www.treasury.govt.nz) (accessed 20 October 2009), 18. The scope of an appropriation determines the permitted uses to which it can be put, and any conditions on that use.

2 Public Finance Act 1989, s10(1).

3 Public Audit Act 2001, Sch.3, cl 5.

4 Ombudsmen Act 1975, s 9(1).

5 Environment Act 1986, s 9.

6 Government Superannuation Fund Act 1956, s 95.

7 New Zealand Treasury, *A Guide to the Public Finance Act*, August 2005, above n 1, 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 Māori Act 1993.

8 David McGee *Parliamentary Practice in New Zealand* (3 ed, Dunmore Publishing Ltd, 2005) 456.

- 1.10 The following matters provided for in relation to the Governor-General 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 (section 4);
  - (c) the travelling expenses of the Governor-General and his or her family and staff (section 6).
- 1.11 We recommend that these matters should continue to be the subject of permanent appropriations under the new Governor-General legislation. We return to consider each payment in more detail in the next chapter.



# Chapter 2

## The Governor-General's programme

### FUNDING ARRANGEMENTS FOR THE GOVERNOR-GENERAL

- 2.1 There are presently two funding pools for the office of the Governor-General. One is made up of funds appropriated through Vote Prime Minister and Cabinet, which funds support services to the Governor-General and the maintenance of the Governor-General's official residences in Wellington and Auckland. The other is made up of the permanent legislative authorities set out in the Civil List Act 1979, which provide for the salary and allowance of the Governor-General, and the travelling expenses of the Governor-General and his or her family and staff.
- 2.2 Following consultation with Cabinet Office and Treasury, it became apparent that the funding structure set out in the Civil List Act 1979 needs updating and restructuring. Our aim is to provide a remuneration and support system that is transparent and administratively straight forward, and that provides adequate support for the office of the modern Governor-General.
- 2.3 We recommend that the present distinction between travel expenses and more general support for the Governor-General's programme should be removed, and the relevant funding consolidated into a permanent legislative authority. The operational budget for the residences, and staff costs, should continue to be funded through Vote Prime Minister and Cabinet.
- 2.4 While the Governor-General is responsible for determining his or her own programme within New Zealand, the international travel programme for the Governor-General is determined by the Government of the day.<sup>9</sup>
- 2.5 Following consultation, we have concluded that it would be appropriate to create separate permanent legislative authorities in the new Bill to reflect this distinction. This would help to improve transparency around the Governor-General's programme. Section 11(2) of the Public Finance Act 1989 requires each expense incurred in accordance with an appropriation by or under an Act (other than an Appropriation Act) to be managed and accounted for in the same manner as expenses incurred in accordance with an Appropriation Act. This means that the estimated amount to be incurred under each permanent

<sup>9</sup> Cabinet Office, *Cabinet Manual 2008* (Wellington, 2008) para 1.10.



appropriation needs to be reported in the Estimates and the actual amount incurred under each permanent appropriation needs to be reported in the annual report of the department that administers that appropriation. As a result, the two permanent legislative authorities will be reported separately.

- 2.6 While it could be argued that the international travel costs could be appropriated annually, the Cabinet Office advises that in fact these costs can be hard to accurately anticipate from one year to the next. The Governor-General is required to travel internationally to some events that are difficult to predict in advance, such as state funerals.
- 2.7 Set out below are two conceptual diagrams, one reflecting the present funding arrangements, and one reflecting the proposed new funding arrangements that appear in the Governor-General Bill.

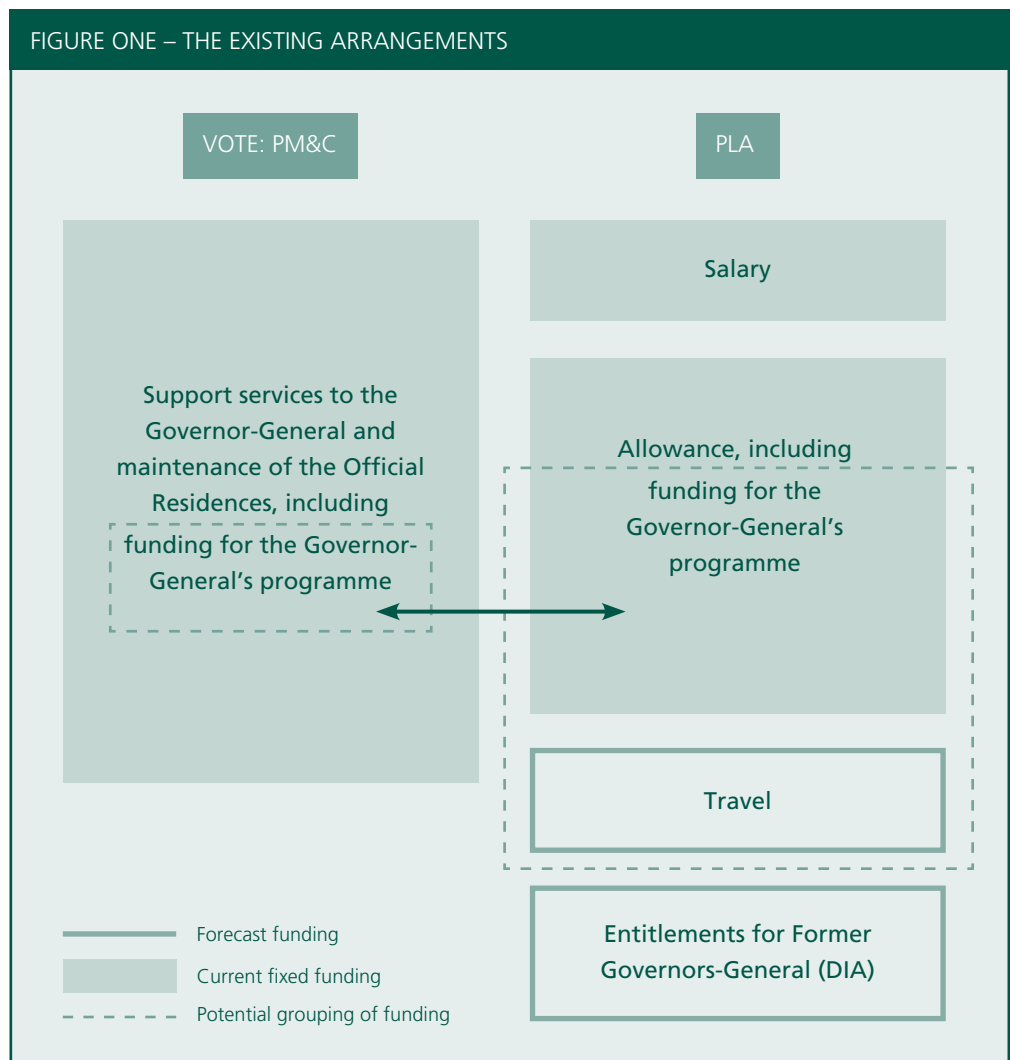
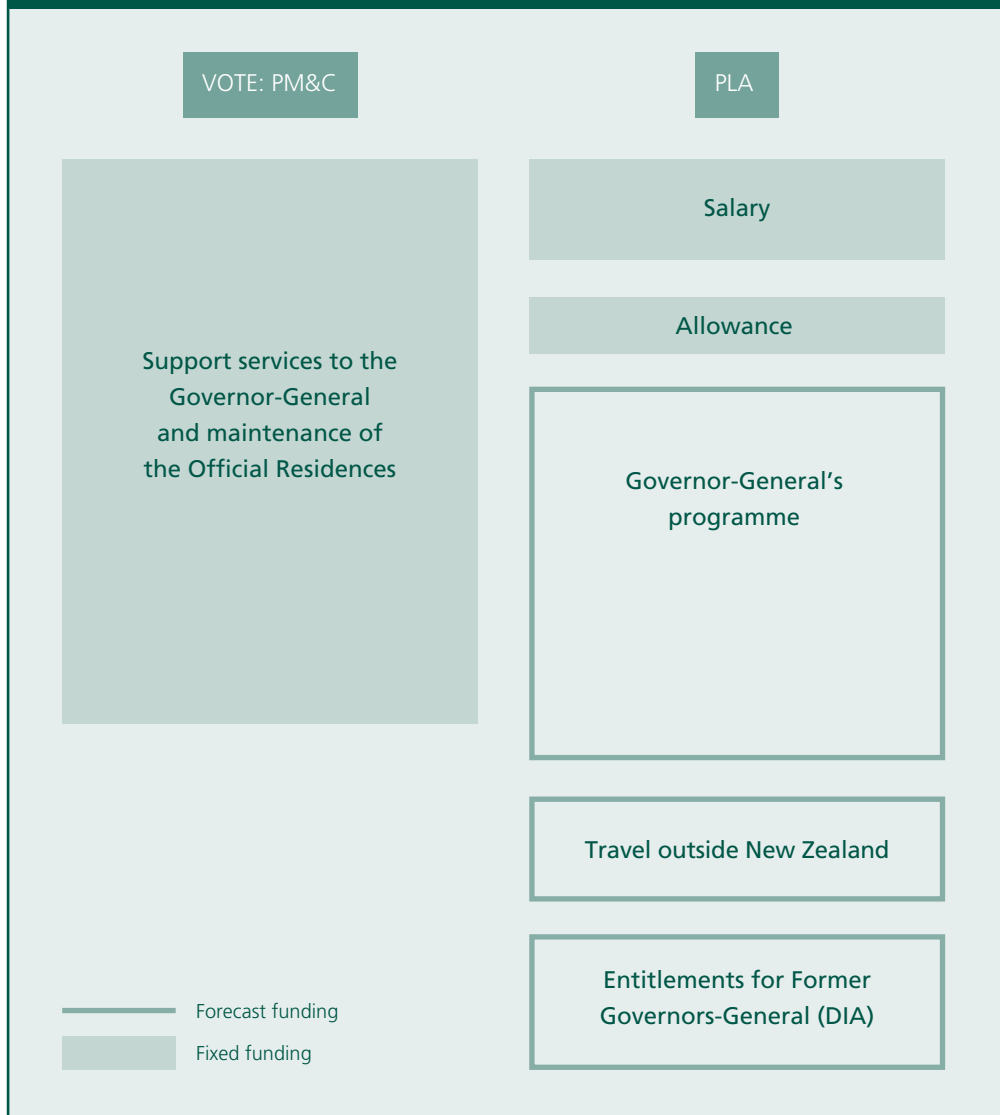


FIGURE TWO – THE PROPOSED ARRANGEMENTS



- 2.8 Clause 13 of the Bill sets out a permanent legislative authority for the funding for the Governor-General’s programme within New Zealand. Clause 14 provides a permanent legislative authority for the Governor-General’s travel outside New Zealand. It also extends to allow funding for the Governor-General designate, and his or her family, and staff of the incumbent Governor-General, to travel to the United Kingdom for an audience with the Queen before he or she takes office.

RECOMMENDATION

- R2 The Governor-General Bill should contain a permanent legislative authority providing funding for the Governor-General’s programme within New Zealand.
- R3 The Governor-General Bill should contain a permanent legislative authority providing funding for the Governor-General’s international travel programme.

# Chapter 3

## Remuneration and entitlements

### NATURE OF APPROPRIATIONS

- 3.1 The Civil List Act 1979 contains a number of provisions relating to remuneration and other entitlements for the Governor-General and former Governors-General. They are:
- (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);
  - (c) payments in respect of other benefits and privileges (section 25).
- 3.2 The salary and allowance of the Governor-General, and the annuities for former Governors-General and their spouses or partners, are presently the subject of permanent appropriations. Payments for other benefits and privileges, which are restricted in practice to domestic travel and chauffeured cars, are appropriated annually.
- 3.3 We recommend that all the provisions relating to the salary, allowance and other entitlements of the Governor-General and former Governors-General should be dealt with by permanent legislative authority. These matters will be either provided by statute, or in the case of other benefits and privileges, will be agreed with the Governor-General designate, and will be carefully considered at that time.
- 3.4 The relevant provision appears in clause 12 of the Bill.

### Salary

- 3.5 Clause 5 of the Bill provides for the payment of a salary to the Governor-General. The Governor-General's salary continues to be fixed by the Remuneration Authority and protected by legislation. It cannot be reduced during his or her commission.

- 3.6 The Governor-General's salary and allowance are presently exempt from income tax under the Income Tax Act 2007,<sup>10</sup> and the salary is calculated on this basis.<sup>11</sup> In our view, there is no longer any justification for the Governor-General's salary to be exempt from income tax. The Queen has voluntarily paid income tax on her private income since 1993. In 2001, the Government of Australia introduced federal legislation to remove the exemptions from income tax on salary enjoyed by the Governor-General and the State Governors.
- 3.7 There were no objections raised in submissions or consultation to abolishing the Governor-General's exemption from income tax.
- 3.8 We note that this proposal may 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. In Australia, when the tax exemption was removed from the Governor-General's salary, the salary was increased to take account of the new tax liability.<sup>12</sup>

#### RECOMMENDATION

- R4 The salary of the Governor-General should no longer be exempt from income tax.

### Allowance

- 3.9 Clause 6 provides for an allowance to be paid to the Governor-General. At present, the Governor-General's allowance is provided for in section 3 of the Civil List Act 1979. It is paid at a rate fixed from time to time by Order in Council.
- 3.10 The Governor-General's allowance currently covers a wide range of expenses that support the office, as well as more personal matters such as clothing and food. One result of the proposed restructuring of the funding pools for the office of the Governor-General would be a considerable reduction in the allowance paid to the Governor-General.

<sup>10</sup> Income Tax Act 2007, CW 16.

<sup>11</sup> Civil List Act 1979, s 3(1)(a).

<sup>12</sup> Governor-General Legislation Amendment Act 2001 (Cth).

- 3.11 In consultation, the Inland Revenue Department suggested that if the Governor-General's allowance is used for official purposes, it would be more administratively convenient for it to continue to be tax exempt. This would avoid compliance costs associated with the process of claiming deductions for expenses incurred which would otherwise result.

RECOMMENDATION

- R5 The allowance paid to the Governor-General should continue to be tax exempt.

**Other exemptions**

- 3.12 Presently, the Minister of Finance may exempt the Governor-General from paying any public or local tax, duty, rate, levy or fee.<sup>13</sup> The Department of Prime Minister and Cabinet advises that there are no such current exemptions.
- 3.13 This exemption power is a hangover from an era where vice-regal appointees came from overseas, and is no longer appropriate. There was support from submitters for repealing this provision. We recommend accordingly.

RECOMMENDATION

- R6 Section 7 of the Civil List Act 1979, providing for the Minister of Finance to exempt the Governor-General from paying any public or local tax, duty, rate, levy or fee, should be repealed and not replaced.

**Payment on leaving office**

- 3.14 Section 3(4) of the Civil List Act 1979 provides that on leaving office the Governor-General shall be paid a sum equal to three months salary and allowance. The rationale for this payment is to cover the outgoing administration and immediate commitments of the outgoing Governor-General.
- 3.15 We consider that a clause to this effect should be retained. However, the result of restructuring the allowance is that if the payment is still calculated according to the formula in section 3(4), it will be much smaller in real terms in the future. We propose that the formula be reworded to allow for a payment of six months salary, which we understand will be equivalent to the current payment. This provision appears in clause 7 of the Bill.

<sup>13</sup> Civil List Act 1979, s 7.

## Annuity

- 3.16 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.<sup>14</sup>
- 3.17 In the Issues Paper we discussed the rationale behind the annuity. In part the annuity recognises the contribution the Governor-General and his or her spouse have made to the country, but it also recognises the on-going commitments that arise from a Governor-General's duties.
- 3.18 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 subsequent activities and employment choices, and may also impose costly obligations. Former Governors-General frequently 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.
- 3.19 In Australia, former Governors-General are entitled to a statutory superannuation benefit provided under the Governor-General Act 1974 (Cth). Under the Act, the retiring allowance for a former Governor-General is set at 60% of the rate of salary payable to the Chief Justice of Australia at the relevant time. If the former Governor-General also receives a Commonwealth or State funded pension by virtue of a previous occupation (for example a member of Parliament or a judge) the pension will be reduced accordingly.
- 3.20 Besides the superannuation benefit, former Governors-General in Australia also receive other significant support in recognition of the on-going commitments that result from the office. These entitlements are available to the office holder for life. They are granted at the discretion of the Prime Minister of the day, but the standard package of entitlements includes the provision of fully equipped office accommodation in their city of residence, and a full time secretary to provide administrative support, and appropriate security arrangements for their residence and/or office.

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14 Clause 4 of the Civil List (Annuities) Determination 2009 provides that an annuity is payable: (a) if that person held office as Governor-General for a total period of less than 2 complete years, at the yearly rate of \$12,400; or (b) if that person held office as Governor-General for a total period of 2 complete years or more, at the yearly rate of \$12,400 for each complete year (not exceeding 5) of that total period.

- 3.21 We recommend that the Governor-General Bill should provide for the payment of an annuity to former Governors-General, in similar terms to the present section 4 of the Civil List Act 1979. However, we recommend that the annuity to a surviving spouse should not end on that spouse's remarriage or entry into a civil union/de facto relationship. The payment of an annuity to a surviving spouse is based on recognition of the significant role played by the spouse in supporting the office holder. That being the case, the annuity should not end if the spouse remarries or enters a new relationship.
- 3.22 The provisions for annuities to former Governors-General are set out at clauses 8 and 9 of the Bill. Section 4(3) of the Civil List Act 1979 provides that no annuity is payable in respect of any period during which the recipient is not domiciled in New Zealand, or holds a position for which a salary is payable under the Act. Thus in the unlikely event that a former Governor-General was subsequently elected to Parliament, he or she would cease to receive the annuity.
- 3.23 Similarly, section 4(4) provides that if a former Governor-General is also entitled to an annuity as a former Prime Minister, he or she should receive only the greater of the two annuities to which he or she is entitled.
- 3.24 We have not included provisos to this effect in the Bill. The domicile provision appears to be another relic of the era in which office holders almost invariably came out from the United Kingdom for the period of their appointment. No such qualification attaches to annuities paid to former Prime Ministers under the Civil List Act 1979. Similarly, a former Prime Minister can subsequently serve as a member of Parliament without it affecting his or her annuity. If the annuities paid to a former Governor-General are paid, at least in part, in recognition of service, it does not seem appropriate that they should cease in either for reasons of domicile, or because the recipient holds or has held another public office.

#### RECOMMENDATION

- R7 There should be an annuity paid to former Governors-General, at a yearly rate to be determined from time to time by the Remuneration Authority. If the former Governor-General dies, the surviving spouse or partner of that person must be paid an annuity at half the yearly rate at which the annuity would have been payable to the former Governor-General.



## Compensation for lost superannuation

- 3.25 In some situations, accepting the office of Governor-General may adversely affect the appointee's existing superannuation scheme. Although such occasions will be rare, it is appropriate that there should be provision for compensation if such a situation arises. Section 5 of the Civil List Act 1979 provides for compensation to be paid where accepting the office of Governor-General leads to the appointee or his or her spouse, partner or child losing any superannuation rights. We recommend that a provision to this effect be retained, but the reference to the superannuation rights of a child being affected should be removed. We are unable to envisage a situation in which a child's superannuation rights would be affected by the appointment of a parent to the office of Governor-General, and are not aware of this ever occurring in the recent past.

## Other benefits or privileges

- 3.26 In the Issues Paper we noted that there are some additional benefits for former Governors-General which are not detailed in the Civil List Act 1979. The terms of appointment entered into between the Governor-General designate and the Prime Minister include provisions for transport entitlements to be provided through Ministerial Services after the Governor-General has vacated the office. While section 25 of the Civil List Act 1979 does not impose limits on the benefits or privileges that may be specified for former Governors-General, in practice they are limited to domestic travel, and the use of chauffeur driven cars. The provision of these benefits recognises that the public demands on a former Governor-General's time may continue after he or she leaves office. Similar provisions exist for former Prime Ministers.
- 3.27 In our view, the nature of the benefits that the Government may agree in this regard should be expressly limited in the Bill. The costs involved should be transparent. At present, they are opaque, although details could be requested under the Official Information Act 1982. We recommend that a statement setting out the details of the expenses incurred to provide such benefits or privileges should be presented to Parliament annually. Clause 11 of the Bill contains provisions to this effect.

### RECOMMENDATION

- R8 The terms of appointment of a person as Governor-General may include an agreement for that person or their spouse or partner to be provided with specified benefits or privileges by way of payments in respect of domestic travel or the use of chauffeured cars when he or she no longer holds office as Governor-General. The details of any such benefits or privileges paid to or in respect of any former Governor-General should be presented to the House of Representatives each financial year.

- ADMINISTRATOR 3.28 Clause 15 amends the description of the people entitled to act as Administrator (currently set out in section 8 of the Civil List Act) to accord with changes made to the Letters Patent in 2006.<sup>15</sup>
- 3.29 During the period when he or she is acting as Administrator, the Administrator is presently paid at either 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 and is tax exempt.
- 3.30 In the Issues Paper we suggested that this substitution of salary is unnecessary, and the Administrator should simply continue to receive his or her judicial salary while carrying out the role of Administrator. No objections were raised to this proposal in submissions or consultation. Clause 15 of the Bill provides accordingly.

#### RECOMMENDATION

- R9 The Administrator should continue to receive his or her judicial salary while carrying out the role of Administrator.

#### OTHER CLAUSES

##### Commencement

- 3.31 The new legislation should not apply to the incumbent Governor-General, but should apply when the next Governor-General is appointed. The Bill contains savings and validations clauses to ensure that the relevant provisions of the Civil List Act 1979 continue to apply to the incumbent Governor-General until the end of his term.

##### Family member

- 3.32 Section 6 of the Civil List Act 1979 provides for the payment of travelling expenses for the Governor-General and his or her family members. The Act does not contain a definition of a family member.
- 3.33 Clause 4 of the Bill defines family members as being spouses, partners and dependent children.

<sup>15</sup> Section 8 of the Civil List Act 1979 provides for the payment of a salary to Chief Justice, the President of the Court of Appeal or the Senior Judge for the time being of the Court of Appeal when acting as Administrator. The Letters Patent Constituting the Office of Governor-General of New Zealand dated 28 October 1983 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 – clause 12.

# Appendix



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# Appendix A

## Governor-General Bill

### **Governor-General Bill**

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Draft prepared by Parliamentary Counsel  
for the New Zealand Law Commission

# Governor-General Bill

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Governor-General Act 2009.

**2 Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent.

**Part 1**

**Provisions relating to remuneration,  
programme funding, and other payments  
concerning office of Governor-General**

*Preliminary provisions*

**3 Act binds the Crown**

This Act binds the Crown.

**4 Interpretation**

In this Act, unless the context otherwise requires,—

**family member**, in relation to any person, means—

- (a) a spouse or partner;
- (b) a child—
  - (i) who is being maintained as a member of the person's family; and
  - (ii) in respect of whom the person either is the sole or principal provider of ongoing daily care for

- the child or shares ongoing daily care of the child substantially equally with another person; and
- (iii) who is under 18 years of age; and
  - (iv) who is not living with another person in a marriage, civil union, or de facto relationship

**financial year** has the same meaning as in section 2(1) of the Public Finance Act 1989

**partner** means a civil union or de facto partner.

*Salary, allowance, annuity, and other payments*

**5 Salary of Governor-General**

- (1) The Governor-General must be paid a salary at a rate determined from time to time by the Remuneration Authority.
- (2) A determination made under this section comes into force on the date specified in the determination, which may be a date that is before, on, or after the date the determination is made.
- (3) The salary of the Governor-General is payable for the period—
  - (a) starting on the earlier of the following dates:
    - (i) a date agreed between the appointee and the Prime Minister;
    - (ii) the date on which the appointee takes up the duties of the office; and
  - (b) ending on the date that person no longer holds office as Governor-General.
- (4) The salary of the Governor-General must not be reduced during the Governor-General's term of office.
- (5) A determination made under this section is deemed to be a regulation for the purposes of the Acts and Regulations Publication Act 1989 but not for the purposes of the Regulations (Disallowance) Act 1989.

**6 Allowance of Governor-General**

- (1) The Governor-General must be paid an allowance, at a rate fixed from time to time by Order in Council, for personal expenses.
- (2) The allowance is payable for the period—
  - (a) starting on the earlier of the following dates:



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- (i) a date agreed between the appointee and the Prime Minister;
  - (ii) the date on which the appointee takes up the duties of the office; and
  - (b) ending on the date that person no longer holds office as Governor-General.
- (3) An Order in Council made under this section comes into force on the date specified in the order, which may be a date that is before, on, or after the date the order is made.
  - (4) An Order in Council made under this section is a regulation for the purposes of the Acts and Regulations Publication Act 1989 but not for the purposes of the Regulations (Disallowance) Act 1989.

**7 Sum payable after office of Governor-General becomes vacant**

When a person ceases to hold office as Governor-General (other than by reason of death), he or she must be paid a gross lump sum equivalent to the gross salary payable for the last 6 months during which he or she held office.

**8 Annuity for former Governor-General**

- (1) This section applies to a person who has held the office of Governor-General (whether before or after the commencement of this Act).
- (2) If a person to whom this section applies held office as Governor-General for a total period of less than 2 complete years, he or she must be paid an annuity at a yearly rate determined from time to time by the Remuneration Authority.
- (3) If a person to whom this section applies held office as Governor-General for a total period of 2 complete years or more, he or she must be paid an annuity at a yearly rate, determined from time to time by the Remuneration Authority, for each complete year (not exceeding 5 years) of that total period.
- (4) The annuity is payable from the date that is 6 months after the date on which the person ceased to hold office as Governor-General.

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- (5) A determination made under this section comes into force on the date specified in the determination, which may be a date that is before, on, or after the date the determination is made.
- (6) A determination made under this section is deemed to be a regulation for the purposes of the Acts and Regulations Publication Act 1989 but not for the purposes of the Regulations (Disallowance) Act 1989.

**9 Annuity for spouse or partner of former Governor-General**

- (1) If a person to whom section 8 applies dies, the surviving spouse or partner of that person must be paid an annuity at half the yearly rate at which an annuity would have been payable to the person under section 8 if that person had not died.
- (2) The annuity is payable from the date of death of the person who held office as Governor-General until the spouse or partner dies.

**10 Compensation for lost or adversely affected superannuation rights**

- (1) Subsection (2) applies if a person is appointed to the office of Governor-General and, because of the person's acceptance of that office, the superannuation rights of the person who is appointed to the office, or the superannuation rights of the spouse or partner of that person, have been lost or otherwise adversely affected.
- (2) From the date on which the person appointed to the office of Governor-General ceases to hold that office, compensation must be paid to that person, or to the surviving spouse or partner of that person, of a sum or an annuity, or both, provided for in a written agreement made between that person and the Minister of Finance before that person assumed office as Governor-General.
- (3) An agreement made between the person appointed to the office of Governor-General and the Minister of Finance for the purposes of this section has effect according to its tenor and—
  - (a) may provide for the payment of contributions by the Governor-General; and

- (b) if it provides for the payment of an annuity, may provide for any annuity payable under section 8 or 9 to be payable at a rate less than that prescribed by that section.

**11 Payments in respect of other benefits and privileges**

- (1) The terms of the appointment of a person as Governor-General may include an agreement for that person and his or her spouse or partner to be provided with specified benefits or privileges by way of payments in respect of domestic travel or the use of chauffeured cars when he or she no longer holds office as Governor-General.
- (2) The Prime Minister must present to the House of Representatives a statement setting out the details of any benefits or privileges paid to or in respect of any former Governor-General under an agreement made under subsection (1) or an agreement referred to in section 21(3)(d).
- (3) The statement must be presented within 12 sitting days after the end of each financial year.
- (4) The statement must show all of the expenses incurred to provide the benefits or privileges.

**12 Permanent appropriation for salary, allowance, annuities etc**

Expenses may be incurred, without further appropriation than this section, to meet—

- (a) the salary under section 5:
- (b) the allowance under section 6:
- (c) the lump sum under section 7:
- (d) the annuities under sections 8 and 9:
- (e) compensation under an agreement made under section 10:
- (f) specified benefits and privileges under an agreement made under section 11(1):
- (g) specified benefits and privileges under an agreement referred to in section 21(3)(d).

*Funding for Governor-General's programme***13 Governor-General's programme**

Expenses may be incurred, without further appropriation than this section, to meet the costs of the Governor-General carrying out his or her duties in New Zealand (such as the costs of and incidental to travel of the Governor-General, staff of the Governor-General, and his or her family members, and the cost of hosting functions and events as part of the Governor-General's programme).

**14 Governor-General's travel outside New Zealand**

Expenses may be incurred, without further appropriation than this section, to meet the costs of—

- (a) the Governor-General carrying out any of his or her duties of office outside New Zealand (such as the costs of and incidental to international travel of the Governor-General, staff of the Governor-General, and his or her family members); and
- (b) travel of the Governor-General designate, his or her family members, and staff of the incumbent Governor-General, for the purpose of the Governor-General designate having an audience with the Sovereign.

*Administrator of the Government***15 Salary and expenses of Administrator**

If the Chief Justice, or the next most senior Judge of the New Zealand judiciary who is able to act, acts as the Administrator of the Government, that person continues to receive the salary of his or her judicial office in respect of the period for which that person acts as the Administrator of the Government.

**Part 2****Miscellaneous provisions***Amendments to Civil List Act 1979***16 Amendments to Civil List Act 1979**

Sections 17 and 18 amend the Civil List Act 1979.

**17 Part 1 of Civil List Act 1979 repealed**

Part 1 is repealed.

**18 Appropriation of money for benefits and privileges**

Section 25(1)(a) is repealed.

*Consequential amendment to Income Tax Act  
2007*

**19 Consequential amendment to Income Tax Act 2007**

Section 20 amends the Income Tax Act 2007.

**20 New section CW 16 substituted**

Section CW 16 is repealed and the following section substituted:

**“CW 16 Income of Governor-General**

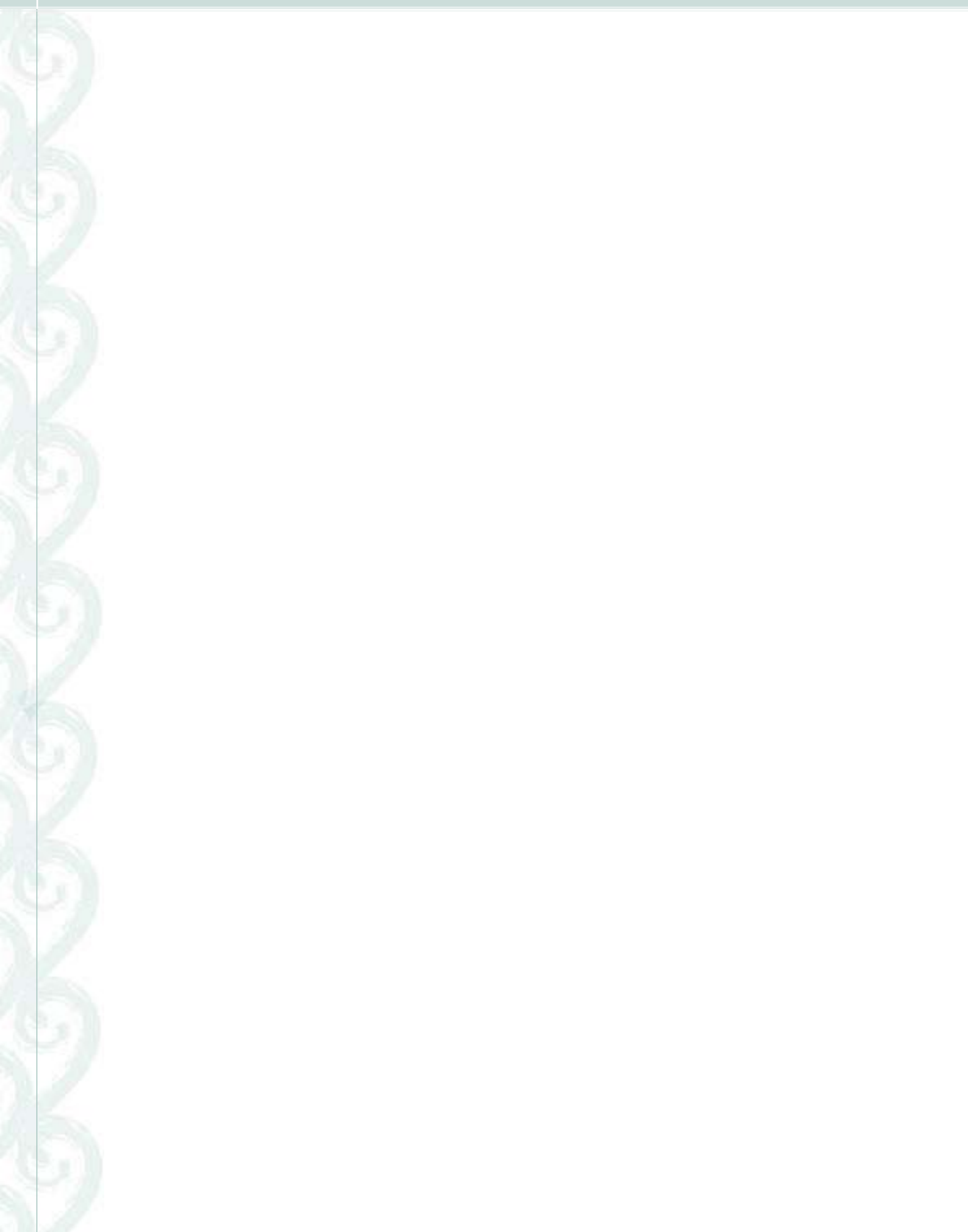
The allowance of the Governor-General, paid under section 6 of the Governor-General Act 2009, is exempt income.”

*Savings and validation*

**21 Savings and validation**

- (1) Despite the repeal of Part 1 of the Civil List Act 1979 by section 17 of this Act, that Part, except section 4, continues in force and applies in respect of the person who held the office of Governor-General immediately before the repeal, until that person no longer holds the office of Governor-General.
- (2) Despite the repeal and substitution of section CW 16 of the Income Tax Act 2007 by section 20 of this Act, section CW 16(a) of the Income Tax Act 2007 continues in force and applies to the salary and allowance payable to the person who held the office of Governor-General immediately before the repeal until that person no longer holds the office of Governor-General.
- (3) Nothing in this Act affects the validity of any of the following made before the commencement of this Act:
  - (a) an Order in Council made under section 3 of the Civil List Act 1979:

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- (b) a determination made by the Remuneration Authority under section 3 or 4 of the Civil List Act 1979:
  - (c) an agreement made under section 5 of the Civil List Act 1979:
  - (d) an agreement, as part of the terms of appointment of a person as Governor-General, for that person to be provided with specified privileges or benefits (whether by way of domestic air travel, the use of chauffeured cars, or any other benefit or privilege) when that person no longer held office as Governor-General.
- (4) Despite anything in this Act, every annuity in respect of which a determination by the Remuneration Authority has been made under section 4(1) of the Civil List Act 1979 must continue to be paid at the rate applicable at the commencement of this Act until the determination of the Authority relating to that annuity has been superseded by a determination of the Authority under section 8 of this Act.
- (5) Despite anything in this Act, every annuity in respect of which a determination by the Remuneration Authority has been made under section 4(2) of the Civil List Act 1979 must continue to be paid to the spouse or partner of the former Governor-General at the rate applicable at the commencement of this Act until the Authority has made a determination under section 8 of this Act fixing, for the purposes of section 9 of this Act, the rate at which an annuity would have been payable to the former Governor-General had he or she not died.







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