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# REVIEW OF THE CIVIL LIST ACT 1979

## MEMBERS OF PARLIAMENT AND MINISTERS



LAW · COMMISSION  
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# REVIEW OF THE CIVIL LIST ACT 1979

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MEMBERS OF PARLIAMENT  
AND MINISTERS

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.

**The Commissioners are:**

Right Honourable Sir Geoffrey Palmer SC – President

Dr Warren Young – Deputy President

Emeritus Professor John Burrows QC

George Tanner QC

The General Manager of the Law Commission is Brigid Corcoran

The office of the Law Commission is at Level 19, HP Tower, 171 Featherston Street, Wellington

Postal address: PO Box 2590, Wellington 6140, New Zealand

Document Exchange Number: sp 23534

Telephone: (04) 473-3453, Facsimile: (04) 471-0959

Email: [com@lawcom.govt.nz](mailto:com@lawcom.govt.nz)

Internet: [www.lawcom.govt.nz](http://www.lawcom.govt.nz)

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

17 November 2010

Dear Minister

NZLC R119 – REVIEW OF THE CIVIL LIST ACT 1979 – MEMBERS OF PARLIAMENT  
AND MINISTERS

I am pleased to submit to you Law Commission Report 119, *Review of the Civil List Act 1979 – Members of Parliament and Ministers*, which we submit under section 16 of the Law Commission Act 1985.

Yours sincerely

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

*Geoffrey Palmer*  
President

## FOREWORD

The Law Commission's Review of the Civil List Act 1979 has been a project of two halves. The first dealt with the provisions of the Civil List Act relating to the Governor-General. Our final report on that subject led to the Governor-General Bill, which at the time of writing has completed its parliamentary stages. Dealing with the rest of the Act, and the payments to members of Parliament and Ministers that arise under it, turned out to be a much more challenging task.

The Law Commission has been significantly influenced by developments in the United Kingdom in response to the scandal concerning payments to MPs that erupted prior to the last general election. It is clear that the New Zealand situation is not in the same parlous state as matters were in the mother of Parliaments. But the current state of affairs is not satisfactory.

When we began this exercise the Law Commission held the tentative view that there was not much need for major change to the existing arrangements. The further we delved into the detail the less attractive that proposition became.

The three principles that should govern remuneration and expenses for members of Parliament and Ministers are: clarity – as to who can claim what, and from whom; transparency – of how much is paid, and for what; and independence – the levels of payment should be set by a process independent of those who receive the money. Clarity, transparency and independence are powerful principles. They are not present in sufficient degree within the existing system. The resulting and continual criticism and media attention that expenses and allowances of members of Parliament and Ministers attract has a corroding effect on public confidence in the integrity of democracy in New Zealand.

The Civil List Act provides the legal authority for payments made to members of Parliament and Ministers for their salaries, allowances and expenses. There has been a consistent drumbeat of calls for change for more than a decade, which shows no sign of abating. No doubt the Law Commission's proposals will be unpopular in some quarters. But a constitutional statute like the Civil List Act must adhere to the highest standards of international best practice. Against that test, the present New Zealand system cannot survive.

We have also recommended that the Official Information Act 1982 should apply to Parliament. We have fashioned particular rules to meet the particular circumstance of Parliament. Parliament cannot be treated like an ordinary government department so far as the Official Information Act is concerned.

In the course of our review we have had many discussions with MPs, the Speaker and officials. We have also held discussions with the Hon Sir Douglas Kidd who chaired the triennial review that reported earlier this year, and the Auditor-General who is conducting an inquiry into ministerial services. We sent copies of the draft report to all the political parties represented in Parliament, and consulted with those who responded, at a time when the issues canvassed in this report were under active public discussion.

The matters addressed in this report are seldom far from the public eye. Even as we were completing the report, a Minister resigned over the use of the international travel rebate. There may be further changes to the Speaker's Directions before this report is printed.

We do not think that members of Parliament and Ministers have anything to fear from the changes we recommend. They must be properly supported in order to carry out their important duties effectively. Our elected representatives should be free from the public opprobrium and suspicion that comes from being involved in setting their own allowances and expenses. The dignity of the New Zealand democracy requires nothing less.

Our report is accompanied by a draft bill, drafted by the Parliamentary Counsel Office. This enables people to see precisely how our proposals will work. The bill does not implement our recommendations in relation to the Official Information Act. Those will be dealt with after the completion of the Law Commission's project on the Official Information Act next year.

A handwritten signature in dark ink, appearing to read 'Geoffrey Palmer', with a horizontal line underneath it.

*Geoffrey Palmer*  
President

## ACKNOWLEDGMENTS

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.

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

This report sets out the Law Commission's recommendations for the reform of Parts 3 and 4 of the Civil List Act 1979. We are grateful to the following individuals and organisations who met with us to discuss the draft final report:

- Hon Dr Lockwood Smith, Speaker of the House of Representatives
- Hon Phil Goff, Labour Party
- Hon Metiria Turei, Green Party
- Hon Rodney Hide, ACT New Zealand
- Hon Te Ururoa Flavell, Māori Party
- Hon Sir Douglas Kidd
- Wayne Eagleson, Prime Minister's Chief of Staff
- The Auditor-General
- Parliamentary Service
- State Services Commission
- Office of the Ombudsmen
- Remuneration Authority
- Mary Harris, Clerk of the House of Representatives
- Peter Lorimer, Treasury
- Janice Calvert, Department of Internal Affairs

The Commissioner responsible for this report is Sir Geoffrey Palmer, President of the Law Commission, and the legal and policy adviser is Rachel Hayward. Our sincere thanks to Suzanne Giacometti, Parliamentary Counsel, for all her hard work in preparing the draft legislation that accompanies this report.

### Disclosure of interest

As a former member of Parliament elected before 1999 and a former Prime Minister, Sir Geoffrey Palmer receives certain entitlements under the Civil List Act 1979, including travel entitlements under Part 6 of the Directions by the Speaker of the House of Representatives 2010. Sir Geoffrey has disclosed his interest according to the terms of the Crown Entities Act 2004 to the Minister Responsible for the Law Commission, and received his permission, by letter dated 18 August 2009, under section 68 of that Act, to continue as Commissioner in charge of this review, on the condition that the review would not consider the amount of payments made to former members of Parliament and Prime Ministers, but would seek to clarify the legislative framework and improve transparency.



# Review of the Civil List Act 1979

## Members of Parliament and Ministers

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# Summary

## THE NEED FOR CHANGE

- 1 In this report, the Law Commission presents its recommendations for the reform of Parts 3 and 4 of the Civil List Act 1979, which provide for remuneration and support for members of Parliament and the Executive, and for annuities for former Prime Ministers and their spouses. A draft bill reflecting our recommendations accompanies this report.
- 2 Our recommendations for the reform of Part 1 of the Civil List Act 1979, which provides for remuneration and support for the Governor-General, were set out in Law Commission Report 112, *Review of the Civil List Act 1979 – the Governor-General*, which was published in December 2009. That report recommended that Part 1 of the Civil List Act 1979 should be repealed and replaced by a modern stand-alone statute. A draft bill to that effect was appended to the report. The Governor-General Bill, which implements the Law Commission’s recommendations, was introduced into Parliament on 29 June 2010.

### Origins of this review

- 3 This review resulted from a Government reference asking the Law Commission to consider the operation and provisions of the Civil List Act 1979, which has not been comprehensively reviewed since its enactment. In July 2008, the Commission released an Issues Paper, *Review of the Civil List Act 1979*. We received a small number of submissions in response.
- 4 The Issues Paper suggested three options for reform:
  - (a) Option 1: amend and retain the current Civil List Act;
  - (b) Option 2: dismantle the Civil List Act and distribute 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, and replace it with two new statutes, one dealing with the provisions relating to the Governor-General, and the other with provisions relating to the salaries, allowances and other services for members of Parliament and the Executive.

- 5 In the Issues Paper we expressly excluded the option of making a fundamental change to the way in which parliamentary and executive entitlements are determined. Those entitlements are set by the Speaker and the Minister Responsible for Ministerial Services by determination. The possibility of their being set by an independent body had been raised on previous occasions but rejected. A comprehensive determinations document was drafted in 2007, setting out in one place the rules relating to services and entitlements for members of Parliament. Officials and politicians described the new determinations document as a vast improvement on the old system.
- 6 Rather than reopening the debate as to how those entitlements should be set, we decided to build on the work that had already been done, and consider what improvements could be made to the existing determination method. However, two developments since that time have caused us to change our approach, and to revisit the question of how parliamentary and ministerial entitlements should be determined.

#### *United Kingdom Parliamentary Expenses Scandal*

- 7 In May and June 2009, the Daily Telegraph in London published a series of highly damaging revelations in relation to the expenses regime of the members of the House of Commons. Three journalists had sought information under the Freedom of Information Act 2000 (UK) about MPs' expenses and allowances. The Information Commissioner had ordered the disclosure of the information sought, and that decision had been upheld on appeal (with limits on the disclosure of some data) by both the Information Tribunal and the High Court.<sup>1</sup>
- 8 Details of MPs' expenses claims were due to be published in July 2009, but some details, including some names and addresses, were to be redacted. The Daily Telegraph obtained, and on 8 May 2009 published, full details of the expense claims.<sup>2</sup> These revealed that large numbers of MPs had made claims for purchases and expenditure that bore no relationship to their ability to do their work. Some had claimed mortgage interest payments in respect of mortgages that no longer existed. Others had routinely "flipped" the designation of their second home so as to be able to maximise the financial gain from their allowances.<sup>3</sup>
- 9 The revelations coincided with the impact of global economic recession, which increased public outrage at the expenditure involved. Public trust and confidence in the integrity of the United Kingdom Parliament was seriously undermined.

1 *Corporate Officer of the House of Commons v Information Commissioner* [2008] EWHC 1084; [2009] 3 All ER 403.

2 Daily Telegraph, 8 May 2009. [www.telegraph.co.uk/news/newstoppers/mps-expenses/5297606/MPs-expenses-Full-list-of-MPs-investigated-by-the-Telegraph.html](http://www.telegraph.co.uk/news/newstoppers/mps-expenses/5297606/MPs-expenses-Full-list-of-MPs-investigated-by-the-Telegraph.html).

3 Peter Leyland "Freedom of Information and the 2009 parliamentary expenses scandal" [2009] Public Law 675.

- 10 The reverberations of the ensuing public scandal were felt in Westminster-style Parliaments around the world. In the months following the British revelations, information was voluntarily released in New Zealand about MPs' expenses. While this information did not reveal anything like the claims that caused such controversy in the United Kingdom, there was considerable discussion in the media, particularly in relation to accommodation for Ministers and MPs, travel expenses for former MPs, and rebates paid on international travel to a number of current MPs. A number of commentators also expressed concern about the absence of detailed breakdown in the figures provided.<sup>4</sup>

### *Problems of transparency and independence*

- 11 The second matter that has resulted in a change in our approach is that our attempt to reduce the legislative complexity surrounding MPs' entitlements and to increase transparency within the existing framework of the determinations process proved fruitless. We have concluded that it is not possible to fix those problems without significant changes to the way in which the entitlements are set. Issues of insufficient independence and transparency lie at the heart of the problems with the Civil List Act 1979. Those issues cannot be resolved without fundamental change.
- 12 In this regard, this report follows on from a number of reviews in the last 11 years that have called for greater independence and transparency in relation to funding and entitlements for members of Parliament and the Executive, but whose recommendations have not been implemented.<sup>5</sup> Unless and until those calls are answered, the legitimacy of the parliamentary funding regime will continue to be subject to public question and challenge.

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4 For example, see "Extravagant perk has to be reviewed" New Zealand Herald 3 August 2009; "At our expense", Sunday Star Times 9 August 2009, B3-B5; "Family air travel up in the clouds", Sunday Star Times 9 August 2009; "Pity for MPs not quite possible", Dominion Post 11 August 2009.

5 *Report of Review Team on a Review of the Parliamentary Service Act to the Parliamentary Service Commission*, February 1999; Office of the Auditor General, *Parliamentary Salaries Allowances and Other Entitlements Final Report July 2001*; Report of the Review Group on Improving Current Arrangements for the Determination and Administration of MPs' Salaries, Allowances and Other Entitlements, *MPs' Remuneration and Expenses Review*, March 2002; Report of the Fourth Triennial Parliamentary Appropriations Review (June 2010).

# Summary of recommendations

- 
- CHAPTER 1 R1 The Civil List Act should be repealed, and a new statute enacted, called the Members of Parliament (Remuneration and Services) Act.
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- CHAPTER 2 R2 Travel, accommodation, attendance and communications services for members of Parliament and members of the Executive should be determined by an independent body.
- R3 That body should be an enhanced Remuneration Authority comprising the members of the Remuneration Authority, a former member of Parliament with no less than nine years' experience, and a person with appropriate skills and experience in the administration of Parliament.
- R4 Entitlements to funding and services to support parties' and members' parliamentary operations should be determined by an independent body, namely the enhanced Remuneration Authority.
- 
- CHAPTER 3 R5 The Official Information Act 1982 should be extended to cover information held by the Speaker in his role with ministerial responsibilities for Parliamentary Service and the Office of the Clerk; the Parliamentary Service; the Parliamentary Service Commission; and the Office of the Clerk in its departmental holdings.
- R6 The OIA should not apply to:
- proceedings in the House of Representatives, or Select Committee proceedings; and internal papers prepared directly relating to the proceedings of the House or committees;
  - information held by the Clerk of the House as agent for the House of Representatives;
  - information held by members in their capacity as members of Parliament;
  - information relating to the development of parliamentary party policies, including information held by or on behalf of caucus committees;
  - party organisational material, including media advice and polling information.
- 
- CHAPTER 4 R7 If a member is absent for more than nine sitting days during any calendar year, there should be a deduction from the payments to be made to that member of 0.2% of the annual salary of an ordinary member of Parliament for each day of absence (exclusive of those nine sitting days). No deduction should be made where the Speaker certifies that the member is absent for reasons of illness or other family cause of a personal nature, or where the member is attending to other public business (whether in New Zealand or overseas).

- R8 It would be desirable if a record of attendance were kept in the House of Representatives. How this is done is a matter for the Standing Orders Committee, and the Speaker.

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CHAPTER 5

- R9 “Run-off” entitlements for former members of Parliament should be treated separately from on-going travel entitlements for former members. (Run-off entitlements are those entitlements designed to cover the costs of a member’s out-of-Parliament office for a short period after the member resigns or is not declared to be a member.)
- R10 Travel entitlements for former members of Parliament elected before the 1999 general election currently appear in Part 6 of the Speaker’s Directions. If those entitlements continue, they should be set out in legislation, so that they cannot be extended or increased except by legislative amendment.
- R11 There should be an annuity paid to former Prime Ministers who have held the office for a minimum of two years, at a yearly rate for each year of service to be determined from time to time by the Remuneration Authority, up to and including five years of service.
- R12 The cost of travel and transport for former Prime Ministers and their spouses should be included in the annual financial statements of the Department of Internal Affairs.
- R13 If the former Prime Minister 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 Prime Minister.

# Chapter 1

## Current framework

### STATUTORY SCHEME

- 1.1 The Civil List Act was enacted in 1979, and though it has been amended since then it has not been comprehensively reviewed. It forms part of the complex legislative framework that operates in relation to salaries, allowances and other entitlements for members of Parliament and the Executive. The history of the Act and the way in which various provisions arose was discussed in detail in our Issues Paper.<sup>6</sup>
- 1.2 Our experience in working with the Act, and in discussing it with people and agencies who use it regularly, is that it is very complicated and confusing. In relation to entitlements for members of Parliament and the Executive, it cannot be considered on its own – it must be viewed alongside a number of other pieces of legislation. The relationships are not always clear, and confusion and ambiguity can result.

### Salaries and allowances

- 1.3 The payment of salaries to members of Parliament and the Executive is governed by sections 16 to 20 of the Civil List Act 1979. In general, the statutory scheme for these payments is straightforward. The Remuneration Authority fixes salaries and allowances. The salaries and allowances may differ in accordance with the office that a member of Parliament holds, or with the electorate he or she represents, or in accordance with such other considerations as may be determined by the Remuneration Authority.<sup>7</sup>
- 1.4 In practice, salaries and allowances are not considered in isolation from other entitlements under the Act. The Remuneration Authority adjusts the salaries paid to MPs and Ministers by reducing them to take account of any remunerative aspects of the entitlements of MPs and Ministers determined under section 20A of the Act. We will return to this below.

### Other entitlements

- 1.5 The statutory scheme for other payments and entitlements to members of Parliament and Ministers is more complicated. A number of interconnected statutory provisions govern this area, including:

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<sup>6</sup> Law Commission *Review of the Civil List Act 1979* (NZLC IP 8, 2008).

<sup>7</sup> Civil List Act 1979, s16 (2).



- (a) The Parliamentary Service Act 2000;
- (b) The Civil List Act 1979 (in particular, sections 20A, 20B and 25);
- (c) The Parliamentary Service (Continuation of Interim Meaning of Funding for Parliamentary Purposes) Act 2009;
- (d) The Public Finance Act 1989.

#### *Parliamentary Service Act 2000*

- 1.6 Section 7(b) of the Parliamentary Service Act 2000 provides the main mechanism for paying members' and parties' entitlements. Section 7(b) provides that one of the principal duties of the Parliamentary Service is to administer, "in accordance with directions given by the Speaker, the payment of funding entitlements for parliamentary purposes." This is also the source of the Speaker's power to issue directions for those entitlements. No entitlement exists for the purpose of section 7(b) unless and until the Speaker issues a direction.
- 1.7 Section 8 of the Act provides that the Speaker must give directions as to the nature of administrative support services to be provided by the Parliamentary Service each year.

#### *Funding entitlements for parliamentary purposes*

- 1.8 "Funding entitlements for parliamentary purposes" is currently defined in section 4 of the Parliamentary Service (Continuation of Interim Meaning of Funding for Parliamentary Purposes) Act 2009. This definition will expire in December 2010.<sup>8</sup> The full definition is set out in Chapter 4. It is inclusive, rather than exhaustive. It is open to the Speaker to specify new entitlements from time to time by way of direction.
- 1.9 As will be discussed in Chapter 4, there is a measure of circularity to the definition. The effect is that "parliamentary purposes" will include anything the Speaker includes in the determination by way of travel, accommodation and attendance services, or in any direction given by the Speaker under the Parliamentary Service Act 2000. There is no overriding requirement that the matters actually relate to parliamentary business. At present, the determination includes entitlements for domestic travel for private purposes, and in the case of current MPs, domestic travel even for private business purposes. Neither of these purposes would be described in ordinary terms as being a "parliamentary purpose."
- 1.10 The definition also includes payments to former MPs and their families when again, most people would not consider those as being for a parliamentary purpose.

<sup>8</sup> A Bill is currently before Parliament which would insert a definition of funding entitlements for parliamentary purposes into the Parliamentary Service Act 2000 – Parliamentary Service Amendment Bill 2010. The proposed new definition is discussed in Chapter 4.

*The Triennial Review*

- 1.11 Section 20 of the Parliamentary Service Act 2000 provides that at least once in the term of every Parliament, the Speaker must establish a review committee of up to three people to review the amounts of money appropriated by Parliament for administrative and support services provided to the House of Representatives and to members of Parliament, and for funding entitlements for parliamentary purposes.
- 1.12 Subject to any written direction by the Speaker, the review committee may regulate its own procedure. Section 21 of the Parliamentary Service Act 2000 requires the review committee to consider each of the following matters:
- (a) the nature, quantity, and quality of administrative services and support services required for the effective operation of the House of Representatives;
  - (b) the nature, quantity, and quality of administrative services and support services that members of Parliament require for the effective performance of their functions;
  - (c) the funding that recognised parties and members of Parliament require for the effective performance of their respective functions;
  - (d) the scope for efficiency gains in the delivery of administrative services and support services to the House of Representatives and to members of Parliament;
  - (e) investments that may be necessary or desirable in order to further the aims of high quality representation by members of Parliament and high quality legislation;
  - (f) the need for fiscal responsibility.
- 1.13 The review committee must consult with the Parliamentary Service, before reporting back to the Speaker with recommendations.<sup>9</sup> The Speaker must present the report to the House, but is not obliged to act on the recommendations made.

*Section 20A of the Civil List Act 1979*

- 1.14 Section 20A of the Civil List Act 1979 provides for the Speaker to determine travel, accommodation, communication and attendance services for members of Parliament, and for the Minister Responsible for Ministerial Services to make a determination in respect of any additional or alternative services in respect of Executive travel, accommodation, attendance and communications.
- 1.15 Some of these services contain an element of personal benefit. This is assessed by the Inland Revenue Department, and the Remuneration Authority adjusts the salaries paid to MPs and Ministers accordingly, by reducing them to take account of the remunerative aspects of the entitlements. This process is not transparent, and is not well understood by the public.
- 1.16 For example, in 2003, the Remuneration Authority placed a value of \$142,700 on the total remuneration level that was appropriate for an ordinary member of Parliament. It then deducted the value of any other benefits from this total, using the average value of those benefits supplied by Parliamentary Service or the

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<sup>9</sup> Parliamentary Service Act 2000, s 22.

Department of Internal Affairs. For example, the average cost of members' domestic air travel per member was \$30,296. The IRD assessed that 5 % of that cost constituted remuneration, or \$1,515, and that amount was deducted from the total package value. Similarly, the average cost of current members' and spouses' private international air travel was \$5,780. The IRD assessed that all of this constituted remuneration and it was deducted from the total package value. Once the value of all such benefits was deducted, the salary of an ordinary member of Parliament was set at \$110,000.

- 1.17 A separate determination is also made under section 20A for travel, accommodation and related services available to members of Parliament participating in the official inter-parliamentary travel programme. This programme is organised and administered by the Office of the Clerk of the House of Representatives, and funded through Vote: Office of the Clerk.<sup>10</sup>
- 1.18 Determinations under section 20A may determine services by one of three methods set out in section 20B. Only the method set out in section 20B(1)(c) has ever been used. It provides that a determination may determine services by incorporating by reference all or part of any other document that sets out:
- (i) any services to be provided to members of Parliament under the Parliamentary Service Act 2000;
  - (ii) any funding entitlements for parliamentary purposes to be provided under that Act;
  - (iii) any matters referred to in section 25 of the Civil List Act 1979.
- 1.19 Sections 20A and 20B were added to the Civil List Act 1979 in 2003.

### *The Speaker's Directions*

- 1.20 The Parliamentary Travel, Accommodation, Attendance, and Communications Services Determination (No. 2) 2010 incorporates by reference the Directions by the Speaker of the House of Representatives 2010. In this report, we will refer to it as the Speaker's Directions. Part 3 of the Speaker's Directions set out the travel, accommodation and communications services to which members are entitled (except for services provided in relation to the official inter-parliamentary travel programme).
- 1.21 Part 4 of the Speaker's Directions sets out the entitlements to funding and services to support parties' and members' parliamentary operations; part 5 sets out directions for administering payment of funding entitlements; part 6 sets out benefits and privileges available to former members; and part 7 sets out entitlements to services and funding for certain electoral candidates.

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10 These services are set out in the document entitled "Specification for Travel, Accommodation and Related Services Available to Members of Parliament Participating in the Official Inter-Parliamentary Travel Programme", which is incorporated by reference in the Parliamentary (Official Inter-Parliamentary Travel Programme) Travel and Accommodation Determination 2007 (SR 2007/117).

*The Executive Determination*

- 1.22 The Executive Travel, Accommodation, Attendance, and Communications Services Determination (No 2) 2009 incorporates by reference the additional travel, accommodation, attendance, and communications services in respect of members of the Executive set out in a document entitled “Travel, Accommodation, Attendance, and Communications Services Available to Members of the Executive” and signed by the Minister Responsible for Ministerial Services on 22 October 2009. For convenience we will refer to this as the Executive Determination.
- 1.23 As members of the Executive are also members of Parliament, they also have entitlements as set out in the Speaker’s Directions. The entitlements set out in the Executive Determination are described in the introduction to that document as being either additional or alternative to the entitlements in the Speaker’s Directions.
- 1.24 Part 3 of the Executive Determination sets out entitlements to travel; Part 4 to accommodation; Part 5 to communications services; Part 6 to attendance (which provides there shall be nothing additional for attendance); and Part 7 to operational resources.

*Section 25 of the Civil List Act*

- 1.25 Section 25 provides for the appropriation of money for the purposes of providing “benefits and privileges of a specified kind” for a number of people, among others, the Prime Minister or a former Prime Minister, Ministers of the Crown, and members and former members of Parliament.

## ISSUES

- 1.26 As will be apparent from this brief summary, the statutory framework is very complicated and involves multiple documents. Our initial response was to design legislative changes to simplify and improve it. However, as this review has proceeded, it has become apparent that there are fundamental problems about a lack of independence in the methods now in place for determining services and entitlements, and a lack of transparency of the services and entitlements delivered. These problems cannot be resolved by just tidying up the existing statutory provisions.

**Independence**

- 1.27 Our prime concern about the current system for determining travel, accommodation, attendance and communications services for MPs and Ministers is simple: the mechanisms for setting those entitlements are not independent of the people who stand to benefit from them. The issue of independence will be discussed in chapter 2.

**Transparency**

- 1.28 The other major issue is transparency. The Official Information Act 1982 (OIA) does not apply to the Parliamentary Service. This means that payments to members of Parliament which are administered by the Parliamentary Service

are not subject to the OIA. However, the OIA does apply to payments to members of the Executive which are administered by Ministerial Services, because it is part of the Department of Internal Affairs, which is subject to the OIA.

- 1.29 Although information about MPs' entitlements is not available under the OIA, since June 2009 the Parliamentary Service and the Office of the Clerk have provided information on members' travel and accommodation expenses on a quarterly basis.<sup>11</sup> While this practice provides information about the total spending of MPs, in some respects the disclosure still lacks transparency. For example, the figures provided for air travel do not distinguish between domestic and international flights, or separately identify travel paid for an MP's spouse or partner and dependent children. They do not separately identify those amounts that relate to parliamentary business expenses and those with an element of private benefit, principally the international travel rebate entitlement. As the Fourth Triennial Review noted in its report:

...some of the amounts disclosed are part of the MPs' remuneration and some of the amounts are parliamentary business expenses: a distinction that does not seem to be clearly understood by the general public (and understandably so given the complexity of the regime).<sup>12</sup>

- 1.30 While the move to greater disclosure is commendable, a voluntary regime is not the same as a statutory requirement of availability.<sup>13</sup> Over time it has also come to seem anomalous that information about Ministers' entitlements can be obtained under the OIA but information about MPs' entitlements cannot. There should be greater transparency relating to the details of MPs' entitlements and their use.

## Clarity

- 1.31 There are a number of areas in which the provisions of the Civil List Act 1979 are unclear, and have the potential to cause real confusion. In part this is because of the way those provisions connect with the labyrinth of regulation and legislation that governs parliamentary and ministerial entitlements. In part it results from the piecemeal amendment of the Civil List Act over many years.
- 1.32 For example, there is ambiguity around the scope and content of the Executive Determination, which results from the addition of sections 20A and 20B in 2003. No doubt the intention was to provide a mechanism for determining clear rules for the entitlements of members of the Executive to travel, accommodation, communication and attendance services. However, the Department of Internal Affairs also has general legal capacity to provide support for Ministers, within the constraints of the relevant appropriations and the Public Finance Act. Section 20A does not explicitly state that the entitlements provided in the

11 [www.parliament.nz/en-NZ/MPP/MPs/Expenses/](http://www.parliament.nz/en-NZ/MPP/MPs/Expenses/).

12 Report of the Fourth Triennial Parliamentary Appropriations Review (June 2010) at [8.19].

13 In late October 2010 the Speaker announced his intention to withhold from quarterly disclosure figures relating to the use of the international travel rebate, on the basis that the cost of the rebate was deducted from the collective salaries of MPs – Derek Cheng “MPs' travel perks now secret under new rules” *The New Zealand Herald* (New Zealand, 29 October 2010). The Speaker subsequently released the details after some party leaders decided to release the figures themselves: Vernon Small, “U-turn on MPs' travel expenses” [www.stuff.co.nz](http://www.stuff.co.nz) (New Zealand, 3 November 2010).

Executive Determination are exhaustive. While in our view it would be hard to justify providing any of those specific services over and above what is set out in the Executive Determination, the question should be put beyond doubt.

- 1.33 The Executive Determination also seems to have been developed with the content of the Speaker’s Directions as a template, without regard to the underlying statutory framework. The Executive Determination incorporates by reference the contents of a document dated 22 October 2009. The only way of incorporating documents by reference in relation to services for members of the Executive under section 20A is by using section 20B(1)(c)(iii), which allows the incorporation by reference of all or part of any other document that sets out any matters referred to in section 25 of the Civil List Act 1979. This provides for the appropriation of money for the purposes of providing “benefits and privileges of a specified kind” for a number of people.
- 1.34 It is not clear whether “services” under section 20A are a type of “benefit or privilege”, but they must be if the method of incorporation by reference is to work in relation to the Executive Determination. However Part 7 of the document incorporated into the Executive Determination deals with operational resources, meaning resources provided to assist members of the Executive to carry out ministerial business, including establishing and operating a ministerial office. In our view these do not fall within the ambit of section 25.
- 1.35 Areas of overlap between ministerial and parliamentary entitlements add to the confusion. As noted above, section 20A provides that the entitlements provided in the Executive Determination are additional to or alternative to those set out in the Speaker’s Directions. But those distinctions are not always clear in practice, and the overlap creates the potential for confusion not only for those responsible for administering entitlements, but also for those claiming under both sets of rules.

### A new Act

- 1.36 The recommendations set out in this report are reflected in the draft legislation set out in the appendix. We propose that the Civil List Act should be repealed, and a new statute called the Members of Parliament (Remuneration and Services) Act enacted.

#### RECOMMENDATION

- R1 The Civil List Act should be repealed, and a new statute enacted, called the Members of Parliament (Remuneration and Services) Act.

# Chapter 2

## Independence

- BACKGROUND
- 2.1 More than a decade ago, the *Report of Review Team on a Review of the Parliamentary Service Act to the Parliamentary Service Commission* (“the Rodger Report”) noted that unfavourable public perceptions appear inevitable wherever members of Parliament are involved in determining the benefits they receive.<sup>14</sup> Those words have been vividly illustrated by the public response to media reports following the release of MPs’ travel and accommodation entitlements in the last 12 months.
- 2.2 We agree with the view recently expressed by former State Services Commissioner Dr Mark Prebble:<sup>15</sup>
- The pattern of determinations issued by successive Speakers and prime ministers demonstrate that they have been scrupulously fair, and have not bent the rules to favour themselves or their colleagues. But it remains difficult for them to achieve an appearance of independence. This is especially problematic when part of the system of rewards (the travel subsidy) is not controlled by the Remuneration Authority, but by the Speaker. Similarly, the decision by the prime minister in 2009 to allow ministers to use their self-drive cars in Wellington is an effective increase in the value of their package, but it was not determined by the Remuneration Authority.
- 2.3 Dr Prebble identifies another problem with this lack of independence: there is no one to speak up in defence of members’ conditions other than members themselves:<sup>16</sup>
- The Speaker has explained and defended, and clearly feels the issues keenly, but he cannot separate himself from the issue because in the eyes of the media and the public he is part of the issue.
- 2.4 This problem also arises in relation to entitlements for Ministers, which are set by the Minister Responsible for Ministerial Services (currently the Prime Minister).

14 *Report of Review Team on a Review of the Parliamentary Service Act to the Parliamentary Service Commission*, February 1999 at [1.3].

15 Mark Prebble *With Respect: Parliamentarians, officials, and judges too* (Institute of Policy Studies, Wellington, 2010) at p 201.

16 *Ibid.*

- 2.5 In a recent article published in a British law review, former Speaker the Hon Margaret Wilson notes that under current arrangements the Speaker has two roles; one as the presiding officer of Parliament and the other as the officer responsible for the administration of Parliament. She points out that these two roles may conflict – acting in the interests of members on matters of the administration of members’ entitlements may not be acting in the interests of Parliament as an institution.<sup>17</sup> The obligation to act independently is sometimes seen by members as acting against their interests. This conflict, between Parliament’s interests and those of members, is a situation where the Speaker requires real independence – an independence that can, however, be constrained by the conduct of members.<sup>18</sup> The former Speaker argues that the time has come for an independent oversight of members’ entitlements and their administration. “Remuneration is set by an independent body, the Remuneration Authority, so why not entitlements for members?”<sup>19</sup>

### Previous New Zealand reviews

#### *Rodger Report 1999*

- 2.6 In 1999 the Rodger Report considered the possibility of the Higher Salaries Commission (now the Remuneration Authority) taking on the policy setting functions at that time held by the Parliamentary Service Commission. The review committee noted increasing moves in Australia to take decision-making on members’ resourcing away from the members themselves and place it with independent remuneration tribunals. The committee did not consider that to be a viable solution in New Zealand, as it would mean a fundamental shift in the role and focus of the Higher Salaries Commission, with implications for its role in relation to its other jurisdictions. Instead the committee believed the necessary independence would be achieved by combining the clear responsibility of the Speaker for the Vote, with a periodic external benchmark-setting review (the Triennial Review).<sup>20</sup>

#### *Auditor-General 2001*

- 2.7 In July 2001, the Auditor-General conducted a detailed review of the regime for setting and administering salaries, allowances and other entitlements for MPs and Ministers. The Auditor-General noted that the Speaker of the House and the Minister Responsible for Ministerial Services were making decisions regarding entitlements for MPs and Ministers which could provide a personal benefit to the recipients.<sup>21</sup> The Auditor-General suggested that an independent body should determine all remuneration and expenses to be reimbursed, on the basis of clearly articulated principles.<sup>22</sup>

17 Hon Margaret Wilson “The Role of the Speaker: Perceptions and Reality” [2010] Public Law 565, at p 566.

18 Ibid, at p 580.

19 Ibid at p 581.

20 Rodger Report, above n 14 at [5.5.6].

21 Office of the Auditor General, *Parliamentary Salaries Allowances and Other Entitlements Final Report July 2001* at [703].

22 Ibid at [803].



- 2.8 The option which the Auditor-General considered would give full effect to the recommended guiding principles was to give the Higher Salaries Commission the mandate and responsibility for setting MPs' and Ministers' remuneration, including the entitlements and privileges set by the Speaker and the Minister Responsible for Ministerial Services.<sup>23</sup> The Higher Salaries Commission would also set the basis for MPs' and Ministers' expense reimbursement, and consider whether the range and nature of entitlements that were not based on actual and reasonable expenditure continued to be appropriate.

#### *Todd Review*

- 2.9 The Auditor-General's proposal was endorsed by an independent review group, known as the Todd Review, set up by the Parliamentary Service Commission to review the report. The Todd Review recommended that the Higher Salaries Commission should have jurisdiction over remuneration, including all types of allowances and other entitlements that were remuneration, and actual and reasonable expenses. The Responsible Ministers would have jurisdiction over work-related expenses arising from the provision of goods and services to MPs.<sup>24</sup> In relation to domestic and international travel, self-drive cars, VIP transport, and communications facilities, the Higher Salaries Commission would have initial responsibility for deciding what was remuneration and what was a work-related expense. The Responsible Ministers would have on-going responsibility for work-related goods and services.<sup>25</sup>
- 2.10 A bill was introduced into the House to give effect to the recommendations of the Todd Review in 2002.<sup>26</sup> However, in its report on the bill, the Standing Orders Committee rejected the proposed extension of the Remuneration Authority's role to include the determination of travel, accommodation, attendance and communications services, and recommended instead that the responsibility for determining these services be clearly retained by the Speaker and the Minister Responsible for Ministerial Services. Sections 20A and 20B of the Civil List Act 1979 were introduced as a result.

#### *Fourth Triennial Parliamentary Appropriations Review*

- 2.11 On 1 July this year, the report of the Fourth Triennial Parliamentary Appropriations Review, chaired by Hon Sir Douglas Kidd, was tabled in Parliament. That report recommends that the remunerative aspects of MPs' entitlements should be removed from the entitlements provided for in the Speaker's Directions, and the value of those benefits added to MPs' salaries.<sup>27</sup> The report noted:<sup>28</sup>

23 Ibid at p 10.

24 Report of the Review Group on Improving Current Arrangements for the Determination and Administration of MPs' Salaries, Allowances and Other Entitlements, *MPs' Remuneration and Expenses Review*, March 2002, at p 20.

25 Ibid at p 25.

26 Remuneration Authority (Members of Parliament) Amendment Bill 2002.

27 Report of the Fourth Triennial Parliamentary Appropriations Review (June 2010) at [8.20].

28 Ibid at [8.46].

The rebate entitlement is confusing. It can either be remunerative, if travel is undertaken for private purposes, or a partial reimbursement of parliamentary business expenses, depending on the nature of the travel undertaken;

The structure of the [international travel] rebate entitlement means that MPs who have served more than one term in Parliament have a degree of control over the amount of their own effective remuneration (because the subsidised travel can be private in nature);

Spouses'/partners' travel is unlikely in most cases to be other than remunerative in nature.

- 2.12 The Review further recommended that an independent body should be responsible for setting MPs' entitlements.<sup>29</sup>
- 2.13 The Review also expressed concerns about the current regime for party and member support entitlements. These provisions are set out in Part 4 of the Speaker's Directions, and fall under services to be provided to members of Parliament under section 7 of the Parliamentary Service Act 2000, and under the definition of "funding entitlements for parliamentary purposes" to be provided under that Act. The Review described its fundamental concern about the current system for determining funding for individual members' support, which was open to on-going change with the formation of successive governments:<sup>30</sup>

There are few, if any, checks and balances in the current system on the level of funding for individual members' support. As a result, there is a real risk that expenditure in this area will be ratcheted up with successive elections. At worst, the current funding regime allows for the prospect of a party buying its way into office. In our view there is a strong case for funding of this entitlement to come under the control of an independent regulator. We note that prior to 2003, what was the 'constituency' allowance was determined independently.

- 2.14 The Review noted in this regard that funding levels for the constituency allowance were previously determined by the Higher Salaries Commission, the precursor to the Remuneration Authority, in conjunction with the Representation Commission, which categorised electorates into different funding levels.

## Other jurisdictions

### *United Kingdom*

- 2.15 In the United Kingdom, in the wake of the MPs' expenses scandal, the Parliamentary Standards Act 2009 created a new public body, the Independent Parliamentary Standards Authority (IPSA), to be responsible for devising, reviewing and administering an expenses scheme for MPs. In its November 2009 report, the Committee on Standards in Public Life recommended that the new independent regulator should also be given responsibility for determining the level of MPs' pay and pension arrangements, as well as their expenses:<sup>31</sup>

29 Ibid at [8.25], and recommendation 12.

30 Ibid at [8.143].

31 Twelfth Report of the Committee on Standards in Public Life *MPs' Expenses and Allowances: Supporting Parliament, Safeguarding the Taxpayer* (November 2009) [www.public-standards.gov.uk/OurWork/MPs\\_Expenses\\_and\\_Allowances\\_x.html](http://www.public-standards.gov.uk/OurWork/MPs_Expenses_and_Allowances_x.html) at p 7.

All financial flows to MPs would then be decided and controlled in one place, whose independence from the House of Commons would be embedded in primary legislation and could only be changed by further primary legislation.

At the present time, the Review Body on Senior Salaries continues to be responsible for setting MPs' salaries in the United Kingdom.<sup>32</sup>

- 2.16 Following consultation with MPs, members of the public and other interested organisations, the IPSA has now prepared and published new rules governing MPs' expenses. The new rules are based on reimbursement of expenses, up to certain financial limits, rather than flat rate allowances. All expenses claims and payments will be published.<sup>33</sup> The scheme came into force after the general election, at the beginning of the new Parliament. It will be reviewed annually.
- 2.17 The new scheme has proved controversial, and has attracted criticism from many MPs as being overly bureaucratic and expensive, and out of touch with the reality of the job of an MP.<sup>34</sup>
- 2.18 In response, IPSA has noted that its system is similar to the online expenses systems used by many businesses throughout the United Kingdom, describing it as a straightforward system which requires an MP to type in the claim details and submit them. It rejects suggestions that it is out of touch with the role of modern parliamentarians, noting that in setting the new rules, it consulted widely and had meetings with a large number of MPs. IPSA also has a former MP on its Board, who it describes as providing considerable insight into the work and life of an MP.<sup>35</sup>
- 2.19 In July, a private members' bill was introduced proposing a new regime that would see MPs given a lump sum to claim as they wish, rather than having to submit monthly expense claims for scrutiny as at present.<sup>36</sup> The bill has not had its second reading at the time of writing.

### *Australia*

- 2.20 In Australia, the Remuneration Tribunal has the power to determine a range of allowances and entitlements for Senators and members of the Federal Parliament (including Ministers). These include travelling entitlements and allowances and electorate allowances.<sup>37</sup> Most other entitlements for current and former Senators

32 [www.parliament.uk/about/mps-and-lords/members/pay-mps/](http://www.parliament.uk/about/mps-and-lords/members/pay-mps/).

33 IPSA Press Release "New rules for MPs' expenses published by IPSA" 29 March 2010, [www.ipsa-home.org.uk/](http://www.ipsa-home.org.uk/) (4 May 2010).

34 Benedict Brogan, "Cleaning up MPs' expenses has turned out to be a dirty business", *The Telegraph*, (United Kingdom, 21 July 2010); Jo Johnson, "MPs' expenses: David Cameron takes on IPSA", *Financial Times*, [ft.com/westminster](http://ft.com/westminster) (United Kingdom, 14 July 2010, [blogs.ft.com/westminster/2010/07/mps-expenses-david-cameron-takes-on-ipsa/](http://blogs.ft.com/westminster/2010/07/mps-expenses-david-cameron-takes-on-ipsa/)).

35 Independent Parliamentary Standards Authority, *For the Record (updated 19 October 2010)* [www.ipsa-home.org.uk/docs/For%20the%20Record%20211010.pdf](http://www.ipsa-home.org.uk/docs/For%20the%20Record%20211010.pdf) (10 November 2010)

36 Parliamentary Standards Amendment Bill 2010, available at <http://services.parliament.uk/bills/2010-11/parliamentarystandardsamendment.html>.

37 Remuneration Tribunal Act 1973 (Cth), s 7 (1), (2) and (4).

and Members are contained in other legislation. The parliamentary entitlements framework has been under review, but the recommendations of the review committee have not yet been made public.<sup>38</sup>

## INDEPENDENT MECHANISM

- 2.21 In our view, the arrangements under sections 20A and 20B of the Civil List Act 1979 for determining services for members of Parliament and the Executive are no longer sustainable. As long as MPs continue to be seen to have a hand in setting their own entitlements, there is risk of public suspicion concerning the legitimacy of those entitlements. The Law Commission considers that an independent body should determine these services, allowing members and presiding officers to stand aside completely from the process, and ensuring public confidence in the independence and transparency of the entitlements. The same argument applies to the additional/alternative entitlements for members of the Executive.
- 2.22 In our view there are two options as to the appropriate body for setting entitlements. One option is the Remuneration Authority, as recommended in 2002, but with its membership augmented to meet the objections that were raised to that proposal. The other is an independent regulator, as suggested by the Fourth Triennial Parliamentary Appropriations Review earlier this year.
- 2.23 Before we evaluate these options, we turn to discuss one of the main objections raised to the idea of an independent body setting entitlements for members of Parliament – the suggestion that it would breach parliamentary privilege.

### Parliamentary privilege

- 2.24 Parliamentary privilege describes the powers, immunities and privileges enjoyed by the House of Representatives collectively and by members of the House individually. These privileges are justified on the grounds of the constitutional separation of powers – the legislature must enjoy autonomy from control by the Crown and the courts and on the basis of the powers and immunities necessary to enable it to carry out its functions.
- 2.25 In New Zealand, section 242 of the Legislature Act 1908 provides the legal basis for parliamentary privilege. It deems the privileges held by the British House of Commons in 1865 to be applicable in New Zealand.
- 2.26 The privileges of the House of Representatives can be divided into two broad categories: those in the nature of immunities from legal processes that would otherwise apply; and those that consist of a power to do something.<sup>39</sup> Parliament's powers and immunities include:<sup>40</sup>
- the power to regulate its own composition, and to regulate and be sole judge of the lawfulness of its own proceedings; to constitute itself, and organise and transact its business with due independence from interference or control by the courts or the executive;

38 Australian Government, Department of Finance and Deregulation, 2009–2010 Annual Report at p86.

39 David McGee *Parliamentary Practice in New Zealand* (3rd ed, Dunmore Publishing Ltd, Wellington, 2005) at p 609.

40 New Zealand Law Commission *The Law of Parliamentary Privilege in New Zealand – a Reference Paper* (NZLC M5, Wellington, 1996) at [17].

- freedom of speech in debates or proceedings; to seek, receive, consider, withhold and impart information relevant to the House's proceedings;
  - the power to punish for contempt;
  - immunities from civil arrest, court summons and service of court process.
- 2.27 Freedom of speech and debates is a specific privilege reaffirmed by article 9 of the Bill of Rights Act 1688, an Act expressly preserved as part of the law of New Zealand.<sup>41</sup> Article 9 states:
- That the freedom of speech and debates or proceedings in Parlyament ought not to be impeached or questioned in any court or place out of Parlyament.
- 2.28 The House of Lords has described the plain meaning of article 9, viewed against the historical background in which it was enacted, as being to ensure that members of Parliament were not subjected to any penalty, civil or criminal, for what they said, and were able to discuss what they (as opposed to the monarch) chose to have discussed.<sup>42</sup>
- 2.29 Parliamentary freedom of speech is one facet of the broader principle known as exclusive cognisance – that what happens within Parliament is a matter for control by Parliament alone. The House has exclusive jurisdiction over how its proceedings are to be conducted: the conduct of those proceedings is not subject to examination elsewhere.<sup>43</sup>
- 2.30 One of the arguments that might be raised against having an independent body set entitlements for MPs is that it would interfere with Parliament's control of its own proceedings. We do not agree with this view.
- 2.31 The primary meaning of “proceedings in Parliament” is some formal action, usually a decision, taken by the House in its collective capacity. This extends to the forms of business in which the House takes action, and the whole process by which it reaches a decision, the principal part of which is debate.<sup>44</sup> Proceedings in Parliament include speeches and voting by individual members, asking questions and giving written notice of questions, and proceedings in Select Committees.
- 2.32 In Australia the term has been defined by statute.<sup>45</sup> It includes all words spoken and acts done in the course of, or for the purposes of or incidental to the transacting of the business of the House or of a committee, including the giving of evidence before a House or committee, the presentation or submission of a document to a House or committee, and the preparation of a document for the purposes of transacting any such business. However proceedings in Parliament cover a much narrower range of activities than those performed by members generally, even if the actions are performed in the capacity of a member of Parliament.<sup>46</sup>

41 Ibid at [27].

42 *Pepper v Hart* [1993] AC 593 at p 638, per Lord Browne-Wilkinson.

43 David McGee *Parliamentary Practice in New Zealand* above n 39, at p 631.

44 WR McKay, ed, *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (23rd ed, London, LexisNexis, 2004) at 111.

45 Parliamentary Privileges Act 1987 (Cth) s 16(2).

46 David McGee *Parliamentary Practice in New Zealand* above n 39 at p 622.

2.33 In 1999, the report of the United Kingdom Joint Committee on Parliamentary Privilege described a number of rights and immunities which comprise exclusive cognisance. They included the right of the House to provide for its proper constitution; the right to judge the lawfulness of its own proceedings; the right to institute inquiries and call for witnesses and papers; and the right to administer its internal affairs within its precincts.<sup>47</sup>

2.34 The Committee noted that this last heading of privilege was unsatisfactory in one important respect:<sup>48</sup>

‘Internal affairs’ and equivalent phrases are loose and potentially extremely wide in their scope. On one interpretation they embrace, at one edge of the spectrum, the arrangement of parliamentary business and also, at the other extreme, the provision of basic supplies and services such as stationery and cleaning. This latter extreme would be going too far if it were to mean, for example, that a dispute over the supply of photocopy paper or dismissal of a cleaner could not be decided by a court or industrial tribunal in the ordinary way. Here, as elsewhere, the purpose of parliamentary privilege is to ensure that Parliament can discharge its functions as a legislative and deliberative assembly without let or hindrance. This heading of privilege best serves Parliament if not carried to extreme lengths.

2.35 The Committee concluded that the right of each House to administer its internal affairs within its precincts should be confined to activities so closely and directly connected with proceedings in Parliament that intervention by the courts would be inconsistent with Parliament’s sovereignty as a legislative and deliberative assembly. Parliament should no longer be a statute-free zone in respect of Acts of Parliament relating to matters such as health and safety and data protection.<sup>49</sup>

2.36 The Committee continued:<sup>50</sup>

...It follows that management functions relating to the provision of services in either House are only exceptionally subject to privilege. In particular, the activities of the House of Commons Commission, a statutory body appointed under the House of Commons Administration Act 1978, are not generally subject to privilege, nor are the management and administration of the House departments. The boundary is not tidy. Occasionally management in both Houses may deal with matters directly related to proceedings which come within the scope of article 9. For example, the members’ pension fund of the House of Commons is regulated partly by resolutions of the House. So too are members’ salaries, and the appointment of additional members of the House of Commons Commission under section 1(2)(d) of the House of Commons Administration Act. These resolutions and orders are proceedings in Parliament, but their implementation is not.

47 Joint Committee on Parliamentary Privilege *Parliamentary Privilege – First Report* (London, 1999) HL 43-I / HC 214-I [www.publications.parliament.uk/pa/jt/jtpriv.htm](http://www.publications.parliament.uk/pa/jt/jtpriv.htm) at chapter 5.

48 *Ibid* at [241].

49 *Ibid* at [247].

50 *Ibid* at [248]. The Committee’s recommendations have not yet been implemented, but the United Kingdom Government has recently announced its intention to introduce a Parliamentary Privilege Bill that will build on the work done by the Joint Committee – “Queen’s Speech – Parliamentary Privilege Draft Bill”, 25 May 2010, [www.number10.gov.uk/queens-speech/2010/05/queens-speech-parliamentary-privilege-draft-bill-50652](http://www.number10.gov.uk/queens-speech/2010/05/queens-speech-parliamentary-privilege-draft-bill-50652).

2.37 Dr David McGee QC similarly notes that the existence of other interests that may be infringed or abridged by the operation of parliamentary privilege justifies restricting the privileges to activities having a real connection with the operation of the legislature, and confining their scope in respect of such activities so as not to trespass on other rights unnecessarily.<sup>51</sup>

2.38 More recently in the United Kingdom, a large part of the discussion during the passage of the legislation which established the new Independent Parliamentary Standards Authority focused on its implications for the issue of parliamentary privilege. It was suggested that there was a potential challenge to privilege in giving an external body authority over certain aspects of the administration of the House:<sup>52</sup>

It was argued that this would, in particular, be the case if the body had powers or functions which might be subject to judicial review or other scrutiny by the courts, where what was said in the House itself might be used in evidence. That could be seen as limiting or impeding freedom of speech in Parliament.

2.39 However the Committee on Standards in Public Life was assured by expert witnesses that IPSA, or some similar statutory body, being responsible for putting together and administering an expenses scheme did not trespass on parliamentary privilege at all.<sup>53</sup> The experts indicated that giving an outside body such as IPSA an *ethical* regulation role would be a different matter, requiring proper consideration of the implications for parliamentary privilege, but the same concerns did not exist in relation to setting and implementing salaries and allowances, which amounted to administration, not ethical regulation.<sup>54</sup>

2.40 These arguments are equally applicable in New Zealand. We acknowledge the constitutional importance of parliamentary privilege, but do not consider that it would be infringed by the establishment of an independent body to set parliamentary and ministerial entitlements.

### Who should set entitlements for MPs and Ministers in New Zealand?

2.41 In our view, an independent regulator which determines funding for MPs and Ministers must satisfy the following requirements:

- its members must be, and must be seen to be, objective and independent of Parliament and the Executive;
- it must have appropriate experience and knowledge;
- its members must have the respect of members of the public and members of Parliament.

51 David McGee *Parliamentary Practice in New Zealand* above n 39 at p 605.

52 Twelfth Report of the Committee on Standards in Public Life, *MPs' expenses and allowances: Supporting Parliament, safeguarding the taxpayer*, (November 2009) at [13.7]–[13.8].

53 Ibid at [13.9] ; The Committee on Standards in Public Life, Review of MPs' expenses and allowances, Public Hearings No 9 – Day 8 Transcript 13.07.09, Professor Patricia Leopold, Head of School of Law, University of Reading, at [352]; Professor Dawn Oliver, Emeritus Professor of Constitutional Law at University College London, at [340], [www.public-standards.gov.uk/](http://www.public-standards.gov.uk/).

54 The Committee on Standards in Public Life, Review of MPs' expenses and allowance, opening statement of Professor Dawn Oliver, Public Hearings No 9 – Day 8 Transcript 13.07.09, at p 120.

- 2.42 We have discussed this issue with the Speaker of the House of Representatives, the Hon Dr Lockwood Smith. He has real reservations about the idea of an independent body setting MPs' entitlements. He is particularly concerned that an independent body would not understand the needs of Parliament, as the services and support MPs require to fulfil their functions are very different to matters such as salary or allowances. As a result, he fears that members would have to spend an inordinate amount of time making representations to the independent body. His strong preference would be to continue to use the mechanism of the Speaker's Directions, which are flexible, easy to amend, and draw on the experience of the Speaker.
- 2.43 The Speaker's concerns about an independent body setting MPs' entitlements are shared by a number of members of Parliament. Similar concerns have been expressed in the past. These concerns are not without foundation: Parliament is a unique workplace, and those who have not been involved in the parliamentary environment may not fully appreciate the services and support required to enable MPs to adequately perform their roles. Unease on this subject has led to proposals for independent regulation of MPs' entitlements being rejected in the past.
- 2.44 A proposal that the Remuneration Authority should set entitlements and allowances for MPs was rejected by the Standing Orders Committee in 2002. The Committee described the proposal as problematic for three reasons:<sup>55</sup>
- (a) It would shift responsibility for making all decisions about such services to a body not directly involved with the details of parliamentary operations;
  - (b) The Remuneration Authority did not determine work-related services for any of the occupations for which it determined the salary;
  - (c) It was not desirable for a non-parliamentary body to 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. The Committee maintained that a non-parliamentary body should not be responsible for determining what services should be funded as parliamentary business.
- 2.45 Although these arguments were raised specifically in relation to the Remuneration Authority, those set out at (a) and (c) could be made equally in response to any proposal for an independent regulator to set entitlements for members. However, with respect, we consider that these objections, and those raised by the current Speaker, are insufficient to outweigh the need for independence.
- 2.46 The first point raised by the Standing Orders Committee is a practical question of ensuring that the body responsible for setting entitlements for MPs and Ministers has a good understanding of what MPs and Ministers do, and what resourcing is required to make the job possible. Both the membership of the independent regulatory body and its consultation processes can be designed to ensure this concern is addressed.

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55 Remuneration Authority (Members of Parliament) Amendment Bill 2002, at p 4.



- 2.47 As to the second objection, the fact that the Remuneration Authority does not determine work related services for other occupations does not mean it is inappropriate for it to do so for MPs and members of the Executive. We suggest this is an argument for augmenting its membership to undertake this task, rather than an argument against the Authority performing this function at all.
- 2.48 The third objection raised by the Standing Orders Committee, that a non-parliamentary body should not be responsible for determining what services should be funded as parliamentary business, suggests that the Committee considered giving this role to the Remuneration Authority would be contrary to the principles of parliamentary privilege. As noted above, the Commission does not accept this argument. Similar concerns were rejected by the Committee on Standards in Public Life in establishing the Independent Parliamentary Standards Authority in the United Kingdom.
- 2.49 We have considered two possible options for an independent regulator to set entitlements for MPs and members of the Executive, and entitlements to funding and services to support parties' and members' parliamentary operations: an enhanced Remuneration Authority, or a new body established for this purpose.

#### *Remuneration Authority*

- 2.50 The advantage of using the Remuneration Authority to set the entitlements of members of Parliament and the Executive is that it is an existing office, and its independence is widely accepted. Members of the Authority are very experienced in setting salaries and allowances, and already set these for MPs.
- 2.51 That said, this would be a new role for the Remuneration Authority, and not one which it is equipped to perform in its present configuration. The membership of the Remuneration Authority would need to be augmented for these purposes, to ensure that it has sufficient familiarity with the operation of Parliament and the resources required to support MPs and Ministers in their roles. We note that the Remuneration Authority is performing its current role without a full complement of members: it currently has one vacancy, and has operated with only two members for some time.
- 2.52 For the purposes of determining services and funding for MPs and Ministers, two additional members should be appointed to the Remuneration Authority. One should be a former member of Parliament with at least nine years' experience. The other should be a person with appropriate skills and experience in the administration of Parliament – for example a former Clerk of the House or Auditor General.
- 2.53 This enhanced Remuneration Authority would need to consult widely, and should be required to seek the views of each party represented in Parliament, as well as consulting with the Speaker, the Parliamentary Service Commission, and the Minister Responsible for Ministerial Services.
- 2.54 In our view, augmenting the membership of the Remuneration Authority and establishing a suitable consultation framework would address concerns about whether an independent body can adequately determine services and support

for MPs and Ministers. This new role may also assist it in its task of setting salaries and allowances, as it will have oversight of the whole package of support for MPs and Ministers.

- 2.55 Combining the task of setting these entitlements in one regulator should also help to minimise any confusion resulting from the present overlapping schemes for MPs and Ministers.
- 2.56 The enhanced Remuneration Authority should be required to determine entitlements for MPs and Ministers, and entitlements to funding and services to support parties' and members' parliamentary operations, prior to every general election. In this way the determinations will take place at least once in the life of each Parliament. It will also mean that incoming MPs know what they will be entitled to.
- 2.57 We envisage that the use of this mechanism would remove the need for the triennial review of parliamentary appropriations that is currently provided for in section 20 of the Parliamentary Service Act 2000. The functions of that review of considering the amounts of money appropriated by Parliament for administrative and support services provided to members of Parliament, and funding entitlements for parliamentary purposes, would be taken over by the enhanced Remuneration Authority.
- 2.58 There should be a limited ability to revisit the Authority's determinations if there are unexpected changes in circumstance that mean amendments to the rules are required.
- 2.59 We recommend that the Authority's findings should still take the form of determinations. However the current method of incorporation by reference under section 20B of the Civil List Act 1979 should not be continued: the Authority should simply have a statutory power of determination.
- 2.60 The chief disadvantage we see to using an enhanced Remuneration Authority to determine funding and support for parties, MPs and Ministers is that it is an option that has been rejected on previous occasions, and as a result carries with it the taint of previous rejections. We have therefore also considered whether there may be advantages in taking a fresh approach, and establishing a new office with processes tailored specifically to this role.

#### *Independent office*

- 2.61 The Fourth Triennial Parliamentary Review recommended that an independent body should set party and member support funding and entitlements for MPs, and suggested that this body could be established as an officer of Parliament.
- 2.62 It would be possible to create a new regulator which draws on the expertise of the Remuneration Authority, but also includes other members who are highly respected and enjoy the confidence of members of the public and members of Parliament, and who have appropriate skills and experience. While we see merit in including an officer of Parliament in the make-up of the authority, we

do not consider it necessary that the regulator itself be an officer of Parliament. Instead, we have considered the option of establishing an independent authority comprising:

- The State Services Commissioner
- The Chair of the Remuneration Authority, and
- An Ombudsman (who should chair the authority).

2.63 In our view, a body with this membership would meet the requirements of independence, status, and experience described earlier. The new authority would be established as a new Crown Entity.

2.64 The consultation and determination processes followed by the independent regulator would be the same as those proposed for an enhanced Remuneration Authority. The legislation establishing the authority could include detailed statutory requirements for consultation with the Speaker, the Parliamentary Service Commission and the Minister Responsible for Ministerial Services to ensure the authority obtains the information needed for the discharge of its functions. It would make determinations every three years, and the triennial review committee would be abolished.

### Recommendation

2.65 At one stage we were of the view that it would be best to establish a new independent authority to determine party and member support funding and services for members of Parliament and of the Executive. This was mainly because of the concerns that have previously been expressed about the suitability of the Remuneration Authority for the role.

2.66 However, the process of consulting about our draft report led us to revisit this recommendation. We were persuaded by the argument that the concerns expressed about the Remuneration Authority taking this role in the past are concerns that can be overcome by augmenting its membership and creating wide consultation requirements. They are also concerns that could be raised in relation to any independent body taking on this role, not the Remuneration Authority in particular.

2.67 Moreover, the Remuneration Authority has the advantage of being an existing body, already experienced at setting salaries and allowances for MPs and Ministers. We consider that with enhanced membership, adequate resourcing and support and specially designed consultation processes, it is a better option than establishing an entirely new body that would need to be separately financed and serviced.

#### RECOMMENDATION

R2 Travel, accommodation, attendance and communications services for members of Parliament and members of the Executive should be determined by an independent body.

## RECOMMENDATION

- R3 That body should be an enhanced Remuneration Authority comprising the members of the Remuneration Authority, a former member of Parliament with no less than nine years' experience, and a person with appropriate skills and experience in the administration of Parliament.

### Funding and services to support parties' and members' parliamentary operations

- 2.68 Part 4 of the Speaker's Directions sets out entitlements to funding and services to support parties' and members' parliamentary operations. MPs are entitled to the following to support their parliamentary operations:
- (a) party and member support funding. This is made up of leadership funding, which funds the leader's office; party and group funding, which funds the whip's office and research operations, and is based on the number of members in a party's caucus; and individual members' support funding, which is generally used to meet the cost of MPs' out-of-Parliament offices including rent and office equipment, and is discussed further below. The determination of the funding levels for individual member support funding assumes that MPs will set up an out-of-Parliament office, but there is no requirement to do so, and not all MPs have an out-of-Parliament office.<sup>56</sup>
  - (b) the services of out-of-Parliament support staff. These are the administrative staff who work in MPs' out-of-Parliament offices. They are employed by the Parliamentary Service. The Speaker's Directions set out how many full time equivalent out-of-Parliament support staff each MP is entitled to. This varies between one and three: one for a list MP; three for a constituency MP in a large electorate or a Māori electorate; and two for other constituency MPs.<sup>57</sup>
  - (c) the services of parliamentary support staff. These are the staff employed by the Parliamentary Service who work in members' parliamentary offices providing secretarial and personal assistance to MPs. Each MP is entitled to one full-time equivalent executive assistant in their parliamentary office.<sup>58</sup>
  - (d) office accommodation, equipment and supplies in Parliament. This includes computers and standard office products and stationery supplies.
- 2.69 There are three categories of individual members' support funding (which forms part of the party and member support funding). Constituency members of Māori electoral districts that are more than 10,000 sq km in area, and general electoral districts that are more than 20,000 sq km in area, receive \$105,192 in individual member's support funding, while other constituent MPs receive \$64,260 and list MPs receive \$40,932. (These figures exclude GST.)

56 Report of the Fourth Triennial Parliamentary Appropriations Review (June 2010) [www.parliament.co.nz](http://www.parliament.co.nz) at [8.133.]

57 Speaker's Directions at [4.15.]

58 Ibid at [4.20.]

- 2.70 Until 2009, there were only two categories of funding: constituency and list MPs. In 2007, the Third Triennial Parliamentary Appropriations Review concluded that there was a degree of inequity in the support Parliament offered the very large electorates compared with smaller ones.<sup>59</sup> At that time, Te Tai Tonga (by far the largest electorate) encompassed the whole of the South Island, Stewart Island, the Chatham Islands and the Wellington environs, and was approximately 147,000 sq km. The other Māori electorates (excluding Tāmaki Makaurau) averaged 25,700 sq km. Moreover, the Review noted that the logistics of travelling large distances was not the only challenge for Māori electorates: protocols and whānau, marae, hapū and iwi dynamics can cause visits to take much more time than in non-Māori constituencies.<sup>60</sup>
- 2.71 The Third Triennial Review recommended that more support be afforded all seven Māori electorates and the four general electorates in excess of 20,000 sq km in area. In this regard “support” might consist of time, transport, office assistance or other services. As a first step, the Review recommended that all Māori constituent MPs and each constituency MP with an electorate in excess of 20,000 sq km in area, be entitled to the services of an extra staff member to equate to three full-time equivalent out-of-Parliament support staff members.<sup>61</sup>
- 2.72 In its 2010 report, the Fourth Triennial Parliamentary Appropriations Review described the way in which the recommendations of the 2007 Review were actioned:<sup>62</sup>
- Prior to the 2008 election, a sub-committee of the Parliamentary Service Commission investigated the need for increased individual members’ support funding for Māori and large electorates in addition to an increase in staffing (that had been recommended by the Third Appropriations Review Committee). The sub-committee’s recommendation was that an additional \$23,328 in individual funding was appropriate. After the election, a Relationship and Confidence and Supply Agreement was entered into between the National Party and the Māori Party dated 16 November 2008. That agreement records the parties’ agreement to implement a recommendation of the Third Appropriations Review Committee to increase staffing entitlements for Māori and large electorates. However, Cabinet subsequently also approved additional funding of \$40,932 for each Māori and large electorate and the Speaker’s Directions were amended accordingly.
- 2.73 As noted above at paragraph 2.13, the 2010 Review expressed concern at the lack of checks and balances in the current system. It recommended that funding of this entitlement should come under the control of an independent regulator.<sup>63</sup>

59 Report of the Third Triennial Parliamentary Appropriations Review (March 2007), [www.parliament.co.nz](http://www.parliament.co.nz) at p 92.

60 Ibid. These figures predate electoral boundary changes made in 2007.

61 Ibid at p 93.

62 Report of the Fourth Triennial Parliamentary Appropriations Review (June 2010) [www.parliament.co.nz](http://www.parliament.co.nz) at [8.129.]

63 Ibid at [8.143.]

- 2.74 We agree with this recommendation. During our consultation in relation to this report we discussed the challenges of the Māori electorates with members of the Māori Party. We acknowledge the particular issues that constituency MPs for those electorates face. We also heard from the Green Party about the challenges of being a smaller party with a constituency of interest, rather than a geographical constituency. In our view, the range of interests and factors to be balanced in determining individual members' support adds to the need for this funding to be determined independently, after consultation with all the political parties represented in Parliament.
- 2.75 We are also concerned to ensure that efforts to bring greater independence to the provision of entitlements of MPs and Ministers are not undermined by the use of the other entitlements to funding and services to support parties' and members' parliamentary operations. In our view there is a risk in this regard if these entitlements continue to be set by way of the Speaker's Directions, rather than being determined by an independent regulator.
- 2.76 Having one independent regulator to set all the relevant entitlements would also help to reduce the legislative complexity in this area, and avoid the risk of confusion that can arise when members claim entitlements under more than one set of rules.

#### RECOMMENDATION

- R4 Entitlements to funding and services to support parties' and members' parliamentary operations should be determined by an independent body, namely the enhanced Remuneration Authority.

#### Status of the Remuneration Authority

- 2.77 Currently the Remuneration Authority is a commission established by statute. During consultation, the State Services Commissioner suggested that if the Remuneration Authority is to take on the new role proposed by the Law Commission, it would be appropriate to make the Authority an independent Crown entity instead.
- 2.78 An independent Crown entity (ICE) is a particular type of statutory entity listed in Part 3 of Schedule 1 of the Crown Entities Act 2004. Statutory entities are bodies corporate established under an Act. There are three types: Crown agencies, which must give effect to government policy when directed by the responsible Minister; autonomous Crown entities, which must have regard to government policy when directed by the responsible Minister; and independent Crown entities, which are generally independent of government policy.

- 2.79 Independent Crown entities have been described as having investigatory or quasi-judicial functions, where a high level of decision-making independence from Ministers is necessary. For this reason they are not subject to influence or easy dismissal by Ministers.<sup>64</sup> They are not generally required to have regard or give effect to government policy.
- 2.80 The question of whether the Remuneration Authority remains a statutory commission or becomes an ICE is not critical to our recommendations in this report. It could perform the new functions we propose in either form. Establishing the Remuneration Authority as a Crown entity would require consideration of the extent to which it should be subject to Ministerial direction, and what changes would be required to the structure of the Remuneration Authority, its establishing legislation and its processes to comply with the requirements of the Crown Entities Act. It would also have significant implications in terms of funding and resources. In our view these are matters that should be considered at a later date, and not in the context of the current project.

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64 Press release of Margaret Wilson, “Crown entity governance and accountability review” (17 August 2000) [www.beehive.govt.nz/node/8245](http://www.beehive.govt.nz/node/8245).

# Chapter 3

## Transparency and the Civil List Act

### OFFICIAL INFORMATION ACT 1982

- 3.1 The Official Information Act 1982 (OIA) does not apply to the Parliamentary Service. This means that payments to members of Parliament which are administered by the Parliamentary Service are not subject to the OIA. However, the OIA does apply to payments to members of the Executive which are administered by Ministerial Services, because it is part of the Department of Internal Affairs, which is subject to the OIA.
- 3.2 Although information about MPs' entitlements is not available under the OIA, since June 2009 the Parliamentary Service and the Office of the Clerk have provided information on members' travel and accommodation expenses on a quarterly basis.<sup>65</sup> While the move to greater transparency is commendable, and provides more information about the total spending of MPs, in some respects the disclosure still lacks transparency.
- 3.3 For example, the figures provided for air travel do not distinguish between domestic and international flights, or separately identify travel paid for an MP's spouse or partner and dependent children. They do not separately identify those amounts that relate to parliamentary business expenses and those with an element of private benefit, principally the international travel rebate entitlement.
- 3.4 Clearly a voluntary regime is not the same as a statutory requirement of availability. Over time it has also come to seem anomalous that information about Ministers' entitlements can be obtained under the OIA but information about MPs' entitlements cannot. The Law Commission considers that there should be greater transparency of the details of MPs' entitlements. In November 2009, the United Kingdom Committee on Standards in Public Life noted in relation to the scandal surrounding MPs' expenses:<sup>66</sup>

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65 [www.parliament.nz/en-NZ/MPP/MPs/Expenses/](http://www.parliament.nz/en-NZ/MPP/MPs/Expenses/)

66 Twelfth Report of the Committee on Standards in Public Life *MPs' Expenses and Allowances: Supporting Parliament, Safeguarding the Taxpayer* (November 2009) [www.public-standards.gov.uk/OurWork/MPs\\_\\_Expenses\\_and\\_Allowances\\_x.html](http://www.public-standards.gov.uk/OurWork/MPs__Expenses_and_Allowances_x.html) at p 7. The reference to the arrangements introduced in Scotland is to the fact that the Scottish Parliament now makes available through internet access full details of members' allowances. Members of the public may view MPs' claims and accompanying receipts in respect of allowances claimed while carrying out parliamentary duties.



The House of Commons has belatedly accepted that full details of all expenses claims should be publicly available. Had this degree of transparency existed in the past, it is unlikely that the previous flawed system would have survived as long as it did. We firmly believe that regular publication, along the lines of the arrangements already introduced in the Scottish Parliament, is an essential part of the way forward.

And later:<sup>67</sup>

The Committee believes that a high level of transparency is a crucial part of maintaining the integrity of the system. It is evident that a significant number of the claims made under the previous regime would not have been made if the MPs concerned had known at the time that the details would be in the public domain.

- 3.5 These observations about the value of transparency apply equally in New Zealand. In the Law Commission's view, the transparency of MPs' entitlements under the Civil List Act 1979 must be improved.
- 3.6 One option is to enact a provision in the new Members of Parliament (Remuneration and Services) Bill that requires disclosure of MPs' entitlements on a quarterly basis. Another option is to extend the reach of the OIA to apply to the Parliamentary Service.
- 3.7 The Law Commission is presently reviewing the OIA. Given the issues raised about transparency in the review of the Civil List Act 1979, we have decided to consider the question of whether the OIA should be extended to apply to Parliament and/or its offices in this review of the Civil List Act.

## Background

- 3.8 The OIA creates a presumption of disclosure: official information must be made available to those who request it unless there is good reason to withhold it. The vision of the original architects of the OIA was that greater openness in government would encourage participation in public affairs and ensure the accountability of those in office.<sup>68</sup>
- 3.9 The OIA was the result of the deliberations and recommendations of the Committee on Official Information (the Danks Committee). The Danks Committee's focus was the accountability of executive government,<sup>69</sup> and its terms of reference did not extend to information generated and held by Parliament. However the Danks Committee expressly noted that it expected its proposals to affect practices in that area in due course.<sup>70</sup>

67 Ibid, at [1.12].

68 Committee on Official Information *Towards Open Government: General Report 1* (Wellington, 1980) at 15.

69 Grant Liddell, "The Official Information Act 1982 and the Legislature: A Proposal" in *The Official Information Act, Papers presented at a seminar held by the Legal Research Foundation and the New Zealand Institute of Public Law at the Old Government Building, Wellington, on 25 February 1997 and at the University of Auckland on 26 February 1997*, at 11.

70 Committee on Official Information *Towards Open Government: General Report 1* (Wellington, 1980) at 8.

- 3.10 The OIA defines official information as any information held by a department, a minister of the Crown in his or her official capacity, or an organisation named in Schedule 1 of the Act or Part 2 of Schedule 1 of the Ombudsmen Act 1975. The House of Representatives is not named in either Schedule. Information held by the Parliamentary Service is specifically excluded by section 2(1) of the OIA.

## PRINCIPLES

## Freedom of expression and transparency

- 3.11 The Danks Committee made the case for greater transparency by drawing on the democratic principles of encouraging participation in public affairs and ensuring the accountability of those in office.<sup>71</sup> The landscape of freedom of information has changed considerably since that report, and the case for a presumption of availability has become even more compelling. Section 14 of the New Zealand Bill of Rights Act 1990 guarantees the right to freedom of expression, subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.<sup>72</sup> The onus has now shifted: the appropriate question now is not why *should* the OIA apply to information held by Parliament, but why *shouldn't* it?
- 3.12 The idea of extending the OIA to Parliament has been raised on a number of occasions, most notably in the 1999 review of the Parliamentary Service Act chaired by the Hon Stan Rodger.<sup>73</sup> The Rodger report recommended that the OIA be extended to apply to the Parliamentary Service. The review team concluded that it did not see any fundamental reason the open government principles of the OIA should not apply in the arena of parliamentary services, so long as there were necessary exceptions such as those protecting the independence of a member of Parliament.<sup>74</sup> It recommended that the OIA be extended to cover the Speaker as Responsible Minister and the Parliamentary Service, these being the two groups that held the appropriate accountability information.<sup>75</sup>
- 3.13 There are legitimate and significant public interests that weigh in favour of a principle of availability of information held by Parliament and the parliamentary administration. Where the expenditure of public money is involved, openness and accountability are essential to the maintenance of public confidence. They also encourage MPs to make better value for money choices, and allow for informed public debate.

71 Ibid at [22]–[23.]

72 New Zealand Bill of Rights Act 1990, s 5.

73 Report of Review Team on a Review of the Parliamentary Service Act to the Parliamentary Service Commission (1999).

74 Ibid, at [5.9.]

75 In 1997, Grant Liddell suggested it was time to consider whether information in the hands of the legislative branch of government ought also to be subject to a statutory principle of availability – Grant Liddell, “The Official Information Act 1982 and the Legislature: A Proposal”, above n 69 at pp 12 – 13. In 2007, the then Speaker of the House suggested there was merit to proposals to extend the coverage of the OIA to parliamentary proceedings and the administration of Parliament – Margaret Wilson “Parliament and official information”, keynote address to Information Law Conference Marking 25 Years of the Official Information Act, (15 May 2007) , “Openness and Transparency in Government”, speech to open 5th International Conference of Information Commissioners, (26 November 2007) available at [www.parliament.co.nz](http://www.parliament.co.nz).

- 3.14 Availability of information is also important for democratic accountability: the public needs information about its elected representatives in order to be able to hold them to account.
- 3.15 The importance of accountability and transparency are recognised in the Speaker's Directions, which includes them in a list of principles to be applied in the use of publicly funded resources by members and parties.<sup>76</sup> Yet despite these statements of principle, there is no statutory requirement for details of MPs' entitlements to be publicly available.
- 3.16 In March 2010, the Auditor-General made the following comments in the context of an inquiry into certain types of expenditure in Vote Ministerial Services:<sup>77</sup>

The public rightly expect all those who spend public money to recognise that it is public money. Any such spending that provides or can be seen to provide private benefit to an individual can be controversial. Although the spending may be justified, the potential for sensitivity means that careful decision-making and judgement is needed to manage the expenditure appropriately.

Everyone who spends or administers public money needs to recognise this sensitivity and to take extra care to ensure that the expenditure is reasonable and able to stand up to public scrutiny. That means considering how an outside observer may reasonably perceive the expenditure. Individuals making decisions about such expenditure need to be guided by the concepts of integrity, honesty, transparency, impartiality and openness.

- 3.17 The expenditure involved in that inquiry was open to public scrutiny through the vehicle of the OIA because it involved payments administered by Ministerial Services. Had the payments involved been administered by the Parliamentary Service, the OIA would not have applied. That does not necessarily mean that the payments would not have been disclosed on a voluntary basis, but there would have been no statutory right to request the information.
- 3.18 The Law Commission is concerned that as long as there are questions about the transparency of payments made to MPs under the Civil List Act 1979, the public will have doubts about the integrity of the system. Such concerns can have a corrosive effect on public confidence in our democracy, even if they are not founded in fact. While we do not consider that the New Zealand system suffers from the remarkable problems that afflicted the United Kingdom regime, in the absence of genuine transparency, criticism and suspicion of the entitlements MPs may be receiving will continue. It is essential for the well-being of New Zealand that its Parliament enjoys public respect, and cannot be criticised for keeping secret details of the expenditure of public money that would be open to scrutiny in other parts of public life.

<sup>76</sup> Directions by the Speaker of the House of Representatives 2010, at para 1.5. The principles are: (a) accountability; (b) appropriateness; (c) openness; (d) transparency; (e) value for money and (f) cost-effectiveness.

<sup>77</sup> Office of the Auditor-General, Auditor-General's Inquiry into certain types of expenditure in Vote Ministerial Services – Part 1 (Wellington, March 2010) at 5.

### Parliamentary privilege

- 3.19 The chief objection raised to the extension of the OIA to Parliament is that it is constitutionally inappropriate, and would breach parliamentary privilege, by subjecting Parliament to supervision by a body outside the House of Representatives.
- 3.20 Any proposal to extend the application of the OIA to Parliament and/or its offices needs to consider the effect on parliamentary privilege. Parliamentary privilege is of course only part of the law, not a body of higher or fundamental law that automatically overrides all other law. It can be abrogated by legislation. But we agree with Dr David McGee that because of its constitutional importance, the public policy that parliamentary privilege promotes is entitled to a high priority when it conflicts with other values.<sup>78</sup>
- 3.21 Parliamentary privilege is already factored into the OIA. Section 18(c)(ii) of the OIA provides that requests for information or access may be declined if to release the information would lead to a contempt of the House. Section 52(1) of the Act confirms that the OIA does not provide authority or permission to release information if such disclosure would constitute contempt of Court or of the House of Representatives. A breach of any of the parliamentary privileges may be a contempt, if the House declares it to be so.

### OTHER JURISDICTIONS

- 3.22 Freedom of information legislation extending to Parliaments is now enacted in a number of countries including the United Kingdom,<sup>79</sup> India,<sup>80</sup> Ireland,<sup>81</sup> and South Africa<sup>82</sup>. The Australian and Canadian legislatures are not covered by freedom of information legislation, although reviews of both statutes have suggested they should be extended to cover parliamentary administration.<sup>83</sup> In addition in Australia, at a federal level, most of the entitlements of members of Parliament are administered by the Department of Finance and Deregulation, a government department. As a result, travel, accommodation, and printing allowances are subject to freedom of information legislation.
- 3.23 In the United Kingdom, both the House of Commons and the House of Lords are public authorities for the purposes of the Act, and therefore subject to the Act, but the individual members of both Houses are not. Thus information held

78 David McGee *Parliamentary Practice in New Zealand* above n 39 at p 610.

79 Freedom of Information Act 2000 (UK).

80 Right to Information Act 2005 (India).

81 Freedom of Information Act 1997 (Ireland).

82 Promotion of Access to Information Act 2000 (South Africa).

83 In 2002 the Canadian Task Force Report recommended that the Access to Information Act should apply to information about the administrative operation of the institutions of Parliament, namely, the House of Commons, the Senate and the Library of Parliament, with exceptions for information that would be protected by parliamentary privilege. The Task Force recommended that the Act should not apply to the information of political parties or their caucuses, or to the personal, political and constituency records of individual Senators and Members of the House of Commons – Access to Information Review Task Force, *Access to Information: Making it Work for Canadians Report of the Access to Information Review Task Force* (June 2002) at 26. In 1996, the Australian Law Reform Commission recommended that the Freedom of Information Act 1982 (Cth) should extend to the parliamentary departments (which are the Department of the Senate, the Department of the House of Representatives, and the Department of Parliamentary Services) – Australian Law Reform Commission *Open Government: A Review of the Federal Freedom of Information Act 1982* (ALRC R 77, 1996) at [11.8.]

by members in their individual capacity is not subject to the Act, even if stored either physically or electronically at either House.<sup>84</sup> However the correspondence of a member with a public body might be subject to disclosure, in response to a request to that body.

- 3.24 There is an absolute exemption to the obligation of disclosure if such exemption is required for the purpose of avoiding an infringement of the privileges of either House of Parliament.<sup>85</sup> The Act provides for the issue of a conclusive certificate by either the Speaker of the House of Commons or the Clerk of the Parliaments at the House of Lords, which will be taken as evidence that complying with the provisions of the FOI Act will constitute an infringement of the privileges of either House of Parliament. Certificates may not be issued on a class basis: each request must be considered on its merits.<sup>86</sup> Because a certificate is conclusive, once it is issued, the Information Commissioner has no role to play.
- 3.25 In 2006, some members of the United Kingdom Parliament attempted to pass a private members' Bill that would have removed both Houses of Parliament from the list of public bodies included within the scope of Schedule 1 of the Freedom of Information Act 2000, and would have made communications between MPs and public bodies exempt from the Act. The Bill failed to complete its parliamentary stages in 2007.<sup>87</sup>
- 3.26 In Ireland, the Freedom of Information Act 1997 does not apply to the private papers of members of either of the Houses of Parliament (the Oireachtas) or an official document of either House that is required by the rules or standing orders to be treated as confidential.<sup>88</sup> This has been described as being effectively the Irish equivalent to the Westminster system of parliamentary privilege.<sup>89</sup>
- 3.27 The South African Promotion of Access to Information Act 2000 specifically provides that the Act does not apply to records of the Cabinet and its committees, or individual members of Parliament.<sup>90</sup>

## PROPOSAL

- 3.28 The Law Commission proposes that the OIA should be extended to cover information held by the Speaker in his role with ministerial responsibilities for Parliamentary Service and the Office of the Clerk; the Parliamentary Service; the Parliamentary Service Commission; and the Office of the Clerk in its departmental holdings.

84 Freedom of Information Amendment Bill, Bill 62 of 2006–7, Parliament and Constitution Centre, House of Commons Library, Research Paper 07/18 21 February 2007, at p 10.

85 Freedom of Information Act 2000 (UK) s 34.

86 Ibid, s34(3).

87 The Freedom of Information (Amendment) Bill 2006 – see Peter Leyland, “Freedom of information and the 2009 parliamentary expenses scandal” [2009] Public Law October 675, at 676; and Freedom of Information Amendment Bill, Bill 62 of 2006–7, Parliament and Constitution Centre, House of Commons Library, Research Paper 07/18 21 February 2007, at p 1.

88 Freedom of Information Act 1997 (Ireland), s 46(1)(e). Article 15(10) of the Constitution of the Republic gives each House the power to protect its official documents and the private papers of its members.

89 Freedom of Information Amendment Bill, Bill 62 of 2006–7, Parliament and Constitution Centre, House of Commons Library, Research Paper 07/18 21 February 2007, at 24.

90 Promotion of Access to Information Act 2000 (South Africa), s 12.

- 3.29 The OIA should not apply to:
- proceedings in the House of Representatives, (which includes select committee proceedings); and internal papers prepared directly relating to the proceedings of the House or committees;
  - information held by the Clerk of the House as agent for the House of Representatives;
  - information held by members in their capacity as members of Parliament;
  - information relating to the development of Parliamentary party policies, including information held by or on behalf of caucus committees;
  - party organisational material, including media advice and polling information.
- 3.30 The current reasons for withholding information under the Official Information Act 1982 would apply as normal to information held by the Parliamentary Service, Parliamentary Service Commission, the Speaker or the Office of the Clerk.
- 3.31 Sections 18(c)(ii) and 52(1) of the OIA would also apply, so that requests for information or access are declined if to release the information would lead to a contempt of the House. This would ensure that parliamentary privilege could be protected in relation to an individual request if necessary.
- 3.32 We note that the legislative provisions required to implement these recommendations do not appear in the Members of Parliament (Remuneration and Services) Bill appended to this report. Instead, they will be included in the Law Commission's final report in relation to the Official Information Act 1982, which will be published in 2011.

### Proceedings in Parliament

- 3.33 Parliamentary proceedings in New Zealand already have a high degree of transparency. Parliamentary debates are open to the public, broadcast on radio and television, webcast live and transcribed in Hansard.
- 3.34 The Standing Orders provide for select committees to hear the evidence submitted to them in public, except in exceptional circumstances.<sup>91</sup> While select committees conduct their other business in private, with proceedings remaining strictly confidential until the committee reports to the House,<sup>92</sup> once a select committee makes a final report to the House, minutes, evidence and other documents relating to the subject of the report are delivered to the Clerk of the House, who is the custodian of all records of the House and its select committees.<sup>93</sup> It is the practice for virtually unrestricted access to be granted to such documents (unless the House makes an order instructing the committee to withhold certain evidence).<sup>94</sup>

91 Standing Orders of the House of Representatives, SO 218. There is provision for evidence to be heard in private, in which case it is not made public until the committee reports to the House, or for evidence to be received as secret evidence, which provides for longer term confidentiality.

92 Ibid SO 235.

93 David McGee *Parliamentary Practice in New Zealand*, above n 39 at p 302.

94 Ibid.

- 3.35 In our view, the current rules and arrangements satisfy the interests of transparency without being constitutionally inappropriate. Select committee material in particular is arguably more accessible under the existing arrangement than it would be if the OIA were to apply, with its reasons for refusing to release information.
- 3.36 As a result we do not recommend that the OIA should extend to proceedings in the House of Representatives.
- 3.37 In our view, extending the OIA to parliamentary proceedings would also threaten the protection conferred by article 9 of the Bill of Rights 1688, by requiring the House of Representatives to answer to an authority outside Parliament.
- 3.38 If the OIA applied to proceedings in Parliament, and information was requested, refused, and a complaint laid, the Ombudsman would be required to investigate, review the decision and make recommendations.<sup>95</sup> Thus parliamentary proceedings would become subject to investigation by the Ombudsman, and ultimately the release or withholding of the information may depend on a power of veto exercisable by the Cabinet.
- 3.39 A Canadian review of the equivalent Canadian legislation suggested that one way of dealing with this concern would be to provide for a modified complaints resolution process, to ensure Parliamentary autonomy from the executive and the courts, and to protect its immunities and privileges. The Information Commissioner would investigate a complaint and make recommendations to the appropriate parliamentary institution, but any second tier review could be done by Parliament – for example, by a “blue ribbon” panel of current or former parliamentarians appointed jointly by the two Houses of Parliament. The panel, in turn, could make recommendations to the Speakers of each House.
- 3.40 However even a modified complaints process would not be sufficient in our view to counteract the risk of the House losing unfettered control over its own proceedings.

### Information held by members of Parliament in their capacity as MPs

- 3.41 One of the concerns that is sometimes expressed about the application of the OIA to information held by members of Parliament is the potential effect it would have on the confidentiality of correspondence between members and their constituents. None of the jurisdictions discussed above which have freedom of information statutes that apply to the legislature extend the reach of those statutes to information held by individual MPs. We recommend the same approach in New Zealand: the OIA should not apply to information held by individual MPs.
- 3.42 However, if an MP receives correspondence from a constituent and acts on it by writing to a department or a Minister, the OIA (and any relevant withholding ground) presently applies to the resulting correspondence if a request is made to the department or the Minister. That should continue to be the position.

<sup>95</sup> Official Information Act 1982, s 28.

## Parliamentary Service

- 3.43 The Parliamentary Service is principally responsible for providing administrative and support services to the House and its members, and for administering the payment of funding entitlements provided for parliamentary purposes.<sup>96</sup> It also provides services to the other offices and departments of state that occupy the parliamentary complex – the Office of the Clerk, Parliamentary Counsel Office, Department of the Prime Minister and Cabinet, and the Department of Internal Affairs.<sup>97</sup> The Parliamentary Service is deemed to be a government department under the Public Finance Act 1989.
- 3.44 Staff employed by the Parliamentary Service are engaged in providing building maintenance, library services, security, reception, attendant services, party research, secretarial services and general administration.<sup>98</sup>
- 3.45 In relation to its role administering the payments of funding entitlements for parliamentary purposes, the Parliamentary Service reports to Parliament, and appears before select committees with the Speaker to answer for its administration of the appropriation. This provides a level of accountability, but not the degree of transparency that applies to Ministerial Services and organisations to which the OIA applies. In 2007 the then Speaker described the reports provided by the Parliamentary Service as sometimes being opaque, and the sums aggregated, and noted that it was not possible to access details of the expenditure of individual members.<sup>99</sup>
- 3.46 In our view, the Parliamentary Service should be subject to the official information regime. However, the OIA should not apply to information held by Parliamentary Service staff in their roles of providing administrative support for caucus committees or as private secretaries for opposition MPs. The costs of providing that administrative support should be subject to the OIA: but the information held by staff in those roles should not.
- 3.47 In 1999, the Rodger review suggested that there were two ways to distinguish between the Parliamentary Service information which should be subject to the OIA and that which should not:
- (a) Adding a new generic ground for withholding information to section 6 of the OIA, covering politically sensitive information of the kind represented by party affairs such as policy papers; and
  - (b) Including a provision similar to that applying to tribunals, providing partial coverage under the Act (where the effect is to exclude judicial functions, leaving administrative functions covered); or to that applying to universities (where the OIA covers only information held by certain parts of the university).

96 Parliamentary Service Act 2000, s 7.

97 David McGee *Parliamentary Practice in New Zealand*, above n 39 at p 66.

98 *Ibid.*

99 Margaret Wilson “Parliament and official information”, above n 75.



- 3.48 In our view it would be preferable to distinguish the Parliamentary Service information that should be subject to the OIA by exempting certain categories of information, rather than providing new grounds for withholding. It should be clear that the OIA does not apply to that information, rather than requiring the issue to be considered on a case by case basis.

### Speaker of the House

- 3.49 Under the Public Finance Act 1989 the Speaker is the Responsible Minister for Vote: Parliamentary Service. This means that the Speaker is accountable for the expenditure of the Parliamentary Service.
- 3.50 We recommend that the OIA be extended to cover the Speaker in his role with ministerial responsibilities for Parliamentary Service and the Office of the Clerk.

### Parliamentary Service Commission

- 3.51 The Parliamentary Service Commission (PSC) is the principal means by which consultations occur on the administrative and support services for Parliament. The PSC provides advice to the Speaker on matters to be included in the Speaker's Directions in relation to the services and entitlements of members of Parliament. At present, minutes and other papers of the PSC are not normally released to the public.
- 3.52 Like the Parliamentary Service, we see no reason that the OIA should not apply to the PSC.

### Office of the Clerk

- 3.53 The Office of the Clerk supports the Clerk of the House in the discharge of his or her functions (which are to note all proceedings in the House, provide procedural advice to the Speaker and other members, to be responsible for all parliamentary printing, and for preparing and presenting copies of bills passed by the House to the Governor-General for Royal assent).
- 3.54 The Office of the Clerk administers a vote containing appropriations for outputs associated with its activities. The Office is organised into four main divisions:
- the House office, which provides support for sittings of the House
  - the Select Committee Office
  - Reporting Services
  - Corporate Office, which provides information services, human resources and financial management records.
- 3.55 The Clerk has custody of all the journals, petitions and papers presented to the House and other records belonging to the House.
- 3.56 In our view the OIA should apply to the Office of the Clerk in relation to its departmental holdings, but not in its role as agent for the House of Representatives. As noted above, material sent to the Office of the Clerk by select committees is already widely available – perhaps more available than it would be if subject to the OIA.

### Party organisational material and caucus committees

- 3.57 A party caucus comprises all the members of Parliament belonging to a particular party. At caucus and caucus committee meetings, parties discuss parliamentary and political business. Caucuses and caucus committees fulfil a range of functions: they are a source of ideas and suggestions on policy; they provide opportunities for full and frank discussion in secret; they discuss appointments; they scrutinise legislation; they elect the parliamentary leader and the deputy leader; and they act as a sounding board of public and party opinion.
- 3.58 Parliamentary Service employees provide secretarial and administrative services to caucus committees. The Ombudsman has ruled that documents prepared for caucus or caucus committees are not official information, even if held by a Minister (unless they are attached to or incorporated into advice to Cabinet).<sup>100</sup>
- 3.59 As noted above, we do not consider that the OIA should apply to information held by caucus and caucus committees, or to information held by Parliamentary Service employees providing services to those committees. Nor should it apply to party organisational material, including information relating to media advice and polling.

#### RECOMMENDATION

- R5 The OIA should be extended to cover information held by the Speaker in his role with ministerial responsibilities for Parliamentary Service and the Office of the Clerk; the Parliamentary Service; the Parliamentary Service Commission; and the Office of the Clerk in its departmental holdings.

#### RECOMMENDATION

- R6 The OIA should not apply to:
- proceedings in the House of Representatives, or Select Committee proceedings; and internal papers prepared directly relating to the proceedings of the House or committees;
  - information held by the Clerk of the House as agent for the House of Representatives;
  - information held by members in their capacity as members of Parliament;
  - information relating to the development of parliamentary party policies, including information held by or on behalf of caucus committees;
  - party organisational material, including media advice and polling.

<sup>100</sup> Sixth Compendium of Case Notes of the Ombudsman, Case No. 117; 1993–96, A JHR, A.3, p26 (Report of the Ombudsman for the year ended 30 June 1994).

# Chapter 4

## Funding entitlements for parliamentary purposes and deductions

### FUNDING ENTITLEMENTS FOR PARLIAMENTARY PURPOSES

- 4.1 As discussed in Chapter 1, there is no definition of “funding entitlements for parliamentary purposes” in the Parliamentary Service Act 2000 or the Civil List Act 1979. An interim definition was enacted in 2006 to retrospectively validate breaches of appropriations found by the Auditor-General in his report into advertising expenditure incurred by the Parliamentary Service in the three months before the 2005 General Election.
- 4.2 The current definition of funding entitlements for parliamentary purposes is in section 4 of the Parliamentary Service (Continuation of Interim Meaning of Funding for Parliamentary Purposes) Act 2009. It will expire in December 2010. A bill was introduced into the House of Representatives in July 2010 that will amend the Parliamentary Service Act 2000 to include a new definition of “funding entitlements for parliamentary purposes.”

#### Current definition

- 4.3 The current definition provides that funding entitlements for parliamentary purposes includes funding for all or any of the following purposes:<sup>101</sup>
- (a) the performance by a member of Parliament of his or her role and functions as a member of Parliament;
  - (b) the performance by a recognised party (within the meaning of that Act) of its role and functions as a recognised party;
  - (c) the provision of travel, accommodation, and attendance services in accordance with any determination made by the Speaker of the House of Representatives under section 20A of the Civil List Act 1979, or any

<sup>101</sup> Parliamentary Service (Continuation of Interim Meaning of Funding for Parliamentary Purposes) Act 2009, s 4(1).

- direction given by the Speaker of the House of Representatives under the Parliamentary Service Act 2000;
- (d) the provision of communications services (other than services including electioneering) in accordance with any determination made by the Speaker of the House of Representatives under section 20A of the Civil List Act 1979, or any direction given by the Speaker of the House of Representatives under the Parliamentary Service Act 2000;
  - (e) the provision of services and resources to support electoral candidates to whom section 9C of the Parliamentary Service Act 2000 applies in accordance with directions given by the Speaker under section 9B of that Act;
  - (f) the provision of benefits or privileges of a specified kind for former members of Parliament and members of their families in accordance with an appropriation by Parliament of money for that purpose.
- 4.4 The definition does not include funding for the provision of services in respect of members of Parliament participating in the official inter-parliamentary travel programme.<sup>102</sup>
- 4.5 The current definition of funding entitlements for parliamentary purposes excludes the provision of communication services for electioneering. Electioneering means any communication that explicitly seeks support for the election of a particular person, or the casting of a party vote for a particular party, or encourages any person to become a member of a particular party, or solicits subscriptions or other financial support.<sup>103</sup> Therefore neither individual member funding nor member and party support funding can be used for electioneering.
- 4.6 The Parliamentary Service Amendment Bill 2010, as introduced to Parliament, does not make any changes to the elements of the definition set out at paragraph 4.3 above. It would change the communications services that are excluded from the definition,<sup>104</sup> but those differences are not relevant for our purposes.

### Speaker's Directions

- 4.7 The Speaker's Directions also set out the interim definition of funding entitlements for parliamentary purposes. Clause 2.4 of the Speaker's Directions includes a definition of parliamentary business, which is:
- the undertaking of any task or function that a member could reasonably be expected to carry out in his/her capacity as a member of Parliament, or a party could be reasonably expected to carry out in its capacity as a party, and that complements the business of the House of Representatives...
- 4.8 The definition then sets out a list of examples of tasks and functions which are included in the definition of parliamentary business, such as attending a sitting of the House, meetings, and research and administrative functions that relate directly to the business of the House. The definition expressly excludes the following:

<sup>102</sup> *Ibid* s 4(2).

<sup>103</sup> *Ibid* s4 (3).

<sup>104</sup> Parliamentary Service Amendment Bill 2010, clause 3A(2).

- Work undertaken for personal or private benefit;
  - Work directly related to the administration or management of a political party;
  - Electioneering (which means any communication that explicitly seeks support for the election of a particular person or party, encourages a person to join a particular party, or solicits subscriptions or other financial support).
- 4.9 Part 3 of the Directions sets out the travel, accommodation, attendance and communications services available to members. In summary, the cost of members' domestic air travel, rail and ferry travel is covered regardless of the purpose for which the travel is undertaken. Other claims must be either for parliamentary purposes, parliamentary business, or exclude electioneering. The effect of the Directions is as follows:
- (a) The cost of members' domestic air travel, rail and ferry travel is covered regardless of purpose (cl 3.7, 3.20);
  - (b) The cost of international travel for members is met provided they are undertaking parliamentary business and the trip has been approved by the party leader and the Speaker (i.e. no electioneering, work for private benefit or work directly related to the administration or management of a political party) (cl 3.10);
  - (c) Members are entitled to a rebate on any expenditure incurred by a member personally for international air travel, as long as the travel is not undertaken for private business purposes (cl 3.13). The rebate varies with the member's length of service, from nil for a member who has served less than one complete term to 90% for a member who has served four or more complete terms;
  - (d) The cost of taxi travel or rental cars will be met for travel on parliamentary business (cl 3.15, 3.17);
  - (e) Members may be reimbursed for actual and reasonable accommodation costs incurred (to a stated maximum) while they are engaged on parliamentary business outside Wellington (cl 3.31);
  - (f) Members who normally live outside Wellington may be reimbursed up to \$24000 a year for the cost of accommodation in Wellington incurred while on parliamentary business (cl 3.32);
  - (g) Members are entitled to the cost of communications services (including telephone, fax, and internet, cell phone and cell phone calls), provided they are not used for electioneering (Part 3 sub-part 7).
- 4.10 Clause 4.12 of the Directions provides what party and member support funding may be used for, and specifically provides that it may not be used for anything that is not for a "parliamentary purpose". A parliamentary purpose is defined in the Directions as anything within (a) to (e) of the definition of funding entitlements for parliamentary purposes.

## Issues

- 4.11 It is unsatisfactory that the definition of funding entitlements for parliamentary purposes does not appear in either the Civil List Act 1979 or the Parliamentary Service Act 2000. The definition is a critical component in describing the statutory duties of the Parliamentary Service and the services to be determined by the Speaker under section 20A of the Civil List Act 1979. The definition requires a permanent and more appropriate legislative home. This is a matter that can be resolved with relative ease.
- 4.12 However, the Law Commission also has substantive concerns about both the current definition and that proposed in the Parliamentary Service Amendment Bill 2010 which are less easily solved. The definition is essentially circular: in particular the effect of section 4(c) and (d) is that funding entitlements for parliamentary purposes means anything the Speaker sets out in a determination under section 20A of the Civil List Act 1979, or in a direction given under the Parliamentary Service Act 2000. As a result, “funding entitlements for parliamentary purposes” includes a number of matters that are not really for parliamentary purposes at all, and that provide a personal benefit to the recipient, such as: domestic or international travel by MPs for private purposes; domestic travel by MPs for private business purposes; communications services for MPs for any purpose (other than electioneering); and travel entitlements for former MPs.
- 4.13 The draft bill attached to this report addresses our concerns about the present definition of funding entitlements for parliamentary purposes in several ways. It removes the references to the Speaker’s Directions and substitutes a reference to the determination of the Remuneration Authority. It also requires the Remuneration Authority to ensure that services provided to members generally do not result in any private gain, or if an element of private gain is unavoidable, that it is clearly disclosed and taken into account when the Authority fixes salaries and allowances. The bill also removes travel entitlements for former MPs from the definition of funding entitlements for parliamentary purposes.

## DEDUCTIONS

### Current situation

- 4.14 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, section 20(1)(a) provides for a deduction of \$10 for each day of absence from the payments to be made to that member. Section 20(1)(c) and (d) provides that no deduction will be made where the Speaker certifies that the member is absent for reasons of illness or other unavoidable cause, or where the absence is caused by the member’s attendance at any conference, meeting, ceremony, or the member’s travelling on any mission or business as a representative of Parliament or with the authority of the House. Just because a member is not present in the House does not mean that he or she is not engaged in parliamentary business.
- 4.15 In the Issues Paper we noted that although section 20 of the present Civil List Act has been used on occasion, it is generally considered to be ineffective. Not only is the amount of the deduction very small, but there is no mechanism in the House of Representatives for monitoring attendance.

- 4.16 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. The Serjeant-at-Arms kept a daily record of members' attendance in the House. 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.
- 4.17 Party discipline may operate to ensure attendance among most members, but it is not a complete answer, particularly given the increasing numbers of independent members of Parliament.
- 4.18 In 1999, the Standing Orders Committee suggested that record keeping of attendance should either be made effective or the practice should be abandoned. It considered that making a record of attendance effective would greatly increase the parliamentary bureaucracy, and would probably require a recentralisation of the granting of leave of absence, a course which it did not favour.<sup>105</sup>
- 4.19 There seems to be general agreement that the present mechanism provided by section 20 of the Civil List Act 1979 is ineffective, both because of the low level of the fine and the problem of recording attendance. In our view some kind of deduction mechanism is desirable, but it must be workable, without being oppressive or unwieldy.

### Replacement mechanisms

- 4.20 We recommend that the amount of the deduction now provided in the Civil List Act 1979 should be increased to a meaningful level. Consideration should also be given to providing a further long-stop mechanism for absences, by including a disqualification provision in the Electoral Act 1993 for dealing with extreme cases in which members of Parliament are not attending to their parliamentary duties.

### *Deduction*

- 4.21 We recommend that in the event of a member being absent (without leave or without meeting one of the criteria specified in the legislation) for more than nine sitting days during any calendar year, the amount that may be deducted from payments to be made to that member for each subsequent sitting day of absence should be increased to 0.2% of the annual salary of an ordinary member of Parliament. As at 1 November 2010, the yearly base salary of an ordinary member of Parliament was \$131,000.<sup>106</sup> The amount of the daily deduction would therefore presently be \$262.
- 4.22 We note that this provision will require a method of recording attendance. We do not consider that this method should be set out in legislation – it would be preferable if it was dealt with in the Standing Orders, as it is a matter for the House and the Speaker.

<sup>105</sup> Standing Orders Committee *Review of the Operation of the Standing Orders* [1999] AJHR, I.18B, 13.

<sup>106</sup> Parliamentary Salaries and Allowances Determination 2009 SR 2009/340.

- 4.23 Even without a general record of attendance, the provision could still operate if the Speaker became concerned about the attendance of a particular member: as currently drafted section 20 is silent as to how attendance is to be established. It may be that in such a case, the Speaker could make arrangements for attendance to be noted. The statutory onus is presently on the member to provide the explanation for non-attendance. We consider this to be appropriate.

## RECOMMENDATION

- R7 If a member is absent for more than nine sitting days during any calendar year, there should be a deduction from the payments to be made to that member of 0.2% of the annual salary of an ordinary member of Parliament for each day of absence (exclusive of those nine sitting days). No deduction should be made where the Speaker certifies that the member is absent for reasons of illness or other family cause of a personal nature, or where the member is attending to other public business (whether in New Zealand or overseas).

## RECOMMENDATION

- R8 It would be desirable if a record of attendance was kept in the House of Representatives. How this is done is a matter for the Standing Orders Committee and the Speaker.

*Disqualification*

- 4.24 In response to our Issues Paper, the former Clerk of the House, Dr David McGee, suggested that while in general non-attendance was not a problem, a long-stop provision is needed to ensure public confidence is maintained. This is particularly the case in a situation in which a member is free of party discipline and is simply not attending to parliamentary duties.<sup>107</sup>
- 4.25 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.
- 4.26 Dr McGee suggests that section 55(1)(a) is now unworkable since Parliament no longer sits on a sessional basis. He proposes instead that this provision should be modernised, and could then be relied on to give protection against individual neglect of the duties of a member.
- 4.27 The provision could operate along the following lines:
- (a) The Speaker would inform the House if satisfied that any member has not attended the House for a specified number of consecutive sitting days (say 30) without permission of the House or the Speaker;

<sup>107</sup> Letter from Dr David McGee to the Law Commission, dated 30 March 2010.



- (b) The House could then order the member to attend by a stated date;
  - (c) If the member fails to attend, his or her seat would become vacant following a further resolution of the House.
- 4.28 Again, such a provision would still benefit from a system being established to record absence. However, a general record of attendance would not be essential, as long as the Speaker was satisfied in a particular case as to the member's non-attendance.
- 4.29 A provision of this kind represents a very important constitutional change, and would need to be carefully considered. It would give the majority of the House the power to remove an elected representative, rather than leaving that decision to the electors themselves.
- 4.30 On the one hand, there may be valid reasons to adopt a policy that insists upon the importance of giving effect to the wishes of the electors, but that frustrates that choice where the continual and unjustified absence of the elected member of Parliament may threaten public confidence in the integrity of the political process. The opposing view is that while such a policy may be commendable in theory, it could be subverted in practice. Given the significant constitutional issues at stake, the matter should be carefully considered.

# Chapter 5

## Entitlements for former members of Parliament

### RUN-OFF ENTITLEMENTS

- 5.1 Part 6 of the Speaker’s Directions provides for entitlements of former members of Parliament. Some of the entitlements in this Part are “run-off” entitlements, designed to cover the costs of the member’s out-of-Parliament office for a short period after the member resigns or is not declared to be a member.<sup>108</sup> There are specific provisions for the Speaker and Deputy Speaker of the House, to assist in the transition between Parliamentary terms.

### TRAVEL ENTITLEMENTS FOR FORMER MEMBERS

- 5.2 The other travel entitlements in Part 6 are on-going entitlements available to MPs who were elected before 1999. Clause 6.13 of the Speaker’s Directions provides that a member elected for the first time at or after the 1999 general election receives no travel entitlements when he or she leaves Parliament.
- 5.3 Clause 6.15 and following provide for travel entitlements for former members of Parliament who were members before the 1999 general election. Such members and their spouses are entitled to rebates on a limited number of domestic and international air fares. The level of rebate depends on the number of parliamentary terms the member has served, and is calculated according to a schedule set out in the Speaker’s Directions. For example, if the former member served two or fewer than two terms, no rebate is payable (unless the person served as Speaker or as a Minister, in which case the rebate payable is 50%). If the member served three terms, a rebate of 60% is payable. There is a separate entitlement for road, rail and ferry travel for a former member who was a member before 1999 and served for 10 years or three complete Parliaments.
- 5.4 Reference to these entitlements may be found in section 25 of the Civil List Act 1979. As noted in the previous chapter, they are also included in the definition of “funding entitlements for parliamentary purposes” set out in section 4 of the Parliamentary Service (Continuation of Interim Meaning of Funding for Parliamentary Purposes) Act 2009.

<sup>108</sup> Directions by the Speaker of the House of Representatives 2010, clauses 6.1–6.12.

- 5.5 In 2007, the Report of the Committee on the Third Triennial Review of Parliamentary Appropriations recommended that the allowances payable to former members of Parliament and their spouses in relation to international and domestic air travel should be revisited.<sup>109</sup>
- 5.6 The preparation of the 2007 Speaker's Directions took place after that report was tabled. The 2007 Speaker's Directions included a provision that a person who was a member during the 2002–2005 Parliament and who was also a member before the 1999 general election had his or travel entitlements frozen at the level for which he or she qualified at the end of the 2002–2005 Parliament.<sup>110</sup> This acted as a cap on the level of rebate to which former members were entitled.
- 5.7 When the Speaker's Directions were reissued in 2008, this provision was removed. Thus for members who had been in Parliament since before 1999, the level of travel rebate to which they would be entitled when they left Parliament continued to increase with the number of full Parliaments served, rather than being frozen at the 2005 level.
- 5.8 When the Speaker's Directions were reissued in July 2010, a new clause 6.14 was inserted, freezing members' travel entitlements at the level for which they qualified at the end of the 2005–2008 term of Parliament.
- 5.9 Earlier this year the Fourth Triennial Parliamentary Appropriations Review considered payments to former members, noting that MPs who were elected prior to 1999 entered Parliament on the understanding that they would receive those entitlements:<sup>111</sup>

There is no compelling reason to change that expectation and, consistent with our discussion on the principles of parliamentary funding in section 5 above, these entitlements should, in the absence of a good reason to the contrary, be left to run their natural course.

### Issues

- 5.10 Two issues arise. First, while the inclusion of run-off entitlements in the definition of funding entitlements for parliamentary purposes seems accurate, travel entitlements for members who entered Parliament before 1999 and may have retired years ago do not sit as easily within the definition. It seems odd to describe these entitlements as being for parliamentary purposes, at least in terms of the ordinary use of those words.

<sup>109</sup> Parliamentary Appropriations Report of the Committee on the Third Triennial Review, (March 2007) 42–43, recommendation 4.3(a).

<sup>110</sup> Directions and Specifications for Services and Funding Entitlements for the House of Representatives, its Members and Former Members, 1 December 2007, clause 6.12.

<sup>111</sup> Report of the Fourth Triennial Parliamentary Appropriations Review (June 2010) at [8.85].

- 5.11 Secondly, the decision to remove the freeze set out in clause 6.12 when the 2008 Speaker's Directions were re-issued represented a change in entitlements that took place without the benefit of public debate or parliamentary scrutiny. This does not seem to us to be satisfactory. In theory it would also be possible by the same process to remove the provisions of the present clause 6.13, which provides that members elected for the first time at or after the 1999 general election receive no on-going travel entitlements when leaving Parliament. In our view, a decision of that nature should be a matter for Parliament.
- 5.12 The question of whether travel entitlements for former members should continue or should be revoked is not one that the Law Commission is able to address. Sir Geoffrey Palmer receives these entitlements. He has disclosed his interest, and has continued with this review on the basis that any recommendations made by the Law Commission in relation to these entitlements would be restricted to framework issues, rather than amounts. We therefore simply record the recommendations of others in this regard.
- 5.13 As noted above, the Third Triennial Parliamentary Appropriations Review recommended those entitlements should be revisited. The Office of the Clerk expressed a similar view in a recent letter to us, suggesting that the time has come to put an end to this scheme. On the other hand, the Fourth Triennial Parliamentary Appropriations Review has recommended that the travel entitlements of former members of Parliament should be left to run their natural course.
- 5.14 The question of whether former members' travel entitlements should continue is for others to decide. If the view expressed by the Fourth Triennial Parliamentary Appropriations Review is adopted, and those entitlements continue, we recommend that they should be set out in legislation, rather than being contained in the Speaker's Directions. This would prevent further creep. It would also resolve an anomaly in the definition of "funding entitlements for parliamentary purposes." The drafting in the bill attached in the appendix reflects this approach. The entitlements attached to the bill as Schedule 2 are the same as those currently set out in the Speaker's Directions.
- 5.15 The disadvantage with this approach is that it may be seen as enshrining or protecting these entitlements, as they could no longer be reduced or removed without substantive legislative change. However it also means that they cannot be increased without the scrutiny accorded to parliamentary enactments, which seems to us on balance to be more important.
- 5.16 We note that under this approach those members of Parliament who entered Parliament before the 1999 general election would still qualify for former members' travel entitlements on leaving, with the level of those entitlements frozen at the level for which he or she qualified at the end of the 2005–2008 term of Parliament.
- 5.17 Alternatively, if entitlements for former members are to continue, they could be dealt with by the enhanced Remuneration Authority as part of its determination process.

## RECOMMENDATION

R9 Run-off entitlements for former members of Parliament should be treated separately from on-going travel entitlements for former members. (Run-off entitlements are those entitlements designed to cover the costs of a member's out-of-Parliament office for a short period after the member resigns or is not declared to be a member.)

## RECOMMENDATION

R10 Travel entitlements for former members of Parliament elected before the 1999 general election currently appear in Part 6 of the Speaker's Direction. If those entitlements continue, they should be set out in legislation, so that they cannot be extended or increased except by legislative amendment.

### ENTITLEMENTS FOR FORMER PRIME MINISTERS

- 5.18 Section 22 of the Civil List Act 1979 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.
- 5.19 The annuity was the result of recommendations made by a Royal Commission on Parliamentary Salaries and Allowances in 1964.<sup>112</sup> The original rationale for the annuity was by way of tangible recognition of the service of former Prime Ministers to their country, and to a lesser extent to take account of their on-going obligations from having held office, “which do not disappear entirely with retirement. They continue to involve him in extra expense.”<sup>113</sup> The Royal Commission noted that in some overseas jurisdictions, similar provisions had been made for Ministers, but it rejected that position, stating: “We think the Prime Minister should be regarded in a special and indeed a unique position.”<sup>114</sup>
- 5.20 The 1964 Royal Commission considered that the annuity should only be payable to people who had held the office of Prime Minister for a minimum of two years. It also recommended that the amount of the annuity should be capped at five years, without giving any reasons. This cap does not appear in section 22 of the Civil List Act 1979, but has been carried over into the determinations of the annuity ever since.<sup>115</sup>
- 5.21 The cap reflects the fact that the annuity is not intended to be a superannuation scheme, closely linked to length of service, but rather a recognition of the office holder's service. Moreover any on-going obligations a former Prime Minister may have are not necessarily dependent on the exact length of time he or she held office: a Prime Minister who was in office for only one term may have as many commitments as one who served longer. The cap maintains some degree of relativity in this regard.

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

113 Ibid at p 27.

114 Ibid.

115 At present the annuity is the lesser of \$8,356 for each complete year of the total period for which the person held the office, or \$41,780 – Parliamentary Annuities Determination 2009, cl 4 (2009/268. Although the determination expired in December 2009, it has not yet been replaced.)

- 5.22 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. The annuity is determined by the Remuneration Authority, and in practice amounts to half the annuity for the former Prime Minister.
- 5.23 The 1964 Royal Commission also recommended that former Prime Ministers and their spouses should be provided with limited free use of official cars, with the exact terms of the provision to be determined in the light of the particular circumstances.<sup>116</sup> In 1973, the Royal Commission on Parliamentary Salaries and Allowances recommended that this should be extended to unrestricted domestic air travel for life, and the right to use official cars without restriction.<sup>117</sup> The Royal Commission noted that ex-members had travel entitlements depending on their length of service, and it was no great extension of these privileges to grant a former Prime Minister unrestricted travel for life. The Royal Commission also recommended that the typing and secretarial services provided for members should be made available to former Prime Ministers.<sup>118</sup>
- 5.24 This practice of providing former Prime Ministers with air travel and the use of official cars has continued to the present day, although the precise details of each arrangement may vary. (We understand that typing and secretarial services are no longer provided.) The money for these entitlements comes out of Vote: Ministerial Services.

### Other jurisdictions

#### *United Kingdom*

- 5.25 In the United Kingdom, regardless of length of service, a former Prime Minister receives a pension entitlement that equates to half of his or her Prime Ministerial salary at the time he or she held the office.<sup>119</sup>
- 5.26 In addition, former Prime Ministers are entitled to a Public Duty Costs Allowance. Introduced in 1991, this is described as being intended to assist with additional office and secretarial costs which former Prime Ministers are liable to incur because of their public duties. All claims must be supported by documentary evidence. The ceiling level of the allowance is linked to the centralised arrangements for payment of staff and secretarial support for members of Parliament with London constituencies.<sup>120</sup> In the 2008–2009 financial year, the maximum that could be claimed by each former Prime Minister was £100,205. The total claimed by former Prime Ministers in the same year was £190,888.

116 Report of the Royal Commission on Parliamentary Salaries and Allowances, above n 113, at p 28.

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

118 Ibid at p 17.

119 Ministerial and other Pensions and Salaries Act 1991 c.5, s 1.

120 Written answers 6 April 2010 Tessa Jowell 6 Apr 2010 : Daily Hansard; Commons Debates; 6 April 2010 Column 1172W [www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100406/text/100406w0007.htm](http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100406/text/100406w0007.htm).

## Australia

- 5.27 In Australia, former Prime Ministers have travel entitlements under the Members of Parliament (Life Gold Pass) Act 2002 (currently capped at 40 return domestic flights per year).<sup>121</sup> In addition, former Prime Ministers are also granted a standard package of benefits at the discretion of the Prime Minister of the day. This includes the use of cars, fully furnished office accommodation, support staff, security and telephone and facsimile services.
- 5.28 Since 2001, the cost of travel and transport for former Prime Ministers is tabled every six months in Parliament by the Department of Finance and Deregulation. The figures tabled for July to December 2009 also included office administrative costs and the cost of office facilities.<sup>122</sup>

## Canada

- 5.29 In Canada, at the age of 65, or when he or she ceases to be a member of Parliament (whichever is the later), every person who has held the office of Prime Minister for four years is entitled to an allowance equal to two thirds of the annual salary payable under the Salaries Act to the Prime Minister on that day.<sup>123</sup>

## Future entitlements

- 5.30 Is the original rationale for the annuity and travel entitlements for former Prime Ministers still valid? We are not aware of other New Zealand offices, other than the office of Governor-General, in which the former office holder is entitled to a statutory annuity in recognition of service. But as the Royal Commission noted in 1964, the office of Prime Minister is special. And although having held the office of Prime Minister may create opportunities for some former office holders, it is still true that it also creates on-going obligations.
- 5.31 We recommend that there continue to be an annuity payable to former Prime Ministers as currently provided in section 22 of the Civil List Act 1979, with the amount of the annuity being determined by the Remuneration Authority from time to time.
- 5.32 However, the unrestricted nature of the entitlements of former Prime Ministers to domestic air travel and the use of official cars contrasts with current trends towards greater restraint and accountability in the use of public money. We note that Australia caps the number of domestic flights to which a former Prime Minister is entitled. In 1973 one of the arguments used by the Royal Commission to support the entitlement to unlimited domestic travel was that it was no great extension of the travel entitlements of former MPs. That argument is no longer sustainable, as MPs who enter Parliament after 1999 do not receive on-going entitlements when they leave.

121 Members of Parliament (Life Gold Pass) Act 2002 (Cth), s 10.

122 *Former Parliamentarians' Expenditure on Entitlements Paid by the Department of Finance and Deregulation, July to December 2009*, available at [www.finance.gov.au/publications/parliamentarians-reporting/index.html](http://www.finance.gov.au/publications/parliamentarians-reporting/index.html).

123 Members of Parliament Retiring Allowance Act (R.S. 1985 c.M-5), s48.

- 5.33 As Sir Geoffrey Palmer is a recipient of travel entitlements as a former Prime Minister, following disclosure of his interest to the Minister Responsible for the Law Commission, he has continued as Commissioner in charge of this review on the basis that in relation to the entitlements of former Prime Ministers, the review was considering issues of statutory form and transparency, rather than the actual amounts of payments. It would therefore be inappropriate for the Commission to make recommendations as to what the content of the travel and other entitlements for former Prime Ministers should be. However we suggest that a reconsideration of the extent of those entitlements would be timely.
- 5.34 In relation to the existing travel entitlements, because they are administered by Ministerial Services, which is part of the Department of Internal Affairs, information about them can be obtained under the Official Information Act 1982. However there is no requirement that they be made publicly available on a regular basis. In the interests of transparency, we recommend that the details of the cost of travel and transport for former Prime Ministers and their spouses should be included in the annual financial statements of the Department of Internal Affairs.

## RECOMMENDATION

R11 There should be an annuity paid to former Prime Ministers who have held the office for a minimum of two years, at a yearly rate for each year of service to be determined from time to time by the Remuneration Authority, up to and including five years of service.

## RECOMMENDATION

R12 The cost of travel and transport for former Prime Ministers and their spouses should be included in the annual financial statements of the Department of Internal Affairs.

### Annuity for surviving spouse

- 5.35 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.

## RECOMMENDATION

R13 If the former Prime Minister 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 Prime Minister.



# Appendix



# Appendix

## Members of Parliament (Remuneration and Services) Bill

**Members of Parliament  
(Remuneration and Services)  
Bill**

Draft prepared by Parliamentary Counsel for the  
Law Commission

## **Members of Parliament (Remuneration and Services) Bill**

Draft prepared by Parliamentary Counsel for the  
Law Commission

### **Explanatory note**

This Bill modernises and modifies the law relating to—

- the salaries and allowances of members of Parliament:
- support services provided for members of Parliament, members of the Executive, parties, and certain electoral candidates:
- the benefits and privileges of former members of Parliament and others.

The main changes made by the Bill are that—

- the daily amount that must be deducted from a member of Parliament's salary and allowance for absence from the House of Representatives (the **House**) without the permission of the Speaker of the House (the **Speaker**) is increased and also future-proofed by requiring the amount to be calculated as a specified percentage of a salary and by providing that this percentage may be increased by regulation:
- entitlements to travel, accommodation, communications, and other support services for members of Parliament, members of the Executive, and certain electoral candidates are required to be determined by the Remuneration Authority. Currently these are determined by the Speaker or, in the case of certain

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services provided for members of the Executive, by the Minister Responsible for Ministerial Services:

- 2 additional members with specified qualifications are required to be appointed to the Remuneration Authority (the **Authority**) and the Authority must be constituted of these 2 additional members and 2 other members of the Authority when it determines these entitlements:
- the Authority is required to have regard to specified criteria and to follow a prescribed procedure in making the determination:
- permanent appropriations are established for the expenses incurred to provide the entitlements, and details of the expenses incurred under these appropriations are required to be provided as part of the annual financial statements of the departments that administer them:
- the travel entitlements of former members of Parliament (other than entitlements that may be provided to enable a member who resigns or who is not declared a member at an election to attend to matters associated with leaving Parliament) are specified in the Bill rather than these being determined through directions given by the Speaker to the Parliamentary Service. The entitlements specified are those that currently apply. Former members who qualify for the entitlements, namely persons who were elected before the 1999 general election, are precluded from receiving any entitlements beyond those that they qualified for as at 1 November 2008. The Bill also precludes any person who was elected for the first time at, or after, the 1999 general election from receiving the entitlements.

The Bill is in 4 Parts—

- Part 1 relates to preliminary matters, including interpretation:
- Part 2 deals with the salaries and allowances of members of Parliament:
- Part 3 deals with services and is in 2 subparts—
  - subpart 1 deals with support services necessary for members of Parliament and parties to perform their roles and functions and certain support services of members of the Executive. It provides for the Authority to determine entitlements to these services:

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- subpart 2 relates to the inter-parliamentary travel scheme, which is administered by the Office of the Clerk of the House of Representatives, and provides for the Speaker to determine the entitlements to travel, accommodation, and communications services for members of Parliament participating in that scheme:
- Part 4 is in 3 subparts—
  - subpart 1 deals with entitlements of former members of Parliament and others, including—
    - the travel entitlements of former members of Parliament:
    - annuities payable to former Prime Ministers and their spouses and partners:
    - other benefits and privileges provided for former Prime Ministers:
    - entitlements of family members when a member of Parliament dies while in office:
  - subpart 2 deals with the repeal of the Civil List Act 1979, revocations, and consequential amendments:
  - subpart 3 deals with the status of salaries, allowances, and annuities pending the Authority making new determinations under the Bill and also includes a transitional provision concerning support services.

### **Clause by clause analysis**

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause. It provides that the Bill comes into force on the day after the date that it receives the Royal assent.

### **Part 1**

#### **Preliminary provisions**

*Clause 3* sets out the purpose of the Bill.

*Clause 4* defines certain terms used in the Bill.

*Clause 5* provides that the Bill binds the Crown.

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## Part 2 Salaries and allowances

*Clause 6* requires the Remuneration Authority (the **Authority**) to determine the salaries and allowances payable to members of Parliament and provides that the salaries and allowances determined may differ according to the office that the member of Parliament holds, the electorate that the member represents, or any other considerations that the Authority determines. When the Authority determines salaries and allowances under *clause 6* it is constituted in the same way as it is for all other functions it is required to perform under the Remuneration Authority Act 1977 and other enactments; it has 3 members and 2 members form a quorum (see sections 5 and 8 of the Remuneration Authority Act 1977). The Bill requires it to be differently constituted when it performs functions under *subpart 1 of Part 3* of the Bill, which concerns the determination of services to be provided to members of Parliament and others (see *clause 13 and Schedule 3*).

*Clause 7* records that the salaries and allowances under *clause 6* have to be determined under section 12 of the Remuneration Authority Act 1977 and that the sections of that Act apply accordingly. Sections of that Act that are relevant to the performance of the Authority's function in setting the salaries and allowances include—

- section 16, which requires the Authority to give a copy of the determination to the Speaker, the Prime Minister, and the Leader of the Opposition, and publish it in the *Gazette*. The section also provides that the determination is a regulation for the purposes of the Acts and Regulations Publication Act 1989 (which has the effect that the determination is published as a statutory regulation) but not for the purposes of the Regulations (Disallowance) Act 1989 (which has the effect that it is not subject to amendment or disallowance by the House):
- section 17A, which requires the Authority to consult with the Commissioner of Inland Revenue, the Speaker and the Minister Responsible for Ministerial Services before making a determination:
- section 18, which sets out criteria that the Authority must have particular regard to, and criteria it must take into account, in determining the remuneration of members of Parliament.

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These criteria include the need for fair relativity with levels of remuneration received elsewhere and the need to be fair to taxpayers and the persons whose remuneration is being determined:

- section 18A, which requires the Authority to take into account adverse economic conditions and allows the Authority to determine the remuneration at a lower rate than it would otherwise have determined.

*Clause 8* re-enacts section 18(1) and (2) of the Civil List Act 1979. The effect of the clause is that the period for which salaries and allowances determined by the Authority are payable to members of Parliament starts on the day after the polling day at the election at which the member is elected (except if the member is returned at an uncontested by-election) and ends on the polling day at the next general election or, if the member leaves Parliament earlier than the next general election, the day on which the member vacates his or her seat.

*Clause 9* re-enacts, with modifications, section 18(3) of the Civil List Act 1979. It applies to members who do not seek re-election at a general election or who stand for re-election but are not re-elected. The clause provides for those persons to be paid a salary for the 3-month period starting on the day after polling day at the election. If the person was an ordinary member of Parliament, the salary is paid at the same rate that an ordinary member's salary was payable as at polling day. The clause differs from section 18(3) of the Civil List Act 1989 in that *clause 9(3)* provides that if the person was a Minister, member of the Executive, or Parliamentary Under-Secretary, then for the period starting on the day after polling day and ending on the day that person no longer holds the office (which, under section 6(2)(b) of the Constitution Act 1986, could be up to 28 days), the salary must be paid at the rate that was payable to the holder of that office as at polling day for the election. For the balance of the 3-month period it must be paid at the rate that an ordinary member of Parliament's salary was payable as at polling day. It also clarifies that if the person was the Speaker or Deputy Speaker then, for the period starting on the day after polling day and ending on the day that the House of Representatives first meets after the general election, the salary must be paid at the rate that the Speaker or Deputy Speaker's salary was payable as at polling day. For the balance of the 3-month period it

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is payable at the rate that an ordinary member of Parliament's salary was payable as at polling day.

*Clause 10* deals with the situation where the election of a member of Parliament is questioned in an election petition. It sets out the salaries and allowances that must be paid to a person who loses his or her seat and to the person (if any) who is declared to have been duly elected in the place of that person.

*Clause 11* is a modification of section 20 of the Civil List Act 1979. Under that section, an amount of \$10 may be deducted from a member's salary for every sitting day in excess of 14 on which the member is absent during a session of Parliament (except where the absence is for specified reasons). Under *clause 11*, an amount may be deducted from a member's salary for every sitting day in excess of 9 that a member is absent during a calendar year without the permission of the Speaker. The amount to be deducted must be calculated as a percentage of the yearly base salary fixed by the Authority under *clause 6* for a member of Parliament who is not an office holder. The minimum percentage of that yearly base salary will be 0.2%, but a higher percentage may be prescribed by regulations made on the recommendation of the Speaker (*subclauses (2) and (5)*). As at 1 November 2010, the yearly base salary of an ordinary member of Parliament was \$131,000 (see Parliamentary Salaries and Allowances Determination 2009). Under *clause 11(2)*, the amount deductible from the salary of any member of Parliament who had been absent from the House without the permission of the Speaker on 1 November 2010 for the tenth day in the calendar year beginning on 1 January 2010 would therefore have been \$262, calculated as follows:

$$0.2\% \times 131,000 = \$262$$

### **Part 3 Services**

#### **Subpart 1—Support services**

*Clause 12* sets out the purpose of *subpart 1* as being to ensure that the entitlements of members of Parliament, members of the Executive, and parliamentary political parties to support services are determined independently, impartially, and in a way that does a number of specified things, including: promoting transparency; recognising the needs of members of Parliament, the Executive, and parties to be ad-



equately supported while at the same time recognising the need for fairness to taxpayers; promoting understanding of the work undertaken by members and parties and what they need to do that work; facilitating cost-effective delivery of support services; maintaining confidence in the integrity of Parliament.

*Clause 13* provides that the functions of the Authority under the subpart must be performed by the 2 additional members of the Authority appointed under *new section 5A* of the Remuneration Authority Act 1977 and no fewer than 2 other members of the Authority. *New section 5A* of the Remuneration Authority Act (inserted by *clause 33*) requires one of the additional members appointed to the Authority to be a former member of Parliament of not less than 9 years' experience and the other additional member to be a person who has appropriate skills, knowledge, and experience to assist the Authority to perform its functions under the subpart and to ensure that the purpose of the subpart is achieved (see *Schedule 3*).

*Clause 14* sets out the functions of the Authority under the subpart. Under *subclause (1)(a)* the Authority must determine the entitlements of members of Parliament, members of the Executive, parties, and qualifying electoral candidates to all travel, accommodation, and communications services (except services in respect of the official inter-parliamentary travel programme, which are administered by the Office the Clerk and funded through Vote Office of the Clerk). Currently, the entitlements of members of Parliament to these services are determined by the Speaker under section 20A(1) of the Civil List Act 1979 and any additional or alternative travel, accommodation, and communications services for members of the Executive are determined by the Minister Responsible for Ministerial Services under section 20A(3) of that Act. *Subclause (3)* clarifies that the term communications services does not include operational support services that are provided by the Parliamentary Service and funded by departmental appropriations, such as computing facilities and computing and telecommunications advisory services associated with these facilities. These are not regarded as being within the meaning of communications services in section 20A of the Civil List Act 1979 so the Speaker's current determination of members' communications services entitlements does not cover these services either.

Under *subclause (1)(b)* the Authority must determine the entitlements of members of Parliament, parties, and qualifying electoral

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candidates to any other services that the Authority considers necessary for them to adequately perform their roles and functions. *Subclause (3)* sets out what the term other services does not include. As a result, the services that the Authority will determine under this provision will not include the services provided for Ministers and will not include the administrative and support services that are currently provided by the Parliamentary Service and funded through departmental appropriations (for example, travel office services, accounting and payroll services, and staffing advice services). One type of service that is currently funded under departmental appropriations and that is not in the list of services excluded from other services is staff support for members. With this exception, what would fall within the definition of other services in the Bill is currently funded by party and member support appropriations. Because party and member support funding comes within the definition of the term funding entitlements for Parliamentary purposes in section 7(b) of the Parliamentary Service Act 2000, which requires the Parliamentary Service to administer such funding in accordance with directions of the Speaker, it is currently the Speaker who decides how funding for other services is allocated and what the funding may be used for.

*Subclause (2)* provides that in carrying out its function of determining the services under *subclause (1)(a) and (b)*, the Authority may determine a number of things. The effect of the provision is that the Authority may not only determine that a person or party is entitled to be provided a service in kind, be reimbursed for a service, or be paid a sum of money to provide a service, but it may also determine that the person or party is entitled to a sum of money to acquire a specified range of services or determine that entitlements to services be provided in some other way.

The combined effect of *clause 20* (which creates a permanent appropriation for all services under *clause 14*) and *clause 14* is that the entitlements of members and parties to all funding and services to support their parliamentary operations is required to be independently determined by the Authority in accordance with the criteria set out in *clause 15*, and following the procedure specified in *clause 16*. *Clause 15* specifies criteria that the Authority must have regard to in making its determination under *clause 14*. These refer to—

- the purposes of the subpart:

- the legitimate expectation of the public that services and funding provided for members of Parliament to perform their roles and functions should not include any element of remuneration or result in any private gain for those persons or members of their families or for parties:
- the need for the entitlements to support services to be clearly defined so that decisions about whether a person or party is eligible for an entitlement can easily be made:
- the need for the entitlements to support services to be determined in a way that promotes efficient and cost-effective delivery of those services:
- the need for the entitlements to be simple to administer.

The effect of *subclause (2)* is that the Authority may determine an entitlement to a service in such a way that the entitlement results or may result in an element of personal benefit to a member of Parliament or their family members, but it can only do so if it is satisfied that the advantages of doing this outweigh the disadvantages of determining the services so that any element of personal benefit is excluded. In this case, the Authority is required to value the benefit and take this into account when it sets the remuneration that is payable to the relevant members of Parliament. The Authority's determination setting the remuneration must also include a statement about this adjustment that sets out the value attributed to the benefit and the grounds on which the Authority is satisfied that the advantages of determining the entitlement in this way outweigh the disadvantages of not doing so.

*Clause 16* sets out the procedure the Authority must follow when making a determination under *clause 14*. This requires the Authority to—

- notify the Speaker as chairperson of the Parliamentary Service Commission (the **Commission**) and the Minister Responsible for Ministerial Services (the **Minister**) of its intention to prepare a determination, invite the Commission and the Minister to provide any information and comment that they consider may be relevant to the entitlements the Authority will be determining, and inform the Commission and the Minister of the Authority's indicative time-frames and key steps through to completion of the determination (*subclauses (1) and (2)*):

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- prepare a draft determination (which *subclause (4)* requires the General Manager of the Parliamentary Service to publicly notify by making it available on Parliament's Internet site), invite submissions on the draft determination from the Commission and the Minister and give all members of Parliament and parties affected by the determination a reasonable opportunity to give their views on the determination before it is completed (*subclause (3)(a) to (c)*):
- have regard to any submissions and views received:
- consult with the Commissioner of Inland Revenue about the tax consequences of the Authority's proposed determination.

*Clause 17* empowers the Authority to require that information it considers necessary for preparing its determination be provided and also obtain advice from persons it considers may assist it in making its determination.

*Clause 18* deals with the publication and status of determinations made under *clause 14*. *Subclause (1)* requires the Authority to provide a copy of every determination to the Prime Minister, the Speaker, the Leader of the House, and the General Manager of the Parliamentary Service (who must ensure that a copy is made available on Parliament's Internet site as soon as practicable (*subclause (2)*). *Subclause (3)* provides that the determinations are regulations for the purposes of the Acts and Regulations Publication Act 1989 but not for the purposes of the Regulations (Disallowance) Act 1989.

*Clause 19* deals with when determinations under *clause 14* must be made and the amendment of determinations. *Subclauses (1) and (2)* require the Authority to make a determination during the last 6 months of every term of Parliament unless Parliament is dissolved before that can be done, in which case the Authority has to make a determination as soon as practicable after the first meeting of Parliament after the general election. *Subclause (3)* provides that each determination continues in force until it is superseded by a new determination. *Subclause (4)* provides for the Authority to amend a determination if it is satisfied that there are particular and special reasons that justify amending the determination. Otherwise, a determination may only be amended to remedy defects, correct ambiguities, or deal with new matters that were not dealt with at the time the determination was made.

*Clause 20* creates permanent appropriations for the services determined under *clause 14* and requires specified details in relation to the expenses incurred under those appropriations to be included in the annual financial statements of the departments that administer the entitlements to those services.

### Subpart 2—Services in respect of inter-parliamentary travel

*Clause 21* provides that the Speaker must determine the entitlements to travel, accommodation, and communications services in respect of members of Parliament participating in the official inter-parliamentary travel scheme.

*Clause 22* requires the Speaker to provide a copy of the determination to the General Manager of the Parliamentary Service (which is responsible for administering the Internet site of Parliament) and requires the General Manager to ensure that a copy of the determination is publicly available on Parliament’s Internet site as soon as practicable after the General Manager receives it.

## Part 4

### Entitlements of former members and others and miscellaneous matters

#### Subpart 1—Entitlements of former members, former Prime Ministers, and others

##### *Former members’ entitlements*

*Clause 23* provides that a person who was a member of Parliament before the 1999 general election may continue to receive the travel entitlements (including the entitlements that apply to that person’s spouse or partner) that are set out in *Schedule 2*. The entitlements set out in that schedule are the current travel entitlements of former members of Parliament. *Subclause (2)* makes it clear that no person who was elected as a member of Parliament for the first time at or after the 1999 general election may receive former member travel entitlements and that, in the case of a person who was elected before the 1999 general election, no service by the member of Parliament after 1 November 2008 is taken into account for the purposes of *Sched-*

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*ule 2.* The effect of the provision is therefore that only members of Parliament elected for the first time before the 1999 general election qualify for former member travel entitlements and those persons' travel entitlements are frozen at the level for which they qualified on 1 November 2008.

*Clause 24* disqualifies former members and the spouses and partners of former members from receiving the former member travel entitlements in *Schedule 2* if, at the date the travel is taken, they have been convicted of certain crimes or have been reported by the court on the trial of an election petition to have been proved guilty of a corrupt practice and that crime or corrupt practice was committed during specified periods.

*Clause 25* provides for any issues that arise about former members' eligibility for travel entitlements, or the interpretation, application, or operation of *Schedule 2*, to be determined by the Speaker.

*Clause 26* creates a permanent appropriation for former members' travel entitlements and requires a statement setting out specified details relating to the expenses incurred against the appropriation to be included in the annual financial statements of the Parliamentary Service.

*Former Prime Ministers' entitlements*

*Clause 27* provides for the payment of an annuity to a former Prime Minister who held that office for at least 2 years. The annuity is payable at the rate fixed by the Authority and must be paid until the person dies. The clause also provides for the payment of an annuity to the person's surviving spouse or partner. That annuity is payable, at half the rate at which the annuity would have been payable to the former Prime Minister, until the spouse or partner dies. *Subclause (3)* creates a permanent appropriation for these annuities.

*Clause 28* requires a statement setting out specified details about expenses incurred to provide benefits or privileges for former Prime Ministers and their spouses and partners to be included in the annual financial statements of the Department of Internal Affairs.

*Members of Parliament dying in office:  
Entitlements of family members*

*Clause 29* provides for the payment of a sum of money as income to a surviving spouse or partner of a member of Parliament who dies while in office. This provision re-enacts section 23 of the Civil List Act 1979.

*Resolution of conflicting claims to entitlements*

*Clause 30* deals with how conflicting claims to the payment of an annuity under *clause 27* or a payment under *clause 29* must be resolved. This provision re-enacts section 27 of the Civil List Act 1979.

Subpart 2—Repeal, revocations, and  
consequential amendments

*Clause 31* repeals the Civil List Act 1979.

*Clause 32* revokes determinations made under the Civil List Act 1979.

*Clause 33* makes the amendments to other Acts specified in *Schedule 3*. The amendments to the Parliamentary Service Act 2000 are made as if that Act had been amended by the Parliamentary Service Amendment Bill as introduced (which inserts a definition of funding entitlements for parliamentary purposes in the Act).

Subpart 3—Validation and transitional  
provisions

*Clause 34* relates to the validity of certain determinations of salaries and annuities made by the Authority under the Civil List Act 1979 before the commencement of the Bill. *Subclause (2)* requires certain salaries and allowances and annuities to continue to be paid at the rate applicable at the commencement of the Bill until superseded by a determination of the Authority under the Bill.

*Clause 35* provides for the transition from the existing regime for the determination of entitlements to support services to the new regime provided for in the Bill. The effect of the provision is that for a transitional period of 6 months after the Bill receives the Royal assent all the existing entitlements of members of Parliament, members of the Executive, parties, and qualifying electoral candidates that the Au-

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thority is required to determine are deemed to be the Authority's determination of those entitlements. The Authority is required to make a determination of the entitlements within 6 months, but may amend existing entitlements at any time before making that determination.

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**Members of Parliament (Remuneration  
and Services) Bill**

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**Members of Parliament  
(Remuneration and Services)  
Bill**

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

- 1 Title**  
This Act is the Members of Parliament (Remuneration and Services) Act **2010**.
  
- 2 Commencement**  
This Act comes into force on the day after the date on which it receives the Royal assent.

**Part 1  
Preliminary provisions**

- 3 Purpose**  
The purpose of this Act is to provide for—
  - (a) the salaries and allowances of members of Parliament and members of the Executive; and
  - (b) support services for members of Parliament, members of the Executive, parties, and certain electoral candidates.
  
- 4 Interpretation**  
In this Act, unless the context otherwise requires,—  
**allowance** has the meaning given to it by section 2 of the Remuneration Authority Act 1977  
**authorised person** has the meaning given to it by **section 30**  
**Authority** means the Remuneration Authority established by section 4(1) of the Remuneration Authority Act 1977

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**corrupt practice** has the meaning given to it by **section 24**

**declaration day** has the meaning given to it by **section 24**

**dependent child**, in relation to a person, means a child—

- (a) who is being maintained as a member of the person's family; and
- (b) 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
- (c) who is under 18 years of age; and
- (d) who is not living with another person in a marriage, civil union, or de facto relationship

**Deputy Speaker** means the Deputy Speaker of the House of Representatives

**Executive** means the Executive Council

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

- (a) a spouse or partner of the person;
- (b) a dependent child of the person

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

**party** means a political party for the time being recognised for parliamentary purposes under the Standing Orders of the House of Representatives

**polling day** means the day appointed in the writ for a general election or a by-election to take place

**publicly available**, in relation to a document, means that the document is available, at all reasonable times, on the Internet site of Parliament

**qualifying electoral candidate** means a person described in **Schedule 1**

**Returning Officer** has the meaning given to it by section 3(1) of the Electoral Act 1993

**sitting day** means a sitting day of the House of Representatives

**Speaker** means the Speaker of the House of Representatives

**term of Parliament** has the meaning given to it by section 17 of the Constitution Act 1986.

**5 Act binds the Crown**

This Act binds the Crown.

**Part 2  
Salaries and allowances**

**6 Authority to determine salaries and allowances**

- (1) The Authority must determine the salaries and allowances to be paid to the following persons:
  - (a) the Prime Minister:
  - (b) Ministers of the Crown:
  - (c) other members of the Executive:
  - (d) Parliamentary Under-Secretaries:
  - (e) the Speaker:
  - (f) the Deputy Speaker:
  - (g) the Leader of the Opposition:
  - (h) other members of Parliament.
- (2) The salaries and allowances may differ according to—
  - (a) the office that the member of Parliament holds (whether or not that office is one referred to in **subsection (1)**); or
  - (b) the electorate that the member represents; or
  - (c) any other considerations that the Authority may determine.
- (3) Expenses may be incurred, without further appropriation than this section, to meet the salaries and allowances determined under this section.

Compare: 1979 No 33 s 16(1)–(3)

**7 How salaries and allowances determined**

- (1) The salaries and allowances under **section 6** must be determined under section 12 of the Remuneration Authority Act 1977 and the sections of that Act apply accordingly (*see*, for example, sections 16 and 17A to 18A).
- (2) The General Manager of the Parliamentary Service must ensure that a copy of the Authority's determination under **section 6(1)** is publicly available as soon as practicable after the General Manager receives it from the Authority in accordance

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with **section 16(1)(a)(iv)** of the Remuneration Authority Act 1977.

**8 Period for which salaries and allowances of members of Parliament payable**

- (1) The salary and allowance of each member of Parliament are payable for the period—
- (a) starting on the day after polling day for the election at which the member is elected; and
  - (b) ending on the earlier of the following days:
    - (i) polling day for the next general election of members of Parliament;
    - (ii) the day on which the member's seat becomes vacant.
- (2) However, if a member of Parliament is returned at a by-election that is not contested,—
- (a) **subsection (1)(a)** does not apply; and
  - (b) the starting day for payment of that member's salary and allowance is the day that the Returning Officer publicly declares that member to be elected.

Compare: 1979 No 33 s 18(1), (2)

**9 Salary payable if member does not stand or not re-elected at general election**

- (1) This section applies to a person who—
- (a) is a member of Parliament immediately before the dissolution of a Parliament; and
  - (b) is not a candidate at the next general election or is an unsuccessful candidate at that general election.
- (2) A salary is payable to a person to whom this section applies starting on the day after the day on which the salary determined under **section 6** ends and ending—
- (a) on the day 3 months after polling day; or
  - (b) if the person sooner dies, on the date of the death.
- (3) The salary is payable at the following rate:
- (a) if the person held office as Speaker or Deputy Speaker on polling day,—
    - (i) for the period starting on the day after polling day and ending on the day of the first meeting

- of the House of Representatives after the general election, at the rate that the salary determined under **section 6** was payable to the holder of that office as at polling day; and
- (ii) for the period starting on the day after the first meeting of the House of Representatives and ending on the day 3 months after polling day, at the rate that the salary determined under **section 6** was payable to a member of Parliament as at polling day:
- (b) if the person was a Minister of the Crown, a member of the Executive, or a Parliamentary Under-Secretary,—
- (i) for the period starting on the day after polling day and ending on the day that the person ceases to hold that office, at the rate that the salary determined under **section 6** was payable to the holder of that office as at polling day; and
  - (ii) for the period starting on the day after the person ceases to hold that office and ending on the day 3 months after polling day, at the rate that the salary determined under **section 6** was payable to a member of Parliament as at polling day:
- (c) if **paragraph (a) or (b)** does not apply to the person, at the rate that the salary determined under **section 6** was payable to a member of Parliament as at polling day.

Compare: 1979 No 33 s 18(3)

- 10 Salaries and allowances payable in case of election petition**
- (1) **Subsections (2) and (3)** apply if there is a trial of an election petition and at the end of the trial the High Court or the Court of Appeal determines—
- (a) that a person elected or returned was not duly elected or returned; or
  - (b) that the election at which a person was elected or returned was void.
- (2) If this subsection applies, the person elected or returned must be paid the salary and allowance that he or she would have been entitled to if he or she had been duly elected or returned as a member of Parliament.

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- (3) The salary and allowance are payable for the period—
- (a) starting on the day after polling day; and
  - (b) ending on the earlier of the following days:
    - (i) the day on which the House of Representatives gives directions under section 246(2) of the Electoral Act 1993 for the altering of the return:
    - (ii) the day on which the seat becomes vacant.
- (4) **Subsection (5)** applies if,—
- (a) at the end of the trial of an election petition, the High Court or the Court of Appeal determines that a person other than the person who was elected or returned was duly elected; and
  - (b) the return is altered in accordance with section 246(2) of the Electoral Act 1993 to carry out that determination.
- (5) If this subsection applies, the person declared elected or returned must be paid the salary and allowance that he or she would have been entitled to if that person's name had been endorsed on the writ or return when it was first returned.

Compare: 1979 No 33 s 19

**11 Deductions from payments if member absent from House**

- (1) The payment of salaries and allowances to members of Parliament under this Act is subject to this section.
- (2) If the number of sitting days that a member of Parliament has been absent from the House of Representatives since the start of a calendar year totals 9 (calculated from the beginning of the first day of that year), then for the tenth and each other sitting day on which the member is absent during the year an amount calculated in accordance with the following formula must be deducted from the member's salary and allowance:

$$a \times b$$

where—

- a is the percentage prescribed under **subsection (5)** or, if no percentage is prescribed, 0.2 percent



- b is the yearly salary payable to an ordinary member of Parliament who is not an office holder, as at the date of the member's absence.
- (3) The deduction must be made as soon as practicable after the day the member is absent.
- (4) A member is not to be treated as being absent on any day on which the member is absent with the permission of the Speaker granted—
- (a) for illness or other family cause of a personal nature; or
- (b) to enable the member to attend to other public business (whether in New Zealand or elsewhere).
- (5) The Governor-General may, by Order in Council made on the recommendation of the Speaker, make regulations prescribing a percentage of not less than 0.2 for the purposes of **subsection (2)**.

Compare: 1979 No 33 s 20

### Part 3 Services

#### Subpart 1—Support services

#### 12 Purpose of subpart

The purpose of this subpart is to ensure that the entitlements of members of Parliament, members of the Executive, and parties to support services are determined independently, impartially, and in a way that—

- (a) promotes transparency in relation to the allocation and use of public money to provide the support services necessary for members of Parliament, members of the Executive, and parties to perform their respective roles and functions as part of a parliamentary democracy; and
- (b) recognises the need for members of Parliament, members of the Executive, and parties to be adequately supported in order for them to perform their respective roles and functions efficiently and effectively but at the same time recognises the need to be fair to the taxpayer; and
- (c) promotes understanding of the work undertaken by those persons and parties and the services they require

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to enable them to undertake that work efficiently and effectively; and

- (d) facilitates the delivery of support services in an efficient and cost-effective manner; and
- (e) maintains confidence in the integrity of Parliament.

**13 Performance of Authority's functions under this subpart**

- (1) Every function of the Authority under this subpart must be performed by the 2 additional members of the Authority appointed under **section 5A** of the Remuneration Authority Act 1977 and no fewer than 2 other members of the Authority.
- (2) The chairperson of the Authority is responsible for determining which members of the Authority, other than the additional members, must perform the functions under this subpart.

**14 Functions of Authority under this subpart**

- (1) The Authority must—
  - (a) determine the entitlements of members of Parliament, members of the Executive, parties, and qualifying electoral candidates to all travel, accommodation, and communications services (except in respect of the official inter-parliamentary travel programme); and
  - (b) determine the entitlements of members of Parliament, parties, and qualifying electoral candidates to any other services that the Authority considers necessary for them to adequately perform their respective roles and functions; and
  - (c) determine issues about how any provision of a determination under this section is to be interpreted or applied or is to operate.
- (2) In carrying out its functions under **subsection (1)(a) and (b)**, the Authority may determine all or any of the following:
  - (a) that a member of Parliament, member of the Executive, party, or qualifying electoral candidate is entitled to an amount of money for the purpose of acquiring a service or specified range of services:
  - (b) that a member of Parliament, member of the Executive, family member of either of those persons, party,

or qualifying electoral candidate is entitled to be provided a service in kind:

- (c) that any of the persons referred to in **paragraph (b)**, or a party, is entitled to be reimbursed money paid by that person or party to acquire a service:
  - (d) that the services referred to in **subsection (1)** be provided by any other means that the Authority considers appropriate:
  - (e) that a service in respect of a member of Parliament or member of the Executive may continue to be provided for a specified period after the member vacates his or her seat, for either or both of the following purposes:
    - (i) enabling the member to attend to matters associated with leaving Parliament:
    - (ii) ensuring the cost-effective use of public resources.
- (3) In this section,—
- communications services**, in **subsection (1)(a)**, do not include computing facilities and computing and telecommunications advisory services associated with those facilities
- other services**, in **subsection (1)(b)**,—
- (a) in relation to a member of Parliament, include (without limitation) services to support an out-of-Parliament office; and
  - (b) in relation to a party, include (without limitation) services to support research operations and such offices as the party's leader's office and whip's office; but
  - (c) do not include the following:
    - (i) computing facilities and computing and telecommunications advisory services associated with those facilities:
    - (ii) library and electronic services provided through the Parliamentary Library and the computing facilities and telecommunications advisory services associated with those services:
    - (iii) travel office services, accounting and payroll services, staffing advice services, and health and safety and wellness services:

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- (iv) support staff for, or information, analysis, or advice provided to, the Speaker:
- (v) any services that are required by a member of Parliament who is also a member of the Executive to perform his or her roles and functions as a member of the Executive:
- (vi) to avoid doubt, services provided through the Office of the Clerk of the House of Representatives.

**15 Criteria for Authority**

- (1) In making a determination under **section 14**, the Authority must have regard to the following criteria:
  - (a) the purpose of this subpart:
  - (b) the legitimate expectation of the public that services (including funding for services) provided in order for members of Parliament, members of the Executive, and parties to perform their roles and functions should not include any element of remuneration or result in any other private gain for those persons, their family members, or parties:
  - (c) the need for the entitlements to support services to be—
    - (i) clearly defined so that decisions about whether a person or party is eligible for an entitlement can easily be made; and
    - (ii) determined in a way that promotes the objectives of efficient and cost-effective delivery of support services; and
    - (iii) simple to administer.
- (2) Nothing in **subsection (1)(b)** prevents the Authority from determining an entitlement to a service under **section 14** in a way that results in an element of personal benefit or potential personal benefit for members of Parliament, members of the Executive, or their family members provided that—
  - (a) the Authority is satisfied that the advantages of determining the entitlement in that way outweigh the disadvantages of determining the entitlement so that any personal benefit or potential personal benefit is excluded; and

- (b) the Authority assesses the value of that benefit and the value is taken into account by the Authority in determining the salaries and allowances of the relevant members of Parliament or members of the Executive under **section 6**; and
- (c) the Authority includes in its determination of the salaries and allowances under **section 6** a statement that sets out—
  - (i) the grounds on which the Authority is satisfied under **paragraph (a)**; and
  - (ii) the value taken into account in fixing the relevant salaries and allowances.

**16 Procedure for making determinations**

- (1) The Authority must notify the following persons of its intention to prepare a determination under **section 14**:
  - (a) the Speaker, in his or her role as chairperson of the Parliamentary Service Commission;
  - (b) the Minister who has, with the authority of the Prime Minister, for the time being assumed responsibility for Ministerial Services (the **Minister Responsible for Ministerial Services**).
- (2) The notice must—
  - (a) invite the Parliamentary Service Commission and the Minister Responsible for Ministerial Services to provide any information or comment that the Commission or Minister may consider relevant to the entitlements to be determined by the Authority; and
  - (b) set out indicative time frames and key steps through to completion of the Authority's determination.
- (3) Before completion of the determination, the Authority must—
  - (a) prepare a draft determination and provide that draft to the Speaker in his or her role as chairperson of the Parliamentary Service Commission, the Minister Responsible for Ministerial Services, and the General Manager of the Parliamentary Service; and
  - (b) call for submissions on the draft determination from the Parliamentary Service Commission and the Minister Responsible for Ministerial Services; and

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- (c) give all members of Parliament, members of the Executive, and parties affected by the determination a reasonable opportunity to give their views on the determination; and
  - (d) have regard to any submissions and views received within any time frames set; and
  - (e) consult with the Commissioner of Inland Revenue about the taxation consequences of the Authority's proposed determination.
- (4) The General Manager of the Parliamentary Service must ensure that the draft determination provided under **subsection (3)(a)** is publicly available as soon as practicable after the General Manager receives it.
- (5) **Subsections (1) to (4)** apply with all necessary modifications to an amendment of a determination under **section 19(4)** as if it were the preparation of a determination.

**17 Authority may request information and independent advice**

The Authority may, at any time during the course of preparing a determination,—

- (a) require the Parliamentary Service Commission, the General Manager of the Parliamentary Service, the chief executive of the department responsible for the administration of entitlements of members of the Executive, any party, or any member of Parliament to provide information it considers necessary for the purposes of enabling it to make its determination;
- (b) obtain advice from any professional adviser or other person whose background or experience the Authority considers may assist it in making its determination.

**18 Publication and status of determinations**

- (1) The Authority must give a copy of every determination made by it under **section 14** to each of the following persons:
- (a) the Prime Minister;
  - (b) the Speaker of the House of Representatives;
  - (c) the Leader of the House;
  - (d) the General Manager of the Parliamentary Service.

- (2) The General Manager of the Parliamentary Service must ensure that a copy of the determination is publicly available as soon as practicable after the General Manager receives it.
- (3) A determination under **section 14** 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.

#### **19 Frequency of adjustments**

- (1) The Authority must make a determination under **section 14** in the 6-month period that ends on the last day of the term of Parliament.
- (2) However, if Parliament is dissolved before the Authority has made a determination in accordance with **subsection (1)**, the Authority must make a determination as soon as practicable after the first meeting of Parliament after the general election.
- (3) A determination continues in force until it is superseded by another determination made in accordance with **subsection (1) or (2)**.
- (4) The Authority may amend a determination at any time while it is in force—
  - (a) to remedy a defect or remove an ambiguity; or
  - (b) to deal with a new matter that was not dealt with at the time the determination was made; or
  - (c) if the Authority is satisfied that in all the circumstances there are particular and special reasons that justify amending the determination.

#### **20 Permanent appropriations for services**

- (1) Expenses may be incurred without further appropriation than this subsection to provide—
  - (a) the services determined under **section 14(1)(a)**, except services that apply only to members of the Executive and their family members; and
  - (b) the services determined under **section 14(1)(b)**.
- (2) Expenses may be incurred without further appropriation than this subsection to provide the services determined under **section 14(1)(a)** that apply only to members of the Executive and their family members.

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- (3) A statement setting out the details specified in **subsection (4)** relating to the services and expenses incurred against the appropriation in **subsection (1)** must be included in the annual financial statements of the Parliamentary Service, in addition to the requirements in section 45B(2) of the Public Finance Act 1989.
- (4) The details referred to in **subsection (3)** are, for each member of Parliament and each party, the total expenses incurred to provide each of the following:
- (a) travel services:
  - (b) accommodation services:
  - (c) communications services:
  - (d) other services determined under **section 14(1)(b)**.
- (5) A statement setting out the details specified in **subsection (6)** relating to the services and expenses incurred against the appropriation in **subsection (2)** must be included in the annual financial statements of the department responsible for administering the entitlements of members of the Executive, in addition to the requirements in section 45B(2) of the Public Finance Act 1989.
- (6) The details referred to in **subsection (5)** are, for each member of the Executive, the total expenses incurred to provide each of the following:
- (a) travel services:
  - (b) accommodation services:
  - (c) communications services.

Subpart 2—Services in respect of  
inter-parliamentary travel

**21 Speaker must determine entitlements to services of members of Parliament participating in official inter-parliamentary travel programme**

- (1) The Speaker must determine the entitlements to travel, accommodation, and communications services in respect of members of Parliament participating in the official inter-parliamentary travel programme.
- (2) Before making a determination under this section, the Speaker must consult with—



- (a) the Attorney-General about the Speaker's own entitlements; and
  - (b) the Commissioner of Inland Revenue about the taxation consequences of the proposed determination.
- (3) A determination made under this section is not a regulation for the purposes of the Acts and Regulations Publication Act 1989 or for the purposes of the Regulations (Disallowance) Act 1989.

**22 Publication of determination**

- (1) The Speaker must provide a copy of every determination made under **section 21** to the General Manager of the Parliamentary Service.
- (2) The General Manager of the Parliamentary Service must ensure that a copy of the determination is publicly available as soon as practicable after the General Manager receives it.

**Part 4**

**Entitlements of former members and  
others and miscellaneous matters**

Subpart 1—Entitlements of former members,  
former Prime Ministers, and others

*Former members' entitlements*

**23 Travel entitlements of former members of Parliament**

- (1) After the commencement of this Act, a person who was a member of Parliament before the 1999 general election, and who is no longer a member of Parliament, may continue to receive the travel entitlements (including those that apply to his or her spouse or partner) set out in **Schedule 2**.
- (2) No travel entitlements in the capacity of a former member may be paid—
  - (a) to a person who was elected as a member of Parliament for the first time at or after the 1999 general election; or
  - (b) in respect of any period as a member of Parliament after 1 November 2008.
- (3) Nothing in **subsection (2)**—

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- (a) prevents a person from receiving any entitlement that continues in respect of a member of Parliament in accordance with a determination of the Authority under **section 14(2)(e)**; or
  - (b) prevents a person from receiving any privilege or benefit that may be provided for him or her in the capacity of former Prime Minister or family member of a former Prime Minister.
- (4) This section is subject to **section 24**.

**24 Disqualification from receiving former member travel entitlements**

- (1) None of the travel entitlements in **Schedule 2** applies to a former member, or the spouse or a partner of a former member, if, at the date that the travel is taken,—
- (a) the former member has been convicted of either of the following committed during any of the periods specified in **subsection (2)**:
    - (i) a crime punishable by imprisonment for a term of 2 years or more;
    - (ii) a corrupt practice; or
  - (b) the former member has been reported by the High Court in its report on the trial of an election petition to have been proved guilty of a corrupt practice and that corrupt practice was committed during any of the periods specified in **subsection (2)**.
- (2) For the purposes of **subsection (1)**, the specified periods are—
- (a) when the former member was a member of Parliament;
  - (b) when the former member was a candidate for initial election or a candidate for re-election, in the period between polling day and declaration day;
  - (c) after the former member left Parliament.
- (3) None of the travel entitlements in **Schedule 2** applies to the spouse or partner of a former member if, at the time that the travel is taken,—
- (a) the spouse or partner has been convicted of either of the following, committed after the former member left Parliament:

- (i) a crime punishable by imprisonment for a term of 2 years or more;
    - (ii) a corrupt practice; or
  - (b) the spouse or partner has been reported by the High Court in its report on the trial of an election petition to have been proved guilty of a corrupt practice and that corrupt practice was committed after the former member left Parliament.
- (4) In this section,—
- corrupt practice** means a corrupt practice within the meaning of the Electoral Act 1993
- declaration day**, in relation to a person,—
- (a) if the person is a candidate for a seat in the House of Representatives representing an electoral district but not on a party list, means the day on which a person (whether that person or some other person) is declared, under section 179 of the Electoral Act 1993, to represent an electoral district; and
  - (b) if the person is a candidate whose name is specified in a party list but not a candidate for a seat representing an electoral district, means the day on which the Chief Electoral Officer declares, under section 193(5) of the Electoral Act 1993, candidates on the party list to be elected; and
  - (c) if the person is both a candidate for a seat representing an electoral district and a candidate whose name is specified in a party list, means the earliest of the following days:
    - (i) the day on which the person is declared, under section 179 of the Electoral Act 1993, to represent the electoral district;
    - (ii) the day on which the person is declared, under section 193(5) of the Electoral Act 1993, elected from the party list;
    - (iii) the first day on which both the following apply:
      - (A) another candidate has been declared, under section 179 of the Electoral Act 1993, to represent the electoral district; and

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- (B) the Chief Electoral Officer has declared, under section 193(5) of the Electoral Act 1993, the candidates entitled to be elected from the party list and the person is not one of those candidates.

**25 Issues concerning former-member travel entitlements to be determined by Speaker**

If an issue arises about a person's eligibility for travel entitlements under **section 23** or about how any provision of **Schedule 2** is to be interpreted or is to apply or operate, that issue must be determined by the Speaker.

**26 Permanent appropriation for travel entitlements of former members of Parliament**

- (1) Expenses may be incurred, without further appropriation than this section, to provide the travel entitlements under **section 23**.
- (2) A statement setting out the details specified in **subsection (3)** relating to the expenses incurred against the appropriation in **subsection (1)** must be included in the annual financial statements of the Parliamentary Service, in addition to the requirements of section 45B(2) of the Public Finance Act 1989.
- (3) The details referred to in **subsection (2)** are the total expenses incurred to provide each type of entitlement in respect of each former member and his or her spouse or partner.

*Former Prime Ministers' entitlements*

**27 Annuity of former Prime Minister and spouse or partner of former Prime Minister**

- (1) If a person has held the office of Prime Minister for not less than 2 years (whether before or after the commencement of this Act, and whether the office was held for a continuous period or for periods totalling 2 years),—
  - (a) that person must be paid an annuity, until he or she dies, at a rate fixed from time to time by the Authority; and
  - (b) the surviving spouse or partner of that person (whether or not that person has died before the commencement of

this Act) must be paid an annuity, until he or she dies, at half the yearly rate at which an annuity would have been payable to the person under **paragraph (a)** had that person not died.

- (2) However, no annuity may be paid to a person under **subsection (1)** in respect of any period during which he or she holds an office for which a salary (other than the salary of an ordinary member of Parliament) is payable under this Act or the **Governor-General Act 2010**.

- (3) Expenses may be incurred, without further appropriation than this section, to provide the annuities under this section.

Compare: 1979 No 33 s 22

**28 Details of expenditure to provide benefits or privileges for former Prime Ministers**

- (1) A statement setting out the details specified in **subsection (2)** relating to any expenses incurred to provide benefits or privileges for former Prime Ministers and their spouses and partners must be included in the annual financial statements of the Department of Internal Affairs, in addition to the requirements of section 45B(2) of the Public Finance Act 1989.

- (2) The statement must show—
- (a) the total expenses incurred to provide each type of benefit or privilege in respect of each former Prime Minister and his or her family members; and
  - (b) against which appropriations in which Votes expenses have been charged.

*Member of Parliament dying in office:  
Entitlements of family members*

**29 Payments to spouse, partner, or dependent children of member of Parliament dying in office**

- (1) This section applies when a member of Parliament dies in office.
- (2) If the member is survived by a spouse or partner, the surviving spouse or partner must be paid as income a sum of money equivalent to the salary payable to an ordinary member of Par-

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liament for the 3-month period starting on the day after the date of death.

- (3) If the member is not survived by a spouse or partner, but is survived by 1 or more dependent children, that child is to be paid as income, or those children are to be paid in equal shares as income, a sum of money equal to the sum referred to in **subsection (2)**.
- (4) Expenses may be incurred, without further appropriation than this section, to meet payments under **subsections (2) and (3)**.
- (5) In a case where a sum of money is payable under this section to a person who is under the age of 18, the sum of money may be paid, by direction of the Speaker, to—
  - (a) that person; or
  - (b) a guardian of, or person caring for, that person to be applied for the maintenance, education, advancement, or benefit of that person.
- (6) The receipt of the guardian or person to whom payment is made is a complete discharge for the payment.

Compare: 1979 No 33 s 23(1)–(4)

*Resolution of conflicting claims to entitlements*

**30 Conflicting claims**

- (1) If more than 1 person claims to be entitled to an annuity under **section 27(1)(b)** or to a payment under **section 29(2)**, an authorised person must decide—
  - (a) whether more than 1 person is entitled to the annuity or payment; and
  - (b) if so, the proportion of the annuity or payment payable to each person entitled to it.
- (2) In this section, **authorised person** means,—
  - (a) in relation to an annuity under **section 27(1)(b)**, a person who has been authorised to make decisions under this section by the Minister who (with the authority of the Prime Minister) is responsible for Ministerial Services; and
  - (b) in relation to a payment made under **section 29(2)**, the General Manager of the Parliamentary Service.

- (3) An authorised person must pay, or arrange for the payment of, an annuity or payment referred to in this section in accordance with any decision made by the authorised person under **subsection (1)**.
- (4) If more than 1 person is entitled to an annuity or payment, the total annuity or payment paid to the persons entitled to it must not exceed the amount that would have been paid if only 1 person were entitled to it.
- (5) If a person who claims to be entitled to an annuity or payment referred to in this section is dissatisfied with a decision made by an authorised person under **subsection (1)**, he or she may appeal against the decision to the High Court.
- (6) The High Court Rules and sections 74 to 78 of the District Courts Act 1947 apply, with all necessary modifications, to an appeal under **subsection (5)** as if it were an appeal under section 72 of that Act against a decision of a District Court.
- (7) The provisions of the Judicature Act 1908 relating to appeals to the Court of Appeal against a decision of the High Court apply to an order or a decision of the High Court on an appeal under **subsection (5)**.

Compare: 1979 No 33 s 27

### Subpart 2—Repeal, revocations, and consequential amendments

#### **31 Civil List Act 1979 repealed**

The Civil List Act 1979 (1979 No 33) is repealed.

#### **32 Determinations revoked**

The following are revoked:

- (a) the Parliamentary Travel, Accommodation, Attendance, and Communications Services Determination (No 2) 2010 (SR 2010/219);
- (b) the Executive Travel, Accommodation, and Communications Services Determination (No 2) 2009 (SR 2009/323).

**33 Consequential amendments**

The Acts specified in **Schedule 3** are amended in the manner set out in that schedule.

Subpart 3—Validation and transitional  
provisions

**34 Validations and savings concerning salary, allowances, and annuities for former Prime Ministers**

- (1) Nothing in this Act affects the validity of a determination made by the Authority under section 16 or 22 of the Civil List Act 1979.
- (2) Despite anything in this Act,—
  - (a) every salary and allowance in respect of which a determination by the Authority has been made under section 16 of the Civil List Act 1979 must continue to be paid at the rate applicable at the commencement of this Act until the determination relating to that salary or allowance has been superseded by a determination of the Authority under **section 6** of this Act; and
  - (b) every annuity in respect of which a determination by the Authority has been made under section 22 of the Civil List Act 1979 must continue to be paid at the rate applicable at the commencement of this Act until the determination relating to that annuity has been superseded by a determination of the Authority under **section 27** of this Act.

**35 Transitional provision concerning services entitlements**

- (1) **Subsection (2)** applies for the transitional period starting on the day after the date on which this Act receives the Royal assent and ending 6 months later.
- (2) The entitlements of members of Parliament, members of the Executive, parties, and qualifying electoral candidates to travel, accommodation, communications, and other services (within the meaning of **section 14**) set out in the following documents are deemed to have been determined by the Authority in accordance with **section 14** to be the entitlements of those persons and parties:



- (a) the document entitled “Directions by the Speaker of the House of Representatives 2010” incorporated by reference in the Parliamentary Travel, Accommodation, Attendance, and Communications Services Determination (No 2) 2010;
  - (b) the document entitled “Travel, Accommodation, and Communications Services Available to Members of the Executive” incorporated by reference in the Executive Travel, Accommodation, and Communications Services Determination (No 2) 2009, as if that document had been amended by inserting the clauses referred to in clause 3(2) of that determination.
- (3) Despite **section 19**,—
- (a) the Authority must make a determination under **section 14** before the end of the transitional period, that comes into force at the end of the transitional period; and
  - (b) the Authority may make a determination amending any entitlement referred to in **subsection (2)** at any time before it makes a determination in accordance with **paragraph (a)**.
-

Schedule 1 **Members of Parliament (Remuneration and Services) Bill**

**Schedule 1**  
**Qualifying electoral candidates**

s 4

The persons in the first column, at the times specified in the second column, are **qualifying electoral candidates**.

<b>Person</b>	<b>Time</b>
1 A person who vacates the office of member of Parliament under section 54(1)(b) or (2)(b) of the Electoral Act 1993 at the close of a polling day and is a candidate in the general election concerned.	Between the close of the polling day and— (a) if the person is a candidate for a seat in the House of Representatives representing an electoral district, the day on which a person (whether that person or some other person) is, under section 179 of the Electoral Act 1993, declared elected to represent the district; or (b) if the person's name is specified in a party list, the day on which, under section 193(5) of the Electoral Act 1993, the Chief Electoral Officer declares candidates to be elected in the election.
2 A candidate at a by-election who is the former member of Parliament and whose vacation of the seat concerned caused the by-election to be required.	Between the close of the polling day and the day on which a person (whether that person or some other person) is, under section 179 of the Electoral Act 1993, declared elected to represent the district concerned.
3 A candidate at a general election for a seat in the House of Representatives representing an electoral district who did not vacate the office of member of Parliament under section 54(1)(b) or (2)(b) of the Electoral Act 1993 at the close of the polling day for the election, if the preliminary results made available by the Chief Electoral Officer on	Between the close of polling day and the day on which a person (whether that person or some other person) is, under section 179 of the Electoral Act 1993, declared elected to represent the district.

**Members of Parliament (Remuneration  
and Services) Bill**

Schedule 1

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<b>Person</b>	<b>Time</b>
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polling day or the day after indicate that—

- |     |   |
|-----|---|
| (a) | he or she received more votes than any other candidate for the seat; or   |
| (b) | he or she is one of 2 or more candidates who received a number of votes that is equal, and greater than the number of votes received by any other candidate for the seat. |
-

Schedule 2

Members of Parliament (Remuneration  
and Services) Bill**Schedule 2**

ss 23, 24

**Travel entitlements of former members of  
Parliament**

Former members' air travel entitlements

- 1 Rebates for travel on scheduled air services payable to former members who were members before 1999 general election**
- (1) A former member of Parliament who was a member before the 1999 general election is entitled to a rebate for travel on scheduled air services undertaken by the former member in accordance with the following rules:
- (a) a rebate is payable in respect of expenditure incurred by the former member personally, and a rebate is not payable where a member's fare is paid from public funds or from any other source;
  - (b) no rebate is payable in respect of any travel undertaken by the former member for private business purposes;
  - (c) where a journey is undertaken for a mixture of personal and private business purposes, the rebate is payable in respect of any portion of the fare that is an additional cost to that which would have been incurred had only the business part of the journey been undertaken;
  - (d) the amount of rebate to which a former member is entitled is the appropriate percentage of the fare that applies to that former member as calculated in accordance with the table below;
  - (e) the fare includes any tax and service fees payable in respect of the travel. It is calculated on the economy or discounted fare for the travel used. If the former member travels business or executive class, the rebate is only on the equivalent economy-class fare for the journey undertaken. It does not include any amounts paid in respect of cancellation fees or accommodation.

**Table of rebates applicable**

<b>Number of complete Parliaments through which former member served</b>	<b>Percentage of fare payable (%)</b>
Less than 2	Nil

28

**Table of rebates applicable**

<b>Number of complete Parliaments through which former member served</b>	<b>Percentage of fare payable (%)</b>
2	If former member has served as a Speaker or as a Minister (not including Parliamentary Under-Secretary): 50 Other cases: nil
2 (and part of a third)	If former member has served as a Speaker or as a Minister (not including Parliamentary Under-Secretary): 50 Other cases: nil
3	60
3 (and part of a fourth)	60
4	75
4 (and part of a fifth)	75
5 or more	90

(2) **Subclause (1)** is subject to **clauses 2 and 3**.

**2 Limitations on rebates for former members' domestic air travel**

- (1) A former member is entitled to a rebate for 12 return air trips between any 2 points within New Zealand in each year.
- (2) For the purpose of **subclause (1)**, a rebate for a one-way trip counts as one-half of a return trip.
- (3) Rebates are paid for open tickets only if the departure date for the first part of the trip is determined at the time the ticket is purchased and it is the date of the return flight that is left open.
- (4) Rebates are paid for travel in respect of the relevant year.

**3 Limitations on rebates for former members' international air travel**

- (1) The total amount paid to a former member by way of rebates for international air travel in each year must not exceed the amount of rebate to which the former member would have been entitled if he or she had flown between Auckland and

Schedule 2  
**Members of Parliament (Remuneration  
and Services) Bill**

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London using an Air New Zealand Online Business Class return air fare as at 1 July in the relevant year.

- (2) Rebates are paid for open tickets only if the departure date for the first part of the trip is determined at the time the ticket is purchased and it is the date of the return flight that is left open.
- (3) Rebates are paid for travel in respect of the relevant year.

Former members' rail, road, and ferry travel  
entitlements

**4 Rail, road, and ferry travel in New Zealand**

- (1) This clause applies to a former member who—
  - (a) was a member before the 1999 general election; and
  - (b) was a member for 3 complete Parliaments or an aggregate of 10 years, whichever is the shorter.
- (2) A former member to whom this clause applies is entitled to—
  - (a) inter-city rail travel, including sleeping berths; and
  - (b) inter-city road travel; and
  - (c) inter-island travel on inter-island ferries.
- (3) The entitlement in **subclause (2)** does not extend to—
  - (a) suburban rail travel; or
  - (b) suburban road travel; or
  - (c) the carriage of a motor vehicle, or the use of a cabin, on an inter-island ferry.

Travel entitlements of former members' spouses  
or partners

**5 Application of clauses 6 and 7**

- (1) **Clauses 6 and 7** apply to a spouse or partner of a former member who—
  - (a) was the spouse or partner of the former member at the time the former member ceased to be a member of Parliament; and
  - (b) is the spouse or partner of the former member at the time of claiming an entitlement under **clause 6 or 7**.
- (2) For the purposes of **clauses 6 and 7**, former member includes a member who dies in office, and who becomes a former member on the date of his or her death.

**6 Domestic and international air travel: spouse or partner entitlement**

- (1) A spouse or partner to whom this clause applies is entitled to a rebate for travel on scheduled domestic and international air services at the same rate and subject to the same conditions as the former member.
- (2) The entitlement in **subclause (1)** continues to apply after the death of the former member.

**7 Rail, road, and ferry travel: spouse or partner entitlement**

- (1) A spouse or partner to whom this clause applies is entitled to the same rail, road, and ferry travel entitlements as the former member.
  - (2) The entitlement in **subclause (1)** continues to apply after the death of the former member.
-

Schedule 3

Members of Parliament (Remuneration  
and Services) Bill**Schedule 3****s 33****Consequential amendments****Goods and Services Tax Act 1985 (1985 No 141)**

Section 6(3)(c)(i): omit “Civil List Act 1979” and substitute “Members of Parliament (Remuneration and Services) Act **2010**”.

**Government Superannuation Fund Act 1956 (1956 No 47)**

Definition of **member** in section 82(1): omit “section 16 of the Civil List Act 1979” and substitute “**section 6** of the Members of Parliament (Remuneration and Services) Act **2010**”.

Definition of **ordinary member** in section 82: omit “Civil List Act 1979” and substitute “Members of Parliament (Remuneration and Services) Act **2010**”.

Definition of **salary** in section 82: omit “Civil List Act 1979” and substitute “Members of Parliament (Remuneration and Services) Act **2010**”.

**Income Tax Act 2007 (2007 No 97)**

Section CW 31: repeal and substitute:

**“CW 31 Services for members and former members of Parliament**

- “(1) Travel, accommodation, and communications services are exempt income if they are—
- “(a) paid in accordance with a determination made under **section 14** of the Members of Parliament (Remuneration and Services) Act **2010**; and
  - “(b) provided to a member of Parliament (including in his or her capacity as a member of the Executive), a qualifying electoral candidate (as defined in **section 4** of that Act), or a family member of one of those persons.
- “(2) The travel entitlements of a former member of Parliament (including the travel entitlements that apply in respect of his or her spouse or partner) are exempt income if they are paid under **section 23** of the Members of Parliament (Remuneration and Services) Act **2010**.”



**Parliamentary Service Act 2000 (2000 No 17)**

Section 3: insert in their appropriate alphabetical order:

“**qualifying electoral candidate** has the same meaning as in **section 4** of the Members of Parliament (Remuneration and Services) Act **2010**

“**Remuneration Authority** means the Authority established by section 4(1) of the Remuneration Authority Act 1977”.

**Section 3A(1)(c) to (f)**: repeal and substitute:

“(c) the provision of services to support members of Parliament (other than services that apply only to members of the Executive Council and services that include electioneering) in accordance with a determination of the Remuneration Authority under **section 14** of the Members of Parliament (Remuneration and Services) Act **2010**:

“(d) the provision of services to support qualifying electoral candidates in accordance with a determination of the Remuneration Authority under **section 14** of the Members of Parliament (Remuneration and Services) Act **2010**.”

Heading to **section 3D**: omit “**under section 20A of Civil List Act 1979**” and substitute “**under section 14 of Members of Parliament (Remuneration and Services) Act 2010**”.

**Section 3D**: omit “by the Speaker under section 20A of the Civil List Act 1979” and substitute “by the Remuneration Authority under **section 14** of the Members of Parliament (Remuneration and Services) Act **2010**”.

Section 4(d): repeal.

Section 7(b): repeal and substitute:

“(b) to administer the payment of funding entitlements for parliamentary purposes; and

“(c) to administer the payment of the travel entitlements of former members of Parliament under **section 23** of the Members of Parliament (Remuneration and Services) Act **2010**.”

Section 8(1)(a): repeal and substitute:

“(a) the nature of the services (other than services required to be determined by the Remuneration Authority under the

Schedule 3 **Members of Parliament (Remuneration and Services) Bill**

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**Parliamentary Service Act 2000 (2000 No 17)**—*continued*

Members of Parliament (Remuneration and Services) Act **2010**) to be provided to the House of Representatives and members of Parliament in the next financial year; and”.

Section 8(3): omit: “or section 7”.

Section 8(3): omit: “section 14(1)(a) or (b)” and substitute “section 14(1)(b)”.

Sections 9A to 9D: repeal.

Section 14(1): repeal and substitute:

“(1) The Parliamentary Service Commission has the following functions:

“(a) to provide information, comment, and submissions to the Remuneration Authority concerning the services to be provided, or that have been provided, to members of Parliament, qualifying electoral candidates, and parties for the purpose of determinations by the Authority under **section 14** of the Members of Parliament (Remuneration and Services) Act **2010**:

“(b) to advise the Speaker on the nature of the services (other than services required to be determined by the Remuneration Authority under the Members of Parliament (Remuneration and Services Act) **2010**) to be provided to the House of Representatives and members of Parliament.”

Heading above section 20: repeal.

Sections 20 to 22: repeal.

**Remuneration Authority Act 1977 (1977 No 110)**

New section 5A: insert after section 5:

**5A Additional members of Authority**

“(1) The Governor-General must, by Order in Council, appoint 2 persons to be additional members of the Authority.

“(2) The additional members must be appointed only in relation to the functions conferred on the Authority by **subpart 1 of Part 3** of the Members of Parliament (Remuneration and Services) Act **2010**.

**Remuneration Authority Act 1977 (1977 No 110)**—*continued*

- “(3) The persons appointed as additional members must have the following qualifications:
- “(a) one must be a person who has been a member of Parliament for not less than 9 years and who is no longer a member of Parliament:
  - “(b) the other must be a person—
    - “(i) who has the appropriate knowledge, skills, and experience to assist the Authority to—
      - “(A) perform its functions under **subpart 1 of Part 3** of the Members of Parliament (Remuneration and Services) Act **2010**; and
      - “(B) ensure that the purpose of that subpart is achieved; and
    - “(ii) who is not a former member of Parliament.”
- “(4) Each additional member must be appointed for a term of 6 years, but may be reappointed.
- “(5) An additional member has the same functions, duties, and powers as a member of the Authority appointed under section 5 of this Act, for the purposes only of the functions in relation to which the additional member is appointed.
- “(6) Subject to **subsection (5)**, and unless the context otherwise requires, a reference in this Act or in any other Act to a member of the Authority must be construed as including a reference to an additional member.”

Section 12(1)(a): omit “Civil List Act 1979” and substitute “Members of Parliament (Remuneration and Services) Act **2010**”.

Section 16(1)(a)(iii): omit “; and”.

Section 16(1)(a): add:

- “(iv) the General Manager of the Parliamentary Service; and”.





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