



COVERSHEET

Minister	Hon Iain Lees-Galloway	Portfolio	Workplace Relations and Safety
Title of Cabinet paper	Remuneration Authority (Members of Parliament Remuneration) Amendment Bill (No 2): Approval for Introduction Remuneration Authority (Members of Parliament Remuneration) Amendment Bill (No 2): Introduction to the House	Date to be published	7 October 2019

List of documents that have been proactively released

Date	Title	Author
20 August 2019	Remuneration Authority (Members of Parliament Remuneration) Amendment Bill (No 2): Approval for Introduction	Office of the Minister for Workplace Relations and Safety
20 August 2019	Cabinet Legislation Committee: Minute of Decision	Cabinet Office
26 August 2019	Remuneration Authority (Members of Parliament Remuneration) Amendment Bill (No 2): Introduction to the House	Office of the Minister for Workplace Relations and Safety
26 August 2019	Cabinet: Minute of Decision	Cabinet Office

Information redacted

NO

In Confidence

Office of the Minister for Workplace Relations and Safety

Chair, Cabinet Legislation Committee

Remuneration Authority (Members of Parliament Remuneration) Amendment Bill (No 2): Approval for Introduction

Proposal

1. This paper seeks agreement to:
 - 1.1. amend the *Remuneration Authority Act 1977* (the Act) and the *Members of Parliament (Remuneration and Services) Act 2013* (the MP Act) to establish a new process for how the Remuneration Authority (the Authority) sets the salaries of Members of Parliament (MPs); and
 - 1.2. introduce the *Remuneration Authority (Members of Parliament Remuneration) Amendment Bill* (the Bill) to the House of Representatives.

Executive summary

2. The Authority is an independent body responsible for determining the salaries of key public office holders such as MPs, the Governor-General and judicial officers. Prior to 2015, the Authority had the discretion to set the remuneration of all these public office holders using criteria in the Act. The Act was amended in 2015 to detach the process for MPs' salaries from other types of office holders by removing the Authority's discretion and linking MPs' salaries to public sector wage increases through a fixed formula. However, these amendments had the opposite intended effect and the fixed formula generated higher pay increases for MPs than for other public office holders.
3. In 2018 the Parliament froze MPs' salaries after concerns about the proposed magnitude of the pay increase generated by the formula. Cabinet also directed officials to provide advice to me on whether there were any underlying issues in the way MPs' pay was set under the Act. I am now proposing changes as outlined in the Bill.
4. The Bill restores the Authority's discretion to determine MPs' salaries based on criteria. Other public office holders – whose salaries were adjusted based on criteria rather than the formula – were receiving smaller pay increases than MPs.
5. The Bill will link the Authority's reviews to the electoral cycle so that a review must commence within three months of the return of the writ of a general election. This review will set MPs' pay for each year of that term of Parliament. Under this proposal, the Authority would conduct one review after each General Election, and would set MPs' pay for the entire term of parliament specified on a year-by-year basis.

6. The Bill also amends the MP Act to restore the requirement for the Authority to consider the value of the personal benefit arising out of entitlements when setting MPs' salaries.
7. The Authority now has the information necessary to make a determination in accordance with the current formula in the Act. It is desirable that they make a determination using the new criteria. I propose that the Bill is introduced as soon as possible after Cabinet decisions.

The Authority is responsible for determining the salaries of MPs and must use a formula introduced in 2015

8. The Authority is responsible for determining the remuneration (salary, fees, certain allowances, and superannuation) of key public office holders including MPs, judicial officers, and local government elected officials. The Act specifies how the Authority reviews and determines the remuneration of these office holders.
9. MPs' pay is a matter of considerable public interest. The Act has been amended a number of times over the past ten years.
10. Prior to 2015, the Authority had the discretion to determine the salaries of all key office holders after considering criteria specified in sections 18 and 18A of the Act. In 2015, the Act was amended to link MPs' salaries to the percentage increases in the average weekly wages of public servants through a fixed formula. The Government at the time changed the formula with the intent of reining in pay increases for MPs.

The Act was generating high pay increases for MPs and change was needed

11. The 2015 amendments resulted in higher percentage increases (and therefore dollar increases) to MPs' salaries than the previous criteria-based approach. From 2015 to 2018, pay increases have ranged from 2.5 to 4 per cent per year, compared to average increases of 1.7 per cent for 2011 to 2014.
12. **Table 1** shows that other than 2015, other key office holders – whose pay adjustments were based on the criteria rather than the formula – received smaller increases than MPs. This provides a rough estimate of how much MPs' pay could have increased in the absence of the 2015 amendments. Although the circumstances of each role are different, it suggests that the 2015 amendments may have contributed to higher pay increases for MPs.

Table 1: Comparison of pay increases of MPs and other key office holders

	2014/15	2015/16	2016/17	2017/18	2018/19
MPs	1.52%	3.12% - 4.06%	2.49%	2.46%	0.00% ¹
Statutory Officers	1.90 - 4.00%	<2.00%	1.70%	1.60%	1.31%
Judiciary	3.50 - 4.00%	2.00%	1.70%	1.90%	1.06%
Local Authorities	-	1.50 - 3.00%	1.70%	1.70%	3.50%
Former Prime Ministers	1.50%	3.00%	1.80%	1.50%	1.50%
Governor-General	3.60%	1.75%	1.70%	1.90%	1.40%

¹ The Government froze MP's pay in 2018. The Authority informed the Government of a 3.08% MP pay increase.

13. In 2018, the Government was informed by the Authority that the 2018 review on MPs' salaries would have resulted in a pay increase of 3.08 per cent for MPs. The Government did not consider this increase was justifiable, and I led urgent legislation to freeze MPs' salaries for a year. Cabinet directed officials provide further advice to me on whether there were any underlying issues in the way MPs' pay was set under the Act, prior to the Authority's 2019 determination on MPs' pay [CAB-18-MIN-0404]. I am now proposing changes to the Act.

Amendments to the Act should be made as soon as possible to mitigate the risk of the Authority issuing the 2019 determination under the current Act

14. The freeze on MPs' pay expired on 30 June 2019. This means the Authority has an obligation to review and make a determination (using the current formula) on MPs' pay for the period 1 July 2019 to 30 June 2020. The data the Authority requires to implement the formula has been released by Statistics New Zealand. It is therefore important to move quickly to pass the legislation to address this.

The Bill will amend how MPs' salary determinations are made and the frequency

I propose to amend the method for how the Authority determines MPs' salaries by restoring the Authority's criteria-based discretion

15. In 2015, the Act was amended to link the increase to MPs' pay to the percentage increase in the average weekly wages of public servants.
16. The Bill returns the Act to the pre-2015 position, meaning the Authority will have the discretion to adjust MPs' salaries based on criteria already specified in the Act. This would align the review of MPs' pay with the reviews the Authority conducts for other key office holders. The criteria prescribed in the Act are:
 - 16.1. the need to achieve and maintain fair relativity with the levels of remuneration received elsewhere;
 - 16.2. the need to be fair both to the people whose remuneration is being determined and taxpayers or ratepayers;
 - 16.3. the need to recruit and retain competent persons;
 - 16.4. the requirements of the position concerned;
 - 16.5. the conditions of service enjoyed by people in comparable situations; and
 - 16.6. any countervailing economic conditions (eg an economic recession).

I propose to amend the frequency of reviews by linking them to the electoral cycle

17. In 2015, the Act was amended to require the Authority to conduct a review and determination at intervals of no more than 12 months in respect of each period of 12 months ending on 30 June (ie 1 July of a certain year to 30 June the following year).
18. The Bill changes the frequency of reviews and links it to general elections, so that a review must commence within three months of the return of the writ of a general

election. Under this proposal, the Authority would conduct one review after each General Election, and would set MPs' pay for the entire term of parliament specified on a year-by-year basis.

The proposals above require amendments to the *Members of Parliament (Remuneration and Services) Act 2013* (the MP Act)

19. The Bill makes consequential amendments to the MP Act to reflect the new method for determining MPs' salaries described above.
20. The Bill also amends the MP Act so that the Authority is again required to take into account the value of the personal benefit of existing entitlements. Currently, when fixing salaries, the Authority is only required to take into account the value of any change in personal benefit if there has been a change in entitlements. The requirement was removed in 2015 because of the complexity of including it in combination with the new salary calculation formula. I propose to reintroduce it, as I consider that excluding the value of these entitlements may result in higher pay increases than the Government intends when the formula-based method is repealed.

The Authority will make the 2019 determination on MPs' pay under the new system

21. The proposals under the Bill apply retrospectively from 1 July 2019. Since the pay freeze expired on 30 June 2019, the Bill requires the Authority to review and issue a determination under the new criteria. The determination would apply from 1 July 2019 until polling day of the next general election. From there, the new frequency requirements would apply.

Risks

22. Returning to the criteria-based discretion system means that, ultimately, the independent Authority has the discretion to determine MPs' salaries after considering the required criteria in the Act. This is the criteria that led to higher than desired (by the then-Government) pay increases in 2015 and which resulted in the Government amending the Act. There is a risk that the Authority's discretion may lead to significant pay increases for MPs.
23. However, I note that the discretion system in place prior to 2015 resulted in lower MP pay increases than the formula system. Under the formula system, MPs' pay increases have ranged from 2.46 per cent to 4.06 per cent per year, compared to average increases of 1.7 per cent in the four years prior to the 2015 amendment. The discretion system, which currently applies to other public office holders, also resulted in lower pay increases compared to MPs from 2015 to 2018 (see **Table 1**).

Financial implications

24. It is difficult to quantify the exact fiscal impact, given that the proposal will return discretion to the Authority for the purpose of determining MPs' salaries. However, as noted earlier in this paper, the criteria-based discretion system may result in lower pay increases for MPs than would otherwise be the case.

Impact analysis

25. The Regulatory Quality Team at Treasury determined that the proposal in this paper is exempt from the Regulatory Impact Analysis requirements as it has no or only minor impacts on business, individuals or not-for-profit entities.

Compliance

26. The Bill complies with the:
 - 26.1. the principles of the Treaty of Waitangi;
 - 26.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 26.3. the disclosure statement requirements (which is attached to this paper);
 - 26.4. the principles and guidelines set out in the *Privacy Act 1993*;
 - 26.5. relevant international standards and obligations.
27. There is a general constitutional principle in the *Legislation Guidelines (2018 edition)* by the Legislation Design and Advisory Committee that legislation should have prospective effect and should not interfere with accrued rights. The Bill will have a retrospective effect as it will change an existing right. MPs have the right to have their salaries determined in accordance with the formula from 1 July 2019. The Bill changes this right by amending the process for how the Authority reviews and determines MPs' salaries from 1 July 2019. However, the retrospective effect is minimised if the change is enacted prior to the Authority's determination. The Bill otherwise complies in all other respects with the Legislation Design and Advisory Committee's Legislation Guidelines.

Consultation

28. The State Services Commission, Ministry of Justice, Department of Internal Affairs, Treasury, Parliamentary Service, Office of the Clerk and Stats NZ were consulted on this paper and the Bill.
29. The independent Authority was also consulted on this paper and the Bill.
30. Stats NZ note that the Authority could seek advice from the Government Statistician on appropriate wage and income measures. This is particularly relevant when considering the criteria to 'achieve and maintain fair relativity with the levels of remuneration received elsewhere'.
31. Parliamentary Service notes that it is currently conducting a joint review of the MP Act with the Department of Internal Affairs as required under section 67 of the MP Act. This review must be completed before the end of this term of Parliament and may result in recommendations to the Speaker and the Minister Responsible for Ministerial Services on whether any amendments to the MP Act are desirable or necessary. I understand the mechanism for adjusting MPs' pay is largely outside the

scope of the review being led by Parliamentary Service so I do not anticipate any overlap with the issues in this paper.

32. Parliamentary Service also notes that, as a matter of principle, it does not consider that MPs' entitlements and salaries should be so explicitly linked. It considers that MPs are in a unique position of having two places of work (their electorate or home base, and Parliament). MPs' entitlements are not akin to expenses or salaries for employees, as their value is only realised when an MP takes them up. They are merely funding entitlements for the cost of doing business and are not a financial reward for taking up the role. Entitlement levels vary greatly based on the member's individual circumstances and it could be viewed as penalising members who either had fewer or no entitlements paid to them, or could potentially result in unintended consequences for decisions about changes to entitlements, or could potentially result in unintended consequences for decisions about changes to entitlements.

Binding on the Crown

33. The amendments are binding on the Crown.

Definition of Minister/department

34. The Bill does not contain a definition of Minister, department (or equivalent government agency), or chief executive of a department (or equivalent position).

Commencement of legislation

35. The Bill will come into force on the day after the date of Royal assent.

Parliamentary stages

36. I propose to introduce the Bill as soon as possible after Cabinet agreement.
37. I propose that the Bill is referred to the Education and Workforce Committee for a truncated period of two months and through all other stages as normal.

Publicity

38. After Cabinet decisions, I intend to announce the proposals, including the introduction of the Bill to the House. It is preferable that announcements are made as soon as possible to mitigate any communications risks. The announcement may be controversial, in part due to the lack of opportunity for public submissions to be made on the proposal. I consider any risk can be mitigated through clear and proactive communications.

Proactive Release

39. I intend to proactively release this Cabinet paper on the Ministry of Business, Innovation and Employment website subject to any necessary redactions, in a timely manner following consideration by Cabinet.

Recommendations

The Minister for Workplace Relations and Safety recommends that the Committee:

1. **note** the Remuneration Authority is an independent body responsible for determining the remuneration of key public office holders including Members of Parliament (MPs), the Governor-General, judicial officers and elected local government officials;
2. **note** that for all office holders except MPs, the Remuneration Authority currently has the discretion to determine pay, based on criteria in sections 18 and 18A of the *Remuneration Authority Act 1977*;
3. **note** the current system for determining MPs' pay (based on public sector wage increases) is leading to higher pay increases than the previous criteria-based approach, and that since 2016 MPs have received higher pay increases than other office holders;
4. **note** the Remuneration Authority's next determination for MPs' salaries will take effect from 1 July 2019, and that from 6 August 2019 the Authority can begin more intensive work on this determination;

Agreement to policy

5. **agree** that the Government amend the *Remuneration Authority Act 1977* (the Act) to restore the Remuneration Authority's discretion based on criteria in sections 18 and 18A to set the rate of MPs' pay;
6. **agree** the Remuneration Authority will be required to set MPs' salaries only once in each term of Parliament;
7. **agree** that the Remuneration Authority must commence a review within three months of the return of the writ after a general election and that the determination from this review applies from the day after the polling day of that general election, and would set the pay for the entire term of parliament specified on a year-by-year basis;
8. **agree** that the Government amend the *Members of Parliament (Remuneration and Services) Act 2013* to restore the requirement for the Remuneration Authority to consider the value of the personal benefit to members and their families when setting MPs' salaries;
9. **agree** to make consequential amendments to the *Members of Parliament (Remuneration and Services) Act 2013* to reflect these changes;
10. **agree** that the Remuneration Authority will be required to review and make a determination for the salaries and allowances of MPs applying from 1 July 2019 until polling day of the next general election, based on the criteria specified under the Act;
11. **note** there is a risk that returning to this system will not necessarily result in lower pay increases and does not prevent the Authority, which is independent, from determining high pay increases;

Agreement to introduce the Bill to the House

12. **note** that the *Remuneration Authority Amendment Bill* holds a category 2 priority on the 2019 Legislation Programme, to be passed this year;
13. **note** that the Bill implements the proposals in recommendations 5 to 10 above;
14. **approve** the Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
15. **agree** the Bill be introduced as soon as possible after Cabinet's agreement;
16. **agree** that the Bill be referred to the Education and Workforce Committee for a truncated period of two months and through all other stages as normal;

Other matters

17. **note** that the proposals in the Bill will have financial implications which are difficult to quantify but which are intended to constrain the level of future MP salary adjustments;
18. **note** that a Regulatory Impact Analysis is not required; and
19. **note** that the Minister for Workplace Relations and Safety will publicly announce the proposals, including the introduction of the Bill to the House.

Authorised for lodgement

Hon. Iain Lees-Galloway
Minister for Workplace Relations and Safety