



INSERT SECURITY CLASSIFICATION

## Amendment to the Remuneration Authority Act 1977

**Date:** 23 April 2020  
**Report No:** SSC2020/0074  
**Contact:** Hannah Cameron, Deputy Commissioner  
**Telephone:** 9(2)(a) [REDACTED]

	Actions Sought	Due Date
<b>Hon Chris Hipkins, Minister of State Services</b>	Agree policy to inform legislative drafting	24 April 2020

Enclosure: No

### Executive Summary

1. This report seeks confirmation of policy detail regarding the proposed amendment of the Remuneration Authority Act 1977 in order to implement salary reductions as announced by the Prime Minister
2. Following your approvals, Parliamentary Counsel Office will finalise the first draft of a Bill for limited consultation with officials
3. We intend to provide the draft Bill and accompanying Cabinet paper for your approval and lodging for Cabinet consideration before the end of next week.

### Minister's Office Comments

<b>Comments:</b>	
<b>Date returned to SSC:</b>	

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**Recommended Action**

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We recommend that you:

- a **agree** that a Bill will be prepared to make two sets of amendments to the Remuneration Authority Act 1977 as follows.
  - Ministers will be legally able to self-initiate a pay reduction of up to 20% for six months, or until a new Government takes office, whichever is the later.
  - For other officers. The Remuneration Authority will, for a time limited period, be given the ability to make a new determination that results in a reduction in pay of no more than 20% for 6 months.

Agree/disagree.

The provisions in the second bullet point should apply to everyone. The Rem Authority will have discretion for all, and we trust they will adhere to the Cabinet decision to seek a 20% pay cut for Ministers. CH

- b **note** that the approach for Ministers will not result in a new determination from the Remuneration Authority

- c **indicate** in appendix 1 your decisions regarding the application of these amendments to different groups of officers whose remuneration is set by the Remuneration Authority **Include all of groups A, B and C but none of D and E.**

- d **agree** the duration of the amendments and other timeframes as outlined in paragraph 17

Agree/disagree.

- e **note** that we do not recommend any changes to the Remuneration Authority's criteria or process as part of this amendment.

- f **agree** to limited consultation on the draft Bill with officials from DIA and MBIE, and also with the Remuneration Authority and Parliamentary Services, prior to Cabinet consideration.

Agree/disagree.

- g **agree** that the SSC release this briefing in full following the introduction of relevant legislation to Parliament.

Agree/disagree.



Hon Chris Hipkins  
**Minister of State Services** 23/4/20

## SSC Report: Remuneration Authority

### Purpose of Report

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1. Following discussion at Cabinet Business Committee on 15 April (CBC 20-MIN-0043 refers), this paper seeks confirmation of the detailed policy regarding changes to the Remuneration Authority Act 1977 to enable pay reductions for certain senior leaders.

### Analysis

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2. The Attorney General has given his permission for Parliamentary Counsel to draft a Bill to amend the Remuneration Authority Act 1977 and Local Government Act 2002 in order to enable the pay reductions announced by the Prime Minister.

### The Remuneration Authority

3. The pay of Ministers, alongside many other public officers, is set according to the Remuneration Authority Act 1977. The underlying policy for the current arrangements is to de-politicise the setting of pay for public and statutory officials.
4. The Remuneration Authority (the Authority) is able to freeze pay if this is an appropriate determination following a consideration of the criteria in the Act, including the economic climate and pay movements elsewhere.
5. The Authority is not allowed to make a determination that reduces an individual's pay – and the organisations making the payments must pay according to the determination.
6. We have identified two potential approaches to the legislative mechanisms:
  - a. Amend the Remuneration Authority Act 1977 to temporarily allow the officers to self-initiate a reduction in pay, or
  - b. Amend the Remuneration Authority Act 1977 to temporarily allow the Authority to make new determinations that result in a decrease in pay.
7. Our advice has been that the self-initiated approach, would allow officers to make a voluntary choice regarding the reduction of their pay. This approach enables leaders to send a strong leadership message. We have already seen a commitment by many public sector leaders to have a reduction in pay. We have further advised that this approach may not be appropriate for all the officers covered by the Act.
8. The Authority believes that any pay reduction should have the authority of an appropriate declaration in the case of the public service and wider State sector, and an amending determination for those covered by the Authority. They support an option that provides them with the ability to reduce pay during the restraint period.

### Amendment of the Remuneration Authority Act

9. You have indicated a preference for a two-part amendment as follows.
  - a. Ministers and the Prime Minister will have the ability to self-initiate a pay reduction of up to 20% for six months (or until a new Government takes office, whichever is the later). The acceptance of this reduction will sit with the individual in question. This

means that even though Cabinet has agreed an approach; each individual will still have to self-initiate steps to nominate whether they are accepting a pay reduction, and the size of any change. The notice would only bind that person, not any successor to the same role.

- b. For other officers. The Authority will, for a time limited period, be given the ability to make a new determination that results in a reduction in pay so that:
  - i. Any decrease cannot be more than 20% of the pre-amendment determination.
  - ii. If a determination is less than the pre-amendment determination, after 6 months it automatically reverts to the pre-amendment amount.
  - iii. The amount of the reduction will be considered as part of their usual framework.

### Detailed matters for your confirmation or consideration

#### *Risk of the two-part approach*

10. We note that the self-initiated approach will not change existing determination in relation to Ministers. This means that the amendments could result in the Authority making determinations that reduce the salaries payable to every member of Parliament except Ministers. This could create an enlarged gap between the salaries of Ministers and non-Ministers on the face of the determination. We recommend that this is managed through clear communications about the leadership intent of the pay reduction by Ministers.

#### *Scope of application*

11. The table at appendix 1 sets out all the officers that are covered by the Remuneration Authority, and how the proposed amendments will apply. We are asking you to denote on this table your preferences in application.
12. We understand that you propose the self-initiated mechanism will apply only to Ministers and the Prime Minister (Group A in the table). We understand that this is due to consideration of the appropriateness of Cabinet making decisions regarding the pay reductions of other officers. The voluntary mechanism will place public and media pressure on officers to accept the reduction. **We need you to confirm that this includes Parliamentary Under Secretaries.**
13. We recommend that you further consider the small number of other leaders (Group B in the table) who sit within the Executive branch for this self-initiated approach. These officers have already indicated a commitment to take a pay cut in line with their Public Service Chief Executive colleagues, and therefore would not come under inappropriate public pressure. They are also part of the Executive and therefore there is reduced need for clear separation from the decisions made by Ministers. **We are asking you to confirm which legislative mechanism should apply to this group.**
14. In terms of the scope of the amendment which will enable the Authority to consider pay reductions, we recommend that this applied to Group C which includes MPs, Crown Entities, Parliamentary staff and Mayors, Chairs and Members of Local Authorities.

15. There is also an additional group of officers in the wider state sector who play a semi-judicial role or operate at a local community board level (Group D in the table). The proposed pay reduction does not appear as relevant or appropriate for these officers. On the other hand, it may be appropriate to leave it to the Authority to make this determination. **We recommend that you review the officers in this group and indicate whether they should be included.**
16. We do not recommend that Group E, the Judiciary and the Governor-General are included. Consideration of the pay of these officers raises constitutional questions and would also require amendment of additional legislation.

*Duration of the change.*

17. This is intended to be an immediate response to the current circumstances. We therefore recommend that the following time limits are built into the legislation:
- a. The Authority would need to make any new determinations that result in a change before 30 June 2020. The new determination cannot be back dated. The Remuneration Authority have indicated that they can meet this timeframe.
  - b. Following the six month reduction in pay, the officer's salary would revert to the previous amount prior to the reduction and no further determination can be made that is less than the pre-amendment determination
  - c. The amendment will be repealed on 31 January 2021.
  - d. Ministers will need to give notice to seek their pay reduction before 30 June 2020.
18. We need to undertake further consultation with Parliamentary Services to determine when the change to Ministers' pay will take effect. We will seek to enable this reduction to be backdated to the date of enactment.

*Remuneration Authority process including consultation with officers*

19. We have considered the process whereby the Authority will consult individuals and how they can apply their criteria to take into account individual circumstances, this is important if, for example, the Authority were considering a pay reduction in the instance where an officer has already committed part of their salary to charity.
20. The Remuneration Authority's criteria include the following relevant criteria that can be used to consider remuneration reductions:
- a. Prevailing adverse economic conditions (s18A Remuneration Authority Act)
  - b. Fairness to both the person whose remuneration is being determined and the taxpayer or ratepayer (s18 Remuneration Authority Act and cl 7 of schedule 7 Local Government Act 2002)
21. To determine fairness, the Authority consults with the person whose remuneration is being determined. Although the Authority would usually make a group determination for, for example, all members of the Law Commission, it is able to make personal determinations if one member had made a charitable donation but others had not.

22. On this basis we do not recommend any changes to the Authority's criteria or process as part of this amendment.

### **Next Steps**

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23. Parliamentary Counsel Office have already commenced drafting the Bill.

24. We recommend limited consultation of the draft Bill to ensure accuracy and workability prior to Cabinet consideration. We seek your approval to consult with

- a. MBIE (officials responsible for the administration of the Remuneration Authority Act)
- b. DIA (officials responsible for the Local Government Act and Ministerial Services who are responsible for provide instructions regarding Ministerial pay)
- c. Parliamentary Services (who are responsible for implementing payroll changes for Ministerial and MP pay)
- d. The Remuneration Authority

25. Following this consultation process, we will provide you with a draft Bill and Cabinet paper for lodgement.

RELEASED BY SSC UNDER OUR COMMITMENT TO OPEN GOVERNMENT

## Appendix 1 - Positions/Bodies Subject to the Remuneration Authority Act

	<b>Positions</b>	<b>Proposed treatment</b>
<b>Group A</b>	<p><b>Members of the Executive –</b> The Prime Minister, Deputy Prime Minister, Ministers. Parliamentary Undersecretaries</p>	<p>Officer allowed to self-initiate pay reduction <i>Agree / Disagree</i></p>
<b>Group B</b>	<p><b>Other leaders who are part of Executive branch –</b> The Solicitor-General The State Services Commissioner and Deputy State Services Commissioner The Commissioner of Police The Chief of Defence Force The Chief Parliamentary Counsel.</p>	<p><i>Either</i> Officer allowed to self-initiated pay reduction <i>Or</i> Remuneration Authority to be enabled to consider pay reduction</p>
<b>Group C</b>	<p><b>Members of Parliament</b> Members of Parliament other than the Prime Minister, Deputy Prime Minister, other Ministers of the Crown and Parliamentary Undersecretaries</p> <p><b>Officers of Parliament and Related Officers –</b> The Controller and Auditor-General and the Deputy Controller and Auditor-General The Ombudsmen The Parliamentary Commissioner for the Environment The Chief Executive of the Parliamentary Service The Clerk of the House of Representatives and the Deputy Clerk of the House of Representatives.</p> <p><b>Other Police &amp; Defence Forces –</b> the Chief of Navy, the Chief of Air Force, the Chief of Army The Deputy Commissioner of Police.</p> <p><b>Local Government Elected Officials–</b> Mayors, deputy mayors, chairpersons, and members of local authorities</p> <p><b>Independent Crown Entities and Corporations Sole –</b> The Retirement Commissioner The Children's Commissioner the Privacy Commissioner and Deputy Privacy Commissioner The Health and Disability Commissioner, the Mental Health Commissioner and Deputy Health and Disability Commissioners The Chief Censor of Film and Literature and the Deputy Chief Censor of Film and Literature</p>	<p>Remuneration Authority to be enabled to consider pay reduction</p> <p><i>Agree / Disagree</i></p>

	<p>Members of:</p> <ul style="list-style-type: none"> <li>the Commerce Commission (and associate members),</li> <li>the Broadcasting Standards Authority,</li> <li>Drug Free Sport New Zealand,</li> <li>the Electricity Authority,</li> <li>the Electoral Commission,</li> <li>the External Reporting Board,</li> <li>the Financial Markets Authority (and associate members),</li> <li>the Climate Change Commission,</li> <li>the Human Rights Commission (and alternate members) and the Director of Human Rights Proceedings or his or her alternate,</li> <li>the Law Commission,</li> <li>the Takeovers Panel,</li> <li>the Transport Accident Investigation Commission,</li> <li>the Criminal Cases Review Commission,</li> <li>the Electricity Authority,</li> <li>the New Zealand Productivity Commission.</li> </ul> <p><b>The Māori Trustee.</b></p>	
<p><b>Group D</b></p>	<p><b>Local Government–</b></p> <ul style="list-style-type: none"> <li>Chairpersons and members of community boards and committees of community boards</li> <li>Chairpersons and members of local boards and committees of local boards</li> <li>Members of the Masterton Trust Lands Trust</li> </ul> <p><b>Semi Judicial Bodies –</b></p> <ul style="list-style-type: none"> <li>The members of the Independent Police Conduct Authority</li> <li>The members of the Sports Tribunal of New Zealand</li> <li>The members of the Waitangi Tribunal</li> <li>The adjudicator of the Motor Vehicle Disputes Tribunal appointed under section 83 of the Motor Vehicle Sales Act 2003</li> <li>The chair of the tribunal under the Weathertight Homes Resolution Services Act 2006</li> <li>The Chief of the Employment Relations Authority, members of the Employment Relations Authority to whom a delegation has been made under section 166B of the Employment Relations Act 2000, and other members of the Employment Relations Authority</li> </ul>	<p><i>Either</i></p> <p>Do <u>not</u> include within the proposed amendments</p> <p><i>Or</i></p> <p>Remuneration Authority to be enabled to consider pay reduction</p>

	<p>The Commissioners of Intelligence Warrants</p> <p>The Chief Community Magistrate</p> <p>The Inspector-General of Intelligence and Security and the Deputy Inspector-General of Intelligence and Security</p> <p>The Principal Disputes Referee</p> <p>The Principal Tenancy Adjudicator and the Deputy Principal Tenancy Adjudicator</p> <p>The Registrar of the Court Martial</p> <p>The Registrar of the Summary Appeal Court of New Zealand</p> <p>Electricity Rulings Panel</p> <p>Judicial Conduct Commissioner and Deputy Judicial Conduct Commissioner</p> <p>The members of a Judicial Conduct Panel (other than a Judge)</p> <p>The Chairperson of the New Zealand Parole Board and Panel Convenors who hold a warrant as a District Court judge or a Judge of the High Court</p>	
<p><b>Group E</b></p>	<p><b>The Judiciary</b></p> <p>The Chief Justice, the other Judges of the Supreme Court, the President of the Court of Appeal, the other Judges of the Court of Appeal, the Chief High Court Judge, and the other Judges of the High Court</p> <p>The appointed Judges of the Court Martial Appeal Court</p> <p>The Chief District Court Judge, the Principal Family Court Judge, the Principal Youth Court Judge, the Principal Environment Judge, and the other District Court Judges</p> <p>The Chief Judge of the Court Martial and the other Judges of the Court Martial</p> <p>The Chief Judge of the Employment Court and the other Judges of the Employment Court</p> <p>The Chief Judge and the Deputy Chief Judge of the Maori Land Court and the other Judges of the Maori Land Court</p> <p>The Associate Judges of the High Court</p> <p>The Chief Coroner, the Deputy Chief Coroner, and the other coroners (excluding District Court Judges who are coroners)</p> <p><b>Governor General Act</b></p> <p>Governor-General and former Governors-General and their spouses</p>	<p>Do <u>not</u> include within the proposed amendments</p> <p><i>Agree / Disagree</i></p>