

Remuneration Authority Amendment Bill PCO 18968/4.0

6 March 2015

Attorney-General

Remuneration Authority Amendment Bill PCO 18968/4.0

Our Ref: ATT395/224

I have reviewed this Bill which is scheduled for urgent introduction next week and could find no inconsistency with the New Zealand Bill of Rights Act 1990.

If passed, the Bill will alter the method by which the Remuneration Authority sets the salaries of Members of Parliament. It leaves untouched the method applied to other salaries set by the Remuneration Authority, including judicial salaries. Future determinations of salaries for Members of Parliament will be linked to the Labour Cost Index applicable to public sector salaries.

None of the rights guaranteed by the Bill of Rights Act have any application to the setting of salaries of Members of Parliament by the Remuneration Authority.

The Bill's transitional provisions would also have the effect of revoking the Parliamentary Salaries and Allowances Determination 2015 recently made by the Remuneration Authority and due to be implemented on 25 March 2015 with backdated effect from 1 July 2014. As a temporary measure the 2013 determination will be deemed to have continuous effect as from 1 July 2014 and apply until such time as the Remuneration Authority can make a new determination for that period applying the amended formula.

Although of retrospective effect the Bill does not purport to interfere with any existing proceedings in respect of the Authority's 2015 determination, whether by judicial review or otherwise so there is no question of any limitation of the right guaranteed by s 27(3) to bring proceedings against the Crown. No such proceedings are in existence but even if they were there would be no self-evident limitation. Section 27(3) guarantees only procedural equality in litigation. It does not guarantee that the prospects of success in litigation will not be disturbed by Parliament changing the law.

At the time of preparing this advice, the Bill is still under discussion between officials. We do not anticipate subsequent versions of the Bill to have any effect on this advice but will notify your office immediately of any significant changes. This advice has been peer reviewed by Senior Crown Counsel Paul Rishworth.

Austin Powell

Senior Crown Counsel

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