

Report into a review by the Remuneration Authority of its approach to determining the salary of the Governor-General

Background

1. Up until August 2011 the Remuneration Authority (the Authority) was responsible, under the Civil List Act 1979, for determining the salary of the Governor-General. In late 2009, the Law Commission completed a review of the Civil List Act 1979 in which it recommended that the matters relating to the Governor-General be placed into a separate piece of legislation. That resulted in Parliament passing the Governor-General Act 2010 (the Act). The Act continued the requirement for the Governor-General's salary to be determined by the Authority.
2. The Authority only determines the salary of the Governor-General, not other conditions because the Act only uses the word "salary". The word remuneration is not used (remuneration is defined in the Remuneration Authority Act 1977 (the RA Act) and includes other items in addition to salary).

2010 changes

3. A significant change to the Governor-General's salary was implemented in conjunction with the passing of the Act. Prior to 2010, the salary was paid free of income tax; the change required income tax to be paid. The salary was 'grossed up' to facilitate this requirement without any reduction in net salary received by the Governor-General.
4. There were many other considerations at that time, changes had been made to allowances and other matters affecting the Governor-General's work, allowances and remuneration. The Authority took all those matters into account, including adding an amount to salary to compensate for some lost financial benefits, and produced the first determination of the Governor-General's salary under the Act in August 2011.
5. There was a high level of complexity in the changes and the Authority focussed on the impact of those matters at the time. No formal review was conducted relating to the salary setting processes used by the Authority nor whether the base salary amount was appropriate.
6. Each year since 2011 (except one year during the COVID-19 pandemic when section 18A of the RA Act was invoked to provide no increase) the Governor-General's salary had been increased by a percentage similar to increases the Authority had applied to key public office holders for whom it is the determining authority.

Formal review

7. Because: (i) there was no formal review of the base salary during the 2010 changes; and (ii) public sector style increases had been applied since 2010; and (iii) it is 13 years since the passing of the Act, the Authority in July 2023 decided to formally review both the process that it utilises to determine the Governor-General's salary and the base salary amount.

- 7.1. The review had a narrow scope because the Act only requires the Authority to determine the Governor-General's "salary" as explained in paragraph 2 above.
- 7.2. Unlike other positions within the Authority's purview, the Authority has no mandate to determine allowances for the Governor-General because section 6 of the Act provides that the Governor-General must be paid an allowance for official expenses, at a rate fixed from time to time by an Order in Council.
- 7.3. Likewise, the Authority has no ability to provide for a retirement savings or superannuation subsidy. Section 10 of the Act enables the Governor-General to be compensated for lost or adversely affected superannuation rights during their term of office. For this to occur an agreement is required to be made between the person appointed to the office of Governor-General and the Minister of Finance.
- 7.4. Therefore, the review focussed solely on the base salary of the Governor-General, process and amount, and this report has a similar narrow focus.

Review process

8. The review comprised:
 - 8.1. A request for submissions from a selected list of individuals who had a good understanding of the Governor-General's role and who could provide an opinion on the role;
 - 8.2. An information search of international practices and local data;
 - 8.3. An analysis, against the mandatory criteria that the Authority must take into account, of all information gathered.
9. A request for submissions was developed and sent to the selected list of individuals.

Responses to Request for Submissions

10. The Authority received a small number of submissions, including from the Clerk of the Executive Council, and held discussions with some previous Governors-General. All the views expressed, in writing or in person, were considered in detail and have been taken into account in the decisions that are reported below.
11. The Authority requested the views of the Rt Hon Sir Geoffrey Palmer KC who is not only a former Prime Minister but also an experienced constitutional lawyer, with a long record of scholarly publications. He is a distinguished Fellow at the Faculty of Law and Centre for Public Law at Te Herenga Waka, Victoria University of Wellington.
 - 11.1. Sir Geoffrey was also involved in the review of the Civil List Act 1979 as the President of the Law Commission and therefore has an in-depth understanding of the history and rationale for the changes that led to the Act.
 - 11.2. Sir Geoffrey is no longer in private practice and provided his advice to the Authority without charge as a public service. The Authority is grateful for that service and the high quality of the advice.

Information search

12. The Authority conducted a substantial literature and internet search to find any information that may assist the review.
 - 12.1. This included details of the salary determination process and salary amount for Governors-General in other Westminster style parliamentary democracies and the

- relationship of those salaries to the salaries of the Prime Ministers and judiciary of those countries.
- 12.2. New Zealand-based information was also obtained relating to what senior private sector and public sector jobs were paid.
 - 12.3. The Authority already had full details of what New Zealand Parliamentarians, Judiciary and local government elected officials were paid because their remuneration is determined by the Authority.
 - 12.4. Tables were also drafted showing relationships with the New Zealand minimum, living and average wage movements and against the labour cost index and quarterly employment survey.
 - 12.5. The deliberations within the review carefully considered each of these data sets. Some were rejected as not being appropriate to the review purpose whilst others have some role to play in informing the setting of the salary of the Governor-General now and into the future.

RA Act provisions

13. Section 5 of the Act requires the salary of the Governor-General to be determined by the Authority. Section 18 of the RA Act outlines the criteria that the Authority must apply in determining remuneration under "... any other enactment ...". Therefore, the RA Act, Section 18, is the criteria that the Authority must utilise in determining the Governor-General's salary. The review considered the Governor-General's salary in relation to each of the five criteria and then made the decisions outlined below taking into account all that information.

RA Act Section 18(1)(a) – fair relativity

14. The first criterion says:

"... the Authority shall have regard in particular to the following criteria:

(a) the need to achieve and maintain fair relativity with the levels of remuneration received elsewhere;"

- 14.1. The term 'elsewhere' is not specifically defined so the Authority sought to understand all possibilities for fair relativities with the Governor-General's salary. Many possible comparisons were tested including senior jobs in the public and private sectors, but that process did not result in any direct comparators that the Authority believed to be credible.
- 14.2. The Governor-General is clearly the most important appointed role in the country from a constitutional perspective. One possibility was to find other roles with constitutional significance and have regard to some form of relativity with those roles when determining the salary of the Governor-General. In addition to other countries' Governors-General, two possibilities were identified that had merit and these are discussed below.
- 14.3. Sir Geoffrey Palmer's advice stated (in part), "*Comparators are impossible for this job. There is no other position like it in New Zealand with which it can be compared*". The Authority noted and agrees with this view; however, the intent of the RA Act is that the Authority will make a sustained effort to achieve and maintain external relativities even if they are, as is highly likely in this case, to be somewhat inexact.

Other Governors-General

15. Given that there is only one Governor-General in New Zealand, the Authority researched other countries with a Westminster style system of government who share the King as their Head of State and who is represented by a Governor-General.
 - 15.1. The two countries that were believed to be most useful in this regard were Australia and Canada because both have Westminster style parliamentary democracies within a constitutional monarchy.
 - 15.2. Whilst those countries have those similarities, the Authority noted that there are also some important differences. Both are larger economies than New Zealand, both are federal countries whereas New Zealand is a unitary state. Both have bicameral legislatures whereas New Zealand's legislature is unicameral. Australia also has a Governor in each state and Canada has a number of Lieutenant Governors in their provinces. Nevertheless, these two countries are the closest comparison that the Authority could identify.
 - 15.3. The identified differences mean that any relativity created between the Australian and Canadian Governors-General must not be rigid, there would need to be considerable leeway incorporated into any fair relativity.

Prime Ministers' salaries

16. The Prime Minister and Ministers are roles that have constitutional significance being part of the country's Executive. So, the comparability between salaries of the Governors-General and Prime Ministers in Australia and Canada were investigated.
 - 16.1. Those countries establish their Governor-General salary by processes that are different from New Zealand and from each other. However, the Authority noted that the Australian Governor-General's salary is currently about 88% of the Prime Minister's salary and the Canadian Governor General's salary is about 86% of the Prime Minister's salary.
 - 16.2. By comparison, the New Zealand Governor-General's salary is currently about 82% of the Prime Minister's salary; but this may be somewhat misleading because New Zealand Parliamentarian salaries (including the Prime Minister's) have been frozen for over six years and remain at 2017 rates. In 2017, the Governor-General's salary was \$360,700 which was about 77% of the Prime Minister's salary at that time.
 - 16.3. This may change in the months following the General Election because the Authority is required to review the remuneration of all members of Parliament, including the Prime Minister, after the return of the writ for the 2023 General Election.

Judiciary

17. Another group of roles that have considerable constitutional significance are the Judiciary. In a Westminster system such as New Zealand operates, the Judiciary are one of the three arms of government within New Zealand's Constitution. The Authority therefore tested the 2022-2023 salary of the Governor-General against the 2022-2023 salary of a Judge of the High Court. The comparison results in the Governor-General's salary being about 79% of the salary of a Judge of the High Court.
18. Part of the Authority's international investigation also included consideration of Governors-General's salaries in comparison with judicial officers in the countries concerned.

RA Act Section 18(1)(b) – fairness to the Governor-General and the taxpayer

19. The second criterion says:

“... the Authority shall have regard in particular to the following criteria:

...

(b) the need to be fair both—

- (i) to the persons or group of persons whose remuneration is being determined; and*
- (ii) to the taxpayer ... “*

19.1. The Authority took careful note of this criterion when making the decision. The Authority believes that a careful consideration of the Governor-General’s salary, utilising a comparison with the salaries of the Prime Minister and a High Court Judge and taking into account the level of a Governor-General’s salary in comparison to the Prime Minister in Australia and Canada would enable the Governor-General’s salary to be determined in a manner that was fair to both the Governor-General and to the taxpayer.

RA Act Section 18(1)(c) – recruit and retain competent persons

20. The third criterion says:

“... the Authority shall have regard in particular to the following criteria:

...

(c) the need to recruit and retain competent persons.”

20.1. The Authority understand that Governors-General do not take on the role for monetary reasons. The Authority has not been made aware of any evidence of a recruitment or retention difficulty relating to the level of the Governor-General’s salary and none was advanced by any submitters during the consultation phase of the review.

20.2. Highly competent people have been available for appointment to the Governor-General role whenever it has become vacant in the recent past and all have completed their terms. Therefore, the Authority regarded this criterion as having minimal impact on the review.

RA Act Section 18(2)(a) – Position requirements

21. The fourth criterion says:

“... the Authority shall take into account—

(a) the requirements of the position concerned;”

21.1. This is a vital criterion because the salary provided is specifically for the work performed. The Authority was able to gain a very clear idea of the requirements of the Governor-General position through written submissions, discussions with previous Governors-General, insightful commentary provided by Sir Geoffrey Palmer and from the literature review.

21.2. The Authority believes that its decisions outlined below are appropriate given the critical nature of the work performed by, and the inherent responsibilities and accountabilities of, the Governor-General role.

RA Act Section 18(2)(b) – Comparable conditions of service

22. The final criterion says:

“... the Authority shall take into account—

(b) the conditions of service enjoyed by the persons whose remuneration is being determined and those enjoyed by the persons or members of the group of persons whose remuneration and conditions of employment are, in the opinion of the Authority, comparable with those of the persons or members of the group of persons whose remuneration is being determined.

22.1. This criterion and the first have a strong intercorrelation. The two New Zealand based roles whose salaries, in the Authority's opinion, should be considered as somewhat comparable with those of the Governor-General are the Prime Minister and a High Court Judge.

22.2. However, the Authority has not considered all the full conditions of service of those other roles because the review was limited to salary only as specified in paragraph 2 above. There are many non-salary conditions applicable to the Prime Minister's role and to the role of High Court Judges; the Governor-General also has a number of non-salary conditions. The limitations placed on the Authority by section 5 of the Act prevented a 'total remuneration' type of comparison. Therefore, the Authority's decision-making was limited to salary only for the comparable roles.

RA Act Section 18A - countervailing economic conditions

23. Section 18A authorises the Authority to determine remuneration at a lower rate than it would otherwise have determined, after taking into account any prevailing adverse economic conditions, based on evidence from an authoritative source. The Authority decided that it did not need to invoke this authorisation at the time of this review.

Review outcomes

24. The Authority believes that the salary of the Prime Minister and a Judge of the High Court are the appropriate comparisons for the Authority to "have regard in particular to" in relation to sections 18(1)(a)(b) & (c) of the RA Act; and simultaneously to "take into account" in relation to sections 18(2)(a) & (b) of the RA Act; whilst taking into account the level of salary payable to Governors-General in Australia and Canada in comparison to those countries' Prime Ministers.

25. A complicating factor in this application of the RA Act's criteria in relation to the salary of the Governor-General is the extended "pay freeze" that has applied to the salary of the New Zealand Prime Minister for the past six years. The decision below aims to simultaneously take into account the Prime Minister's and High Court Judges' salary, however that must necessarily wait until after the next Parliamentary Determination so the Authority cannot use the High Court Judge relationship at this time either. Therefore, the Authority has made a decision to alter the salary of the Governor-General in two tranches.

25.1. Firstly, the salary for the 2023-2024 year will be altered conservatively to be similar to an Associate Judge of the High Court (being one level lower than the High Court Judge) as specified for the 2023-2024 year (see: Judicial Officers Salaries and Allowances (2023/24) Determination 2023).

25.2. This will enable a separate, secondary decision to possibly alter the salary again once the new salary (if there is one) of the Prime Minister is finalised early in 2024. At that point, the Authority will consider the following factors:

- 25.2.1. the level of salary the Prime Minister is receiving in the forthcoming new Parliamentary Salaries and Allowances Determination; and
 - 25.2.2. the level of salary that a High Court Judge is receiving in the Judicial Officers Salaries and Allowances (2023/24) Determination 2023; and
 - 25.2.3. the point in relation to those salaries where the Authority believes a fair relativity resides given the relationship between Governors-General salaries and Prime Ministerial salaries in Australia and Canada; where the Governor-General's salary is over 85% but below 90% of the relevant Prime Minister's salary.
- 25.3. The Authority believes that the first decision will lift the Governor-General salary to a reasonable level in accordance with all section 18 criteria whilst allowing appropriate decisions to be made in 2024 once the review of the members of Parliament including the Prime Minister's remuneration has been completed.

Decision

26. The Authority will issue a new determination for the salary of the Governor-General to replace the Governor-General (Salary) Determination 2022 to come into force on 1 November 2023; where the salary of the Governor-General will be set at \$440,000 per annum.
27. Following the publication of the revised Parliamentary Salaries and Allowances Determination in early 2024, as required by section 19 of the RA Act, the Authority will review the Governor-General's salary taking into account the factors outlined in paragraph 25.2 above and decide if any change is needed, and if change is needed, publish an amending determination to the Governor-General (Salary) Determination 2023.
28. In addition to the statutory criteria the Authority must have regard to and take into account in reviewing the Governor-General's salary, the Authority will maintain its past practice of being informed by public sector wage growth data, similar to that applied to the Authority's public office holders, in making any future adjustments to the Governor-General's salary because this remains the most reliable indicator.
29. In making any future adjustments to the salary the Authority will also:
- 29.1. compare the remuneration and conditions of service received by Governors-General in Australia and Canada.
 - 29.2. have regard to the relativity of the Governor-General's salary with the salary received by the Prime Minister and Judges of the High Court of New Zealand.

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