

**Report of Review Team  
on A Review of the  
Parliamentary Service Act  
to the  
Parliamentary Service Commission**

February 1999

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## **PART THREE**

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*Review of the Parliamentary Service Act, c/- Office of the General Manager  
Parliamentary Service, Parliament Buildings, Wellington*

17 February 1999

Hon Doug Kidd  
Chairman, Parliamentary Service Commission  
House of Representatives  
Parliament House  
WELLINGTON

Dear Mr Speaker

**Report on a Review of Parliamentary Service Act**

We have the pleasure of presenting herein the report on our review of the Parliamentary Service Act 1985, carried out in accordance with the terms of reference transmitted to us by the Parliamentary Service Commission on 30 October 1998.

We believe that the Commission will find the report an important contribution to the intent expressed in its 1998 Annual Report, to undertake a reconsideration of its role and functions.

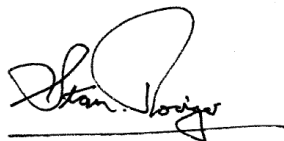
It will be seen from our report that the issue of accountability, highlighted in last year's Annual Report, is central to our proposals for future change. In adopting this emphasis, we have however been fully cognisant of the differences between Parliament and Executive Government. We have sought to reinforce and strengthen the constitutional principle of the independence of Parliament from the Executive inherent in the original reforms brought in by the 1985 Act.

The other main emphasis in our report is further improving the responsiveness to an MMP environment of the processes for allocating and managing the funding for members' support.

We also propose a re-write of the Parliamentary Service Act to bring it up to date, and to deal with a number of inconsistencies that have grown up around the Act in the course of its 14-year history.

If the Commission, and subsequently Parliament, accept our proposals as a package, we believe the quality of administration involving the Parliamentary Service and Parliamentary Service Commission will be significantly enhanced.

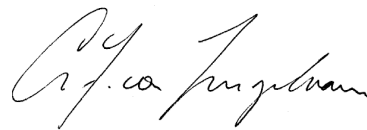
Yours sincerely



Hon Stan Rodger  
**Chair, Review Team**



Rex McArdley  
**Member**



Adrienne von Tunzelmann  
**Member**

Part One

## **Executive Summary**

# Report of Review Team on A Review of the Parliamentary Service Act

## EXECUTIVE SUMMARY

### 1.0 BACKGROUND TO THE REVIEW

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- 1.1 It is now 14 years since the Parliamentary Service Act 1985 was enacted, establishing the Parliamentary Service Commission as a statutory body independent of the Executive, to determine and administer the resources available to support members of Parliament. The purpose of this review is to consider the 1985 model in the light of the experience and developments of the past decade or so, and in particular to look at the means by which the Commission is able to exercise its functions, and the scope and options for enhancing or modifying these.
- 1.2 The period since 1985 has seen:
- (i) The introduction of MMP, bringing many changes to the parliamentary system and its administration.
  - (ii) Comprehensive public sector management reform to clarify and strengthen responsibility and accountability, accompanied by stringent requirements for effective and efficient performance, and enhanced accountability to the public for publicly funded activities.
  - (iii) Legislative change impacting on the functions of the Commission, in particular the Public Finance Act which designated the Speaker as the Responsible Minister for Vote: Parliamentary Service and deemed the Parliamentary Service to be a 'department' for the purposes of the Act. These developments have in many respects cut across the intended functional responsibilities of the Commission.
- 1.3 Related to all of these factors is the increasing public expectation of openness and constraint in matters of parliamentary expenditure, as in all areas of government. Public confidence in institutions of government is a vital prerequisite to their being able to carry out their functions and make decisions. The issues here are by no means a uniquely New Zealand problem and can be found in other countries with Westminster-style parliamentary systems. Unfavourable public perceptions appear inevitable

wherever members of Parliament are involved in determining the benefits they receive.

1.4 Central to our review is the absolute importance of recognising the distinctive character of the legislature, compared with that of the executive. This principle was very much behind the reforms introduced by the Parliamentary Service Act, and is one the review team has sought totally to reinforce.

1.5 We do not believe the status quo is an option:

- There are too many out-of-date and inconsistent aspects of the Parliamentary Service Act for these to be put aside, and the overtaking of the Act by the Public Finance Act means that the Parliamentary Service Commission cannot realistically fulfil its statutory functions.
- MMP should be reflected in all aspects of the running of Parliament.
- The public will continue to question any increase in money spent on supporting members as long as the system appears to be one of members adjudicating among themselves and lacks robust external assurance that expenditure is justified and reasonable.

1.6 The review team is convinced there is considerable scope to enhance the effectiveness - and the workability - of the arrangements for providing support for members. The goal is not a modest one. It is fundamental to the larger issue of the effectiveness of Parliament as the basic institution of New Zealand democracy, and its central position in the ground between Government and the wider community.

## **2.0 OUR APPROACH**

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2.1 Our primary focus was on the present governance structure, the extent to which it is capable of generating sound decisions and how it might be improved, in terms of:

- effective public administration applied in the context of Parliament itself, and the need to design a system to suit the institutional environment of Parliament;
- responsiveness to the needs of Parliament and its members, especially recognition of the importance of a system that produces proper resourcing of members of Parliament in their full-time and increasingly demanding professional roles; and



- providing information to Parliament and the public that ensures transparency in the way public money is spent.

### **3.0 THE REVIEW FRAMEWORK**

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3.1 We based our review and proposals for change on the following framework:

- (i) *Good governance*, which in the context of our review, rests on three factors:
  - clarity of role and function;
  - clear lines of accountability (including delegations); and
  - processes that produce desired outcomes for Parliament and the public interest.
- (ii) *Public sector financial management*, the main issue being the relevance of the principles of public sector financial management to parliamentary services, and what constitutional and practical considerations might apply.
- (iii) *Concern for efficiency and effectiveness* where the key issues are achieving budgetary control while meeting the needs of Parliament and MPs, and taxpayer interests in value for money.
- (iv) *Alignment with MMP*, the key issues being meeting requirements of Parliament and MPs, and adherence to public expectations of an MMP Parliament.
- (v) *Clear jurisdictional statutory responsibilities*, between the responsibilities of the Parliamentary Service Commission and Speaker/Minister (responsible for support services to members) on the one hand, and the Higher Salaries Commission (responsible for pecuniary matters) on the other.
- (vi) *Public Perceptions*, and maintaining confidence in Parliament and its members, as a factor in sustaining satisfactory levels of Parliamentary resourcing. To quote from the Australian Remuneration Tribunal, “accountability is best served by the public knowing the purpose for which funds are available and the controls which are in place to account for the expenditure of public moneys.”<sup>1</sup>

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<sup>1</sup> *Australian Remuneration Tribunal, Statement - members of Parliament - Remuneration and Allowances*, January 1998, page 2

- 3.2 Overseas experience underlines concern with similar issues in other parliamentary jurisdictions. Our study of the parliaments in Australia, Canada, the UK and Europe highlights the distinct sense of “parliamentary” focus in the way resourcing arrangements have evolved. There is a strong consciousness of the need to maintain the capacity of the Parliament to hold the government to account, not only through the processes of scrutiny and approval of the budget but in terms of the rights and prerogatives of the Parliament vis-à-vis the Executive. Along with this is a strong consciousness in at least some parliaments of the need to maintain the legitimacy of Parliament’s own claim on the public purse.

## **4.0 EXISTING SYSTEM**

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- 4.1 The Parliamentary Service Act was the outcome of a major re-consideration of how support services for Parliament should be organised, and a desire to remove policy and management responsibility for those services from Executive responsibility. There was an explicit constitutional focus for the changes legislated in 1985. The model of a Commission with legal status as a separate body corporate was clearly intended to establish a body that could look to the interests of Parliament.

### *Parliamentary Service Commission*

- 4.2 The statutory functions of the Commission are the exercise of budgetary control over the Parliamentary Service; determination of the size, organisation and type of services for members; and supervision of the administration of services by the Parliamentary Service. The Commission itself does not receive any parliamentary appropriations, and is therefore not statutorily accountable for funding provided for parliamentary purposes under the Public Finance Act. Instead, it has statutory responsibility for budgetary control over the appropriation for Vote: Parliamentary Service.
- 4.3 The Government remains ultimately responsible for, and in control of, the overall level of resources allocated to Parliament.
- 4.4 The Commission has among its tasks the development of systems of budgetary control, and has the ability to formulate and review its own operations. It has been significantly active on both fronts. It has also introduced modifications to how it operates itself, and how the budgetary process operates, to accommodate MMP.
- 4.5 The concept of the Parliamentary Service Commission as an agency with executive and policy determining powers has been substantially affected by

the various state sector reform measures that post-dated the Parliamentary Service Act 1985. In this report we have especially highlighted the Public Finance Act 1989, but the State Sector Act 1988 and the Employment Contracts Act 1991 have also impacted on the role and accountabilities of the General Manager of the Parliamentary Service vis-à-vis the Parliamentary Service Commission.

#### *The Parliamentary Service*

- 4.6 The 1985 legislation also established the Parliamentary Service as the administrative agency. It specifically provided that the Parliamentary Service was not part of Executive Government. The Service has the vital role of providing services to members of Parliament that promote effective, efficient parliamentary government in New Zealand. It supports individual members in carrying out their parliamentary duties, and maintains services and facilities essential to Parliament as an institution.
- 4.7 It has two distinct areas of administration: one directly concerned with managing the operational functioning of Parliament, delineated by output classes and their associated outcomes and for which the Service is directly responsible in terms of efficiency and effectiveness; the other concerned with funding members of Parliament as members. The latter is in effect an agency role.

#### *Issues that have arisen*

- 4.8 Public Finance Act - the Public Finance Act 1989 significantly altered accountability arrangements and responsibilities under the Parliamentary Service Act. Specifically, elaborating on paragraph 1.2(ii) above, section 82 of the Public Finance Act 1989 designated “the Speaker” as the “Responsible Minister” for Vote : Parliamentary Service, for the purposes of that Act, and the Parliamentary Service was “deemed to be a department” for the purposes of that Act. A result of the public finance reforms is that the Commission has no statutory connection with the 1989 Act.

It is the **Speaker** (and not the Commission) who receives and is responsible for the appropriations made to the Vote, but it remains the statutory function of the **Commission** to exercise budgetary control. As noted in the Commission’s 1998 Annual Report (page 8), “Because of the sequencing of the relevant legislation, the respective roles and responsibilities of the Speaker, the Commission and the Parliamentary Service are not as clear as they might be.”

- 4.9 Crown Law legal opinion has also identified a number of significant inconsistencies between the provisions of the Parliamentary Service Act 1985 and the Public Finance Act 1989.
- 4.10 These inconsistencies are more than matters of abstract principle. The Parliamentary Service Commission is in various significant ways clearly constrained in exercising its statutory functions by not having access to relevant information.
- 4.11 A memorandum by the Speaker to the Commission in June last year summarises the issues as: confused accountabilities in terms of exactly what the Parliamentary Service Commission is responsible for in relation to its current statutory functions; a Parliamentary Service Act clearly out of step with later legislative requirements and enactments; and an Act which has had 42 of the original 71 sections changed or repealed over the years, with many of the remaining provisions now out of date or unnecessary.
- 4.12 Other issues drawn to the review team's attention were: membership of the Commission (present membership reflects the two-party emphasis of the FFP electoral system); functioning of the Commission (it was suggested to us that because the Commission is inherently representative in nature, decisions tend to be made on the basis of consensus after members have consulted with their caucuses rather than in an executive manner); and risk management (the Commission's exercise of budgetary control is constrained by the fact that members in general do not bear the risk of any negative impact their actions may have on expenditure and management).

## **5.0 PROPOSED CHANGES**

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### **5.1 Framework for change**

Our proposals involve five categories of change:

- legislative change to produce a new Parliamentary Service Act
- structural change around the roles of Speaker and the existing Commission, and around the budget-setting process
- the introduction of a process for external review of the appropriate level of resourcing for members
- changes in the method of funding support for members, to place responsibility for budget management with those who in practice spend the money

- administrative change to overcome problems experienced with existing processes that constrain the effectiveness and efficiency of services to members of Parliament.

## **5.2 A new Parliamentary Service Act**

We propose an overhaul of the existing Act and preparation of a new statute, for introduction and passing in the 1999 parliamentary session. The main issues to address in the legislation are:

- the future role and functions of the Parliamentary Service Commission
- the relationship of the Parliamentary Service Act to the Public Finance Act
- jurisdictional boundaries between the Parliamentary Service Commission and the Higher Salaries Commission, and any consequential amendments to the Civil List Act 1979.

## **5.3 Governance Roles of Speaker and Commission**

Currently, governance of the Parliamentary Service is divided between the Responsible Minister (the Speaker) and the Commission (with the Speaker as chair). This situation contradicts the principle of good governance that requires clear accountability arrangements.

The review team considers that this problem should be resolved by reconstituting the role of the Commission to one akin to an advisory board, rather than an executive commission. It would remain a statutory body, providing a link between the Public Finance Act responsibilities of the Speaker, and the ongoing interests of the members of Parliament in resource allocation. We believe that by focusing on advisory functions, the new Commission would be more truly effective than it can be as an executive body.

Important areas for the new Commission to advise on would include: strategic direction for parliamentary services; financial budgets; high-level operational matters; and effective support for members - reflecting, for example, changing technology.

If this course were taken the Speaker would be vested with full legal control as 'Responsible Minister'. The structure would then parallel the public sector accountability framework.

We believe that the unique position held by the Speaker, as servant of the whole House, and the strong conventions and Standing Orders that define

most of the Speaker's roles and responsibilities, would ensure that the Speaker would be able to carry out these responsibilities without unnecessary or undesirable challenge from members.

#### **5.4 Application of Public Finance Act and State Sector Act**

These two Acts are now regarded as statutes of fundamental importance in New Zealand's constitutional framework, to a large extent because of the principles of public accountability and of the good employer which underlie them. These are principles which transcend the separation of powers of the legislature and the executive.

In the light of this, we have considered how the two Acts should be thought of in relation to the parliamentary services arena.

##### *Public Finance Act*

The present situation is that the Act generally applies. The main difficulty has been conflict with the Parliamentary Service Act, which can be resolved through our proposals for re-constituting the Parliamentary Service Commission. There does not seem to be a need for any further re-consideration of how the Act applies, except for the possible merit of incorporating into the Parliamentary Service Act, by way of deeming, those provisions which reflect transcending principles.

##### *State Sector Act*

The State Sector Act applies only in specific respects to the Parliamentary Service and the General Manager.

We are in agreement with the fundamental principles of the Act, and with the view that the governing principles for the Parliamentary Service should line up with those in the Act. Rather than apply the Act (which would bring with it the need for some careful modifications to avoid undermining the independence of Parliament), we have sought in our report to resolve the issues by targeting specific problems with the existing system.

##### *Budgetary Control and the Role of the General Manager*

The Public Finance Act, as it presently applies, establishes a clear hierarchy of accountabilities between Parliament, the Speaker (as the Responsible Minister for Vote: Parliamentary Service) and the General Manager who is responsible and accountable for Output Class expenditure. This follows the same pattern of accountabilities applicable to government departments generally, and effectively treats the Parliamentary Service as a government department.

At variance with this set of arrangements however are the Parliamentary Service Commission's present statutory functions, listed above in paragraph 4.2. Our proposal to re-establish the Commission as an advisory body, leaving the Speaker wholly responsible for budgetary control, supported by the General Manager as effectively the Chief Executive, resolves this problem.

## **5.5 Independent triennial review**

We believe that in the interests of Parliament's ongoing ability to ensure proper levels of resourcing for members there should be some means for externally assessing members' legitimate resource requirements.

We propose that there be a three-yearly review by an independently appointed body whose task would be to recommend the dollar benchmark for the funding of members' support, for the forthcoming Parliament. Its report would be recommendatory, to assist in the budget process. Its work would encompass all aspects of the physical resources necessary for members to carry out their functions effectively.

We envisage a membership of three, appointed every three years by the Governor-General on the recommendation of the Speaker after consulting the reconstituted Parliamentary Service Commission. The review body would make its recommendations to the Speaker who would retain full responsibility for allocating funding within Parliament in the normal budget round, subject of course to procedures to ensure fair allocations among parties and members.

## **5.6 Method of funding under Vote: Parliamentary Service**

We endorse the principle that wherever discretion is involved in spending decisions, decision-making is best placed in the hands of those who have the immediate information about resource needs, and about the consequences of their actions.

The issue of "bulk funding" of parliamentary parties or of individual members, has been considered in the past as a means of improving accountability for expenditure on members' support. An officials' paper identifies bulk funding as a way of overcoming problems under the present system relating to inflexibility (members and party groups have limited flexibility to determine how they configure the services available to them); blurred accountability and transparency (as highlighted elsewhere in our report); and Crown fiscal risk (resulting from the demand-driven nature of some areas of expenditure).

A move has already been made in this direction. Electorate support and parliamentary party group activities are now appropriated to each party group

as line items in the Estimates. We propose extending these arrangements to the areas of members' travel and communications. We believe wider bulk funding would meet the criteria of a good budget system, especially by strengthening fiscal sustainability, promoting accountability, improving transparency, supporting MPs' effectiveness and, finally, providing a system that can be readily understood and accepted by members, and by the public.

Future extension of bulk funding to members' personal staff support costs (currently funded as departmental outputs) and other 'institutional' costs, is also a possibility.

The system may not appeal to all members or parties, and the means of implementing it require further investigation and consultation. One way we believe it could be adopted is to allow members or party groups to 'opt-in' as far as they wish to take on managing their own resource decisions. We ourselves believe that, once established, bulk funding will prove to be sufficiently attractive to draw in most parties or individual members.

The precise details of implementing a bulk fund approach would require more work, and possible variation from the features we suggest, to ensure the system is robust and workable.

## **5.7 Changes to Parliamentary Service and Senior Officers**

While our brief does not cover matters of internal management or organisational performance, we believe some important changes are needed within the Parliamentary Service to make it consistent with clear accountability.

### *(i) Status of Parliamentary Service*

In section 5.4 above, we have argued against constituting the Parliamentary Service as a department under the State Sector Act. We propose however that the Parliamentary Service Act include a provision similar to that in section 17 of the Clerk of the House of Representatives Act 1988 providing for the State Services Commission, at the request of the Speaker of the House of Representatives, to exercise its functions which include machinery of government reviews and reviewing efficiency, effectiveness, and economy including the "discharge by the chief executive of his or her functions".

### *(ii) General Manager's responsibility for departmental outputs*

Public sector reform has emphasised the responsibility of the Chief Executive for deciding the input mix to meet the objectives of the Minister.



Reconstituting the Commission's role, as we propose above, would meet this principle. It would leave the General Manager clearly responsible for deciding the input mix to meet the needs of Parliament and members, and directly accountable to the Speaker for performance against objectives, in the same way as public service Chief Executives.

*(iii) Senior management positions*

- Appointment of General Manager: We propose adopting the same process that applies to appointing the Clerk of the House of Representatives, with two additional procedures: that the Speaker consult the Parliamentary Service Commission; and that the Speaker be enabled to constitute a panel to assist in the selection process, which could involve the State Services Commission. Our concern here is to ensure appropriate emphasis on the professional management requirements of the job.
- We further propose that the General Manager's remuneration be brought back under the jurisdiction of the Higher Salaries Commission, as it was between 1985 and 1988.
- The present Act provides specifically for appointments to two further senior management positions, the Deputy General Manager and the Parliamentary Librarian. We believe the provisions are unnecessary and should be taken out of the Act.

*Employment Relationships*

Our inquiry has highlighted the problem of the General Manager's accountability for, but not control of, the costs associated with managing the employment contracts of staff employed to work for members in and away from Parliament, and in other parliamentary party office activities such as research and communications.

We favour resolving this problem by relying on the incentives that would flow from a shift to the bulk funding of members' support services, under which party groups or members could recruit and employ staff from their own budgets, with agency support from the Parliamentary Service.

*Ministerial Services*

The Ministerial Services division of the Department of Internal Affairs administers support services for Ministers that are similar to those for members. A merger with the Parliamentary Service is clearly feasible, but we

believe that the balance of argument favours retaining the existing separation, which recognises the distinction between Parliament and the Executive.

## **5.8 Role of the Parliamentary Service Commission relative to that of the Higher Salaries Commission**

The responsibilities of the Higher Salaries Commission to determine allowances for members under section 12 of the Higher Salaries Commission Act have become less clearly defined over time, because the Parliamentary Service Commission (and Ministerial Services) have exercised overlapping functions on the range of support for members. The lines of responsibility and function are now quite blurred, with the possibility of confusion over whose jurisdiction prevails.

Whether or not the Parliamentary Service Commission is re-established as an advisory body rather than an executive body, consideration needs to be given to the process by which payments to individual members and the policy behind these are set.

We propose that the general principle be adopted that:

*matters to do with the remuneration of members, including benefits, and allowances and personal expenses be entirely in the hands of the Higher Salaries Commission to determine, while the determination of support services be entirely in the hands of the Speaker in consultation with the Parliamentary Service Commission and with advice from the Parliamentary Service.*

One transition issue that we recommend be dealt with by the Parliamentary Service Commission exercising its **present** functions is how travel privileges for former members and their spouses should be dealt with in the future. The continuation of the existing privileges was questioned by a number of members we met with, who thought that the original circumstances that justified their introduction no longer existed, and who took the view that they should in fact be phased out over time. It would be desirable for the Parliamentary Service Commission to put in place procedures to conclude its operation - with appropriate grandparenting where necessary - in advance of a new Parliamentary Service Act.

## **5.9 Application of the Official Information Act 1982**

The Parliamentary Service Commission and Parliamentary Service are excluded from the Official Information Act (OIA). The OIA, like the Public Finance and State Sector Acts, is a statute of constitutional importance designed to promote the accountability of public bodies. We do not see any

fundamental reason the open government principles of that Act should not apply in the arena of parliamentary services, so long as there are necessary exceptions such as those protecting the independence of a member.

It is important that the terms on which the OIA might apply are carefully constructed. The focus should be on information relating to the services provided to Parliament and members, not the affairs of the individual member. We propose that the OIA be extended to cover the Speaker as Responsible Minister and the Parliamentary Service, these being the two groups which hold the appropriate accountability information. The Act would not apply to information held by members in their capacity as members, or to information relating to Parliamentary party policies, or party organisational material.

## **6.0 IMPLICATIONS OF PROPOSED CHANGES**

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- 6.1. Our aim with each of our proposals has been to establish a clear principle, present the supporting analysis, and suggest, indicatively, how we envisage the proposal working in practice. There are obviously further matters of policy and detail to be worked through.
- 6.2. The main implementation issues concern cost, legislative requirements, process, and priorities and timing. We note that our proposals do not in all respects break new ground. Moves that have already been made towards funding parliamentary party offices, improving internal budget information flows and on some aspects of employment provide a basis for further initiatives.
- 6.3. We have designed our proposals as an overall 'package' of complementary changes and recommend strongly that they be considered in a comprehensive way. The risk of not doing so is the continuation of blurred accountabilities and of shortcomings in how well the overall system aligns with MMP.

### 6.4 *Timing*

The most significant factor in the timing of Parliamentary Service Commission decisions on our proposals and subsequent implementation is the 1999 General Election. A General Election represents a watershed in the cycle of parliamentary life, and there are advantages in linking the introduction of changes affecting members to a new Parliament.

Membership of the Parliamentary Service Commission is an urgent matter, given that the existing arrangements were designed for a two-party system. Continuation of this situation into a new Parliament would be highly unsatisfactory.

Taking this and other factors in to account, enactment of a new Parliamentary Service Act to implement our proposals prior to the end of the current Parliament is highly desirable.

## **7.0 CONCLUSIONS AND SUMMARY**

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- 7.1 The climate since 1985 has been one of fundamental public sector reform, with major re-organisation of the state sector, and the overhaul of public finance legislation. These represent considerable enhancements in the means for Parliament to scrutinise Government. The same enhancements need to apply to Parliament itself.
- 7.2 Equally there have been considerable advances in the understanding of ‘good governance’. We believe that our proposals meet the tests of good governance set out in our main report, in section 7.0.
- 7.3 It needs also to be recognised that there are limits to applying the conventional tools for accountability based on cost-efficiency and effectiveness to the work of members of Parliament since their work is not easily, or perhaps even desirably, defined in terms of outputs, outcomes and performance measures.
- 7.4 Responsiveness to the MMP environment will be improved by our proposals for restructuring the membership of the Parliamentary Service Commission, and, significantly, for widening the application of bulk funding.
- 7.5 Finally, we conclude that the approach adopted in New Zealand in 1985 remains broadly appropriate, albeit that it now requires substantial updating.

For the longer term, and looking at the experience of other legislatures, we suggest consideration be given to the way that in some countries the independence of Parliament is recognised formally by establishing a separate Appropriation Bill. We note, however, that where that is done, it is still found quite hard to match the formal appearance of independence with effective budgetary independence.

Part Two

## **Main Report**

## **1.0 BACKGROUND TO THE REVIEW**

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### **1.1 Initiative for review**

1.1.1 The initiative for this review lies in the 1998 Annual Report of the Parliamentary Service Commission. In that document the Commission highlighted the need for a reconsideration of its role and functions in order to reflect developments in public sector accountabilities since its establishment in 1985; it also signalled the intention to pursue the present review.

Our terms of reference were written to mirror this intention, and also to reflect the Commission's desire to look for ways to progress still further the changes it had already adopted to respond to the MMP environment.

1.1.2 It is now 13 years since the Parliamentary Service Act 1985 was enacted, establishing the Commission as a statutory body independent of the Executive. The purpose of the review is to consider the 1985 model in the light of the experience and developments of the past decade or so, and in particular to look at the means by which the Commission is able to exercise its functions, and the scope and options for enhancing or modifying these.

### **1.2 Context for review**

1.2.1 Three factors suggest that it is timely and appropriate to review the arrangements for determining and administering the resources available to support members of Parliament:

- (i) The introduction of MMP

MMP has brought many changes to the parliamentary system and its administration. It is recognised that MMP demands that the business of Parliament be conducted in a way that reflects a multi-party Parliament and Government.

Following the 1996 General Election, the Commission did make changes in response to MMP, as outlined in section 4 below. With the benefit of experience under MMP, there is an opportunity now to assess more thoroughly the ongoing requirements for decision-making and administration against present arrangements, which have mostly carried forward features of the former two-party, FPP system.

(ii) Public sector management reform

The establishment of the Commission and the Parliamentary Service pre-dates the introduction of comprehensive public sector reforms in New Zealand, which have been applied almost universally across government. Implementation of these reforms has seen a wide range of new approaches adopted in all areas of Executive Government and throughout its organisational structures. The framework is set in the State Sector Act 1988 and the Public Finance Act 1989.

Almost all public sector reforms in New Zealand have focused on the need to clarify responsibility and accountability. This has resulted in stringent requirements for effective and efficient performance, and enhanced accountability to the public for publicly funded activities and the associated expenditure, which has in many cases resolved long-established conflicts of interest.

The Commission is not fully subject to either Act, so that it has not been a statutory requirement to bring to bear the principles of these reforms on the exercise of its functions.

(iii) Legislative change and the functions of the Commission

While the Commission is not fully covered by the two key pieces of public sector legislation, the Parliamentary Service became subject to certain parts of the State Sector Act as if it were a “Department of the Public Service”; and it is also deemed to be a ‘department’ for the purposes of the Public Finance Act. Furthermore, the Public Finance Act designated the Speaker as the Responsible Minister for Vote: Parliamentary Service. It is therefore the Speaker (and not the Commission) who receives and is responsible for the appropriations made to that Vote.

These developments have in many respects cut across the intended functional responsibilities of the Commission, which are listed in the Parliamentary Service Act as being:

- the exercise of budgetary control;
- determination of the size, organisation and type of services for members; and

- supervision of the administration of services by the Parliamentary Service.

The view of the Crown Law Office is that if the provisions of the Public Finance Act and the Parliamentary Service Act conflict on matters of budgetary control, the former Act prevails.

- 1.2.2 Related to all of these factors is the increasing public expectation of openness and constraint in matters of parliamentary expenditure, as in all areas of government. Public perceptions are influenced by how well the decision processes are or can be understood outside the institution, and by views held about whether the system seems robust, reasonable and appropriate.
- 1.2.3 Public confidence in institutions of government is a vital prerequisite to their being able to carry out their functions and make decisions. The review team found that the issues here are by no means a uniquely New Zealand problem. Similar issues have arisen in other countries with Westminster-style parliamentary systems where members of Parliament have access to a wide range of entitlements to support, which are designed to enhance their effectiveness as representatives and legislators. Public perceptions about these entitlements are typically unfavourable, which seems all the more inevitable when benefits are determined by Parliamentarians for Parliamentarians.
- 1.2.4 One further factor is the prospective issue of tax treatment of allowances. Since the foundation of the New Zealand Parliament in 1854, Members have received allowances for expenses incurred in carrying out their parliamentary duties.<sup>2</sup> As has been common practice in other occupational fields these allowances have been untaxed. We are aware that as a flow-on from an amendment to income tax legislation clarifying the tax status of office holders (effectively they will be treated on the same basis as ‘employees’), the Inland Revenue Department is undertaking a review of the tax status of office-holder allowances across the board. This review includes allowances paid to members of Parliament, along with other office-holder categories within the Commission’s jurisdiction. The IRD review could well lead to changes in the way allowances are treated for tax purposes and consequently how remuneration is dealt with in determinations of the Higher Salaries Commission.

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<sup>2</sup> Payment to members of Parliament initially took the form solely of an allowance (honorarium) to cover expenses. The concept of a salary emerged only gradually, and was formalised in the 1920 Civil List Act. Allowances gradually became seen as additional payments, over and above income, to meet expenses.



### **1.3 Building on the current Act**

1.3.1 Central to our review is the absolute importance of recognising the distinctive character of the legislature, compared with that of the executive. As elaborated in Section 4 below, this was very much behind the reforms introduced by the Parliamentary Service Act, and is a principle the review team has sought totally to reinforce in proposals intended to strengthen the independence of Parliament from Executive Government.

1.3.2 The Parliamentary Service Act was itself an act of open government, given that its purpose was to create a process for decisions about expenditure on members' support separated out from the government of the day, and therefore improving transparency and accountability. There is a convincing case for updating this principle, and reviewing how it can best be carried through into how the system works in practice.

### **1.4 Scope for Change**

1.4.1 We do not believe the status quo is an option:

- there are too many out-of-date and inconsistent aspects of the Parliamentary Service Act for these to be put aside, and the overtaking of the Act by the Public Finance Act means that the Parliamentary Service Commission cannot realistically fulfil its statutory functions;
- MMP should be reflected in all aspects of the running of Parliament;
- the public will continue to question any increase in money spent on supporting members as long as the system appears to be one of members adjudicating among themselves and lacks the means for robust external assurance that expenditure is justified and reasonable.

In relation to the last point, we note that in Australia statutory bodies have been established to monitor the spending of those in public office. The New South Wales Independent Commission Against Corruption reported recently on its investigation last year into parliamentary and electorate travel, and said "The low priority given to establishing and maintaining accountability mechanisms creates the perception that parliamentary funds and efforts tend not to be directed towards establishing more effective control of parliamentary resources."<sup>3</sup>

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<sup>3</sup> Investigation into Parliamentary and Electorate Travel: Second Report - Analysis of Administrative Systems and Recommendations for Reform, December 1998, discussion on accountability. Retrieved on 20 January 1999 from the World Wide Web: [http://icac.nsw.gov.au/pub\\_investigation/pub2\\_5f\\_4i.htm](http://icac.nsw.gov.au/pub_investigation/pub2_5f_4i.htm)

1.4.2 The review team is convinced there is considerable scope to enhance the effectiveness - and the workability - of the arrangements for providing support for members. This report offers proposals directed to that purpose.

1.4.3 Our proposals, we believe, are realistic in scale and achievable in practice. That does not imply that the goal is a modest one. On the contrary, it has been our very specific intention to point to the larger issue of the effectiveness of Parliament as the basic institution of New Zealand democracy, and its central position in the ground between Government and the wider community. We are also mindful that the changes we propose present an important challenge to the members of the Commission and to Parliament as a whole, and that decisions on our proposals will require some time and thought.

1.4.4 In our view, the report will have served its purpose:

- if it opens up possibilities for cohesive change that would not happen if left to incremental improvements within the present structure, however useful those improvements are;
- if its package of proposed changes can be seen as logical and operationally feasible; and
- if it can be acted on in the near term, and if it avoids being consigned to the 'too hard basket'.

1.4.5 We do not believe that there are any constitutional impediments to the changes we are proposing. Rather, our proposals are intended to reinforce principles established in 1985 Act and are aimed at bringing these up to date.

## **2.0 OUR APPROACH**

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### **2.1 Focus and scope of inquiry**

2.1.1 Our terms of reference are framed broadly. (The full terms of reference are contained in Appendix I.) There are, however, clear elements that guided our approach.

- First, the scope of our review was in the first instance determined by the scope of the Parliamentary Service Act. The Act establishes the Parliamentary Service Commission, lays out its role and functions, and provides for the Parliamentary Service and the appointment of senior officers.
- Second, the emphasis was on governance. Governance has a wide range of meanings. We saw it as having two key aspects: the formal allocation and exercise of authorities and responsibilities in providing the resources for members of Parliament to carry out their parliamentary roles; and the associated accountabilities.
- Third, the issues were defined in terms of the two fundamental changes in the environment for the operation of Parliament: the advent of MMP; and the public sector accountability reforms of the past decade.

2.1.2 We were also guided by a number of issues that had already been before the Commission prior to this review and which were brought to our attention in background papers made available to us. We have made a point of addressing these in our proposals.

2.1.3 These factors led us to focus on the present governance structure, the extent to which it is capable of generating sound decisions and how it might be improved, in terms of

- (a) effective public administration;
- (b) responsiveness to the needs of Parliament and its members; and
- (c) providing information to Parliament and the public that ensures transparency in the way public money is spent.

#### 2.1.4 Our brief did **not** include matters of:

- the organisational structure or performance of the Parliamentary Service or its administrative practices;
- the internal management and control systems for members' entitlements; eg, risk management or assurance on the accuracy of expenditure claims;
- current or future policy on members' remuneration or allowances as such (we did not examine present entitlements or alternatives, with one exception - travel privileges for former members and their spouses, which are currently dealt with by the Parliamentary Service Commission and which we recommend be addressed by the Commission exercising its present functions);
- Ministers' support services and expenses, as administered by Ministerial Services (although we are mindful that legislative changes resulting from our proposals on the respective functions of the Parliamentary Service and Higher Salaries Commissions may have ramifications for legislation that covers Ministers' expense entitlements and benefits);
- industrial issues concerning staff employed by the Parliamentary Service and the setting of conditions of employment (in section 5.7 we do, however, refer briefly to employment issues raised with us, which could be taken up by the General Manager).

## 2.2 Our reference points

### 2.2.1 Our report is built on three fundamental considerations:

- our endorsement of the principles underlying the 1985 reforms which led to the Parliamentary Service Act, in particular the principle of independence of decision-making from Executive Government;
- recognition of the importance of a system that produces proper resourcing of members of Parliament in their full-time and increasingly demanding professional roles; and
- an emphasis on effective accountability, applied in the context of Parliament itself, and the need to design a system to suit the institutional environment of Parliament.

2.2.2 We have assumed that MMP will continue into the foreseeable future. We stress that nearly all of our proposals would stand in any electoral environment, and do not rest on MMP as such.

2.2.3 We have taken the view that the case for tackling issues raised in the review is only partly based on internal requirements for efficiency and effectiveness. In a number of respects, the present system works well in serving members. We wish to acknowledge that. But the need for change must also be assessed against public confidence in the way Parliament controls its own resourcing. In other words, there is an external case to be made. If the external test is not met, the public may be encouraged to conclude that activities to support members, and the associated expenditure, are of questionable worth.

2.2.4 Finally, it is important to stress that our brief is confined to the structures for providing services to members of Parliament; ie, the Speaker, Parliamentary Service Commission and Parliamentary Service. We found in the course of our inquiry a common blurring in people's minds of parliamentary services and ministerial services. The two are quite distinct, albeit with some cross-over, which are handled administratively. Support services for ministers, as ministers, is the responsibility of the Ministerial Services Branch of the Department of Internal Affairs.

2.2.5 Two other distinctions that are often overlooked are:

- the role of the Speaker as Chair of the Parliamentary Service Commission, and as the Responsible Minister for Vote: Parliamentary Service; and
- the role of the Parliamentary Service Commission and the Parliamentary Service.

It is important to be clear about these distinctions in order to attribute responsibilities - and any issues that arise - correctly.

## **2.3 Methodology and Acknowledgements**

2.3.1 Although the review team worked over a relatively short period of time (mid November 1998 to 31 January 1999), we were able to canvass a wide range of viewpoints and to study a substantial body of literature. We have drawn significantly from consultations and discussions, and greatly appreciate the frank, cordial meetings we had with politicians and others, and the quality of oral and written analysis submitted to us. Appendix II lists the people and organisations we met with and received submissions from.

2.3.2 The input we received covered a wide scope:

- Discussions with politicians revealed a diversity of view on matters encompassing the role and effectiveness of the Parliamentary Service Commission, the effectiveness of present spending controls, how well the Parliamentary Service Commission's structure and processes reflect MMP, the extent of Government control of the Parliamentary Service budget, bulk funding and member's accountability for expenditure and employment issues.
- Departmental submissions provided important context and analysis for our consideration of the public sector management issues relevant to the parliamentary services arena. They also assisted us greatly in establishing the framework for our review.
- Senior parliamentary officials provided experienced views and information on the present situation, and valuable feedback on the feasibility of draft proposals.
- Detailed consultation with the Higher Salaries Commission contributed to our appreciation of the accountability issues, and to our proposals for clarifying the responsibilities of the Parliamentary Service Commission and Higher Salaries Commission.
- Discussions with independent experts in constitutional matters and public administration helped us identify the underlying issues that concern the uniqueness of Parliament.

2.3.3 Among the documented material available to the review team were past papers prepared for the Parliamentary Service Commission. These provided us with some of the history behind the issues within our terms of reference.

2.3.4 We were greatly assisted in our study of systems adopted in other comparable legislatures by the Parliamentary Library which undertook the search for relevant information.

## **3.0 THE REVIEW FRAMEWORK**

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### **3.1 An integrated approach**

3.1.1 We have stressed earlier the significance of the Parliamentary Service Act as a major constitutional reform designed to give Parliament independence from Executive Government. We have based our review and our proposals for change on the framework set out in paragraphs 3.2 to 3.7 below, designed to be an integrated approach to updating the intent of this reform and ensuring its future sustainability.

3.1.2 Our review has highlighted a raft of significant issues, some arising from piecemeal changes made to the Parliamentary Service Act over its life, and some arising from the need to reconsider the framework created by the original Act, in the light of constitutional and public sector reforms since the Act was passed. We conclude that governance issues should be addressed in an integrated and comprehensive manner, to provide a clear framework for future legislation. This is a view put to us by a number of parties.

3.1.3 The present Speaker has worked with the Commission to introduce notable improvements in budgetary control. Party leaders and other members regard these as useful disciplines. They are completely compatible with our proposals and we fully support their further development. They are internal processes, however, and do not in themselves deal with being able to account externally.

### **3.2 Concern for good governance**

3.2.1 Good governance, in the context of our review, rests on three factors:

- clarity of role and function;
- clear lines of accountability (including delegations); and
- processes that produce desired outcomes for Parliament and the public interest.

3.2.2 From the range of suggestions made to us about the best means for achieving these, we have concluded that future change should be concerned with defining roles and relationships, providing for an external element to be introduced into the process for determining resource requirements to support members, more flexible methods of funding members and party groups and opening up more information to the public.

3.2.3 Central to governance is effective public accountability. If members of Parliament are to be properly resourced, we believe this matter should be addressed with some urgency, for two reasons:

- In the short term, Parliament may not suffer any malfunction from the absence of fuller public accountability, but over time a widening gap between expected standards of the accountability of public institutions, and those perceived to apply to Parliament, may weaken Parliament's ability to argue the case for being properly resourced.
- Improvements in the mechanisms of public accountability, such as ways to formulate the provision of meaningful information, mean that high standards are now achievable. Parliament as an institution can benefit from these improvements.

### **3.3 Public sector financial management**

3.3.1 The main issue is the relevance of the principles of public sector financial management to parliamentary services and what constitutional and practical considerations might apply.

A point well made in a recently published book on democracy in Australia is that "Parliament has an obligation to disclose the standards of public accountability with which it, as a public institution, ought to comply and to justify its performance against those standards."<sup>4</sup>

3.3.2 Specific issues are:

- how closely the provisions of the Public Finance Act and State Sector Act can be built into the Parliamentary Service Act, consistent with constitutional considerations; and
- how the budgetary control role of the Commission ought to take into account the provisions of the Public Finance Act, if the Parliamentary Service Act is to adhere to the general model of the Public Finance Act for financial accountabilities.

### **3.4 Concern for efficiency and effectiveness**

3.4.1 Key issues are:

- achieving budgetary control while meeting the needs of Parliament and members; and
- preserving taxpayer interests in value for money.

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<sup>4</sup> Uhr, John, *Deliberative Democracy in Australia*, Cambridge University Press, 1998, p 245.



3.4.2 It can be argued that the present arrangements under the Parliamentary Service Act, while as we indicate in section 4.0 below are somewhat ambiguous and out of line with more recent legislative developments, are nevertheless workable. This is to an extent true, but we note that “workable” does not mean efficient and effective.

3.4.3 In New Zealand as in other legislatures, resources to support members require a focus on stewardship. We note that the Canadian House of Commons system has addressed this with the introduction in 1996 of a system based on the principles of openness and accountability, and emphasising the stewardship roles of results-based management and return on public investment. The exercise of effective stewardship in turn requires clear stewardship responsibility. Section 4.0 points to the mixed responsibilities currently held by the Speaker, Parliamentary Service Commission and Parliamentary Service under the present system.

### **3.5 MMP**

3.5.1 Key issues are how best to:

- meet the resource requirements of party groups and members, and ensure fair resource allocation within inevitable budget constraints;
- adhere to public expectations of an MMP Parliament, in particular that it will produce effective governance while making no more than reasonable demands on the public purse.

3.5.2 Our report includes specific proposals to improve the functioning of the parliamentary services system to reflect MMP.

### **3.6 Boundary of responsibilities between Parliamentary Service Commission and Higher Salaries Commission**

3.6.1 An essential companion to our proposals for the sound governance of services within Parliament and to members, in terms of both roles and effective administration, is establishing clear boundaries between the responsibilities of the Parliamentary Service Commission and Speaker/Minister (responsible for support services to members) on the one hand, and the Higher Salaries Commission (responsible for pecuniary matters) on the other.

As we note in our proposals for achieving clarity of function between these two areas of responsibility (section 5.8 below), a further key element is the Civil List Act, which is the source of statutory authority for appropriating money for benefits and privileges for members of Parliament and others.

### **3.7 Public Perceptions**

- 3.7.1 Public perceptions of the robustness of the system for providing support to members and party groups, as a factor in maintaining confidence in Parliament and its members, over time will play a part in sustaining satisfactory levels of Parliamentary resourcing.
- 3.7.2 To quote from the Australian Remuneration Tribunal, “accountability is best served by the public knowing the purpose for which funds are available and the controls which are in place to account for the expenditure of public moneys.”<sup>5</sup>

### **3.8 Overseas experience**

- 3.8.1 Overseas experience underlines concern with similar issues in other parliamentary jurisdictions. Our study of the parliaments in Australia, Canada, the UK and Europe highlights the distinct sense of “parliamentary” focus in the way resourcing arrangements have evolved. There is a strong consciousness of the need to maintain the capacity of the Parliament to hold the government to account, not only through the processes of scrutiny and approval of the budget but in terms of the rights and prerogatives of the Parliament vis-à-vis the Executive. Along with this is a strong consciousness in at least some parliaments of the need to maintain the legitimacy of Parliament’s own claim on the public purse.
- 3.8.2 This is all true not only of parliaments that have retained traditional styles of finance, but also of those which have adopted modern public sector management principles (the best example is Canada).
- 3.8.3 In all cases studied, Parliament largely approves the parliamentary budget one means or another, reflecting Parliament’s right to determine its own internal affairs. But in every case the government still retains overall responsibility for the sum of money allocated to service to members, which is seen to be a necessary consequence of the exclusive power of Executive Government to raise and spend taxes.
- 3.8.4 It is next to impossible to know what elements can usefully be extracted from other legislatures and implanted in New Zealand, because every Parliament is unique. We have however drawn on overseas experience to test the range of models that might be considered relevant to New Zealand, and to fit the system under the Parliamentary Service Act in this range.

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<sup>5</sup> *Australian Remuneration Tribunal, Statement - members of Parliament - Remuneration and Allowances*, January 1998, page 2

3.8.5 A fuller description of approaches taken in other legislative jurisdictions is contained in Appendix III to this report.

## 4.0 EXISTING SYSTEM

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### 4.1 The 1985 reforms

- 4.1.1 The Parliamentary Service Act was the outcome of a major re-consideration of how support services for Parliament should be organised, and a desire to remove policy and management responsibility for those services from Executive responsibility. There was an explicit constitutional focus for the changes legislated in 1985. This was emphasised by the role that the then Deputy Prime Minister played as the principal architect in introducing the legislation and in steering its passage through the House.
- 4.1.2 The model of a Commission with legal status as a separate body corporate, and removed from direct Executive responsibility, was clearly intended to establish a body that could look to the interests of Parliament. It deliberately abandoned the previous Legislative Department, which made the Executive, through a Minister (usually the Prime Minister), responsible for providing support services for Parliament and parliamentarians.
- 4.1.3 The independence of the Parliamentary Service Commission and Parliamentary Service from Executive Government is achieved by statutory protection, such as:
- section 3(2) of the Parliamentary Service Act which states that the Service is not an instrument of the Executive Government;
  - section 7 which specifies the membership of the Commission (excluding Ministers of the Crown) and the appointment process (by nomination);
  - section 8 which specifies the process for vacation of (or removal from) office by members of the Commission;
  - section 82 of the Public Finance Act 1989, which effectively makes the Speaker the Vote Minister in terms of the financial accountability provisions relating to the Service; and
  - section 82 of the Public Finance Act 1989 which exempts the Parliamentary Service from being required to include in the Estimates information on the link between outputs and government outcomes.<sup>6</sup>

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<sup>6</sup> But see paragraph 6.3.1 below.

## **4.2 The Parliamentary Service Commission**

4.2.1 The Commission is a statutory body whose primary function is to exercise budgetary control over the Parliamentary Service. Its functions as enacted in 1985 are set out in Appendix IV. The only change made to these has been the addition in 1991 of the responsibility “to provide premises for Parliamentary purposes”, to clarify the Commission’s role in providing accommodation.

4.2.2 The Commission itself does not receive any parliamentary appropriations, and is therefore not statutorily accountable for funding provided for parliamentary purposes under the Public Finance Act. Instead, it has statutory responsibility for budgetary control over the appropriation for Vote: Parliamentary Service.

The Government remains ultimately responsible for, and in control of, the overall level of resources allocated to Parliament.

Government policies are likely to prevail in two ways:

- On matters of major ‘investment’ expenditure otherwise within the Commission’s jurisdiction, the Commission will inevitably rely on Government decisions to provide the necessary funding. (A recent example is the case of future accommodation within the parliamentary complex, which last year resulted in a Government decision to proceed with neither of two proposals for new buildings although both proposals had been taken to an advanced stage in work that heavily involved the Commission and the Parliamentary Service).
- The overall resources made available for parliamentary support are subject to Government fiscal policy decisions which might include budget cuts resulting from Government policy decisions made in the course of expenditure rounds, when savings are being sought across the board.

Parliamentary expenditure is also subject to the Government’s obligations under the Fiscal Responsibility Act.

4.2.3 The Commission has among its tasks the development of systems of budgetary control, and has the ability to formulate and review its own operations. It has been significantly active on both fronts. On the budgetary front, 1996 saw the adoption of a formula-based approach to the bulk of discretionary funding for support of Parliamentary parties and individual members, allowing each party to determine its expenditure priorities within general policies and guidelines set by the Commission. In 1998 indicative

travel budgets on a party basis were introduced, against which the party offices can monitor expenditure. On its own operations, as indicated in paragraph 1.1.1 above, the Commission has highlighted the need for reconsideration of its role and functions.

Policies and guidelines are well laid out in the Members' Handbook of Services compiled by the General Manager and encapsulating all relevant Commission policy decisions.

- 4.2.4 It has also introduced modifications to accommodate MMP, in recognition of the explicit part played by party groups in the parliamentary environment under an MMP system, and of the range and nature of support services needed for members and party groups.<sup>7</sup> Particular changes included representation at meetings of the Commission, and, as mentioned above, in funding support for parliamentary party leaders and groupings, and for individual members.
- 4.2.5 The concept of the Parliamentary Service Commission as an agency with executive and policy determining powers has been substantially affected by the various state sector reform measures that post-dated the Parliamentary Service Act 1985. In this report we have especially highlighted the Public Finance Act 1989, but the State Sector Act 1988 and the Employment Contracts Act 1991 have also impacted on the role and accountabilities of the General Manager of the Parliamentary Service vis-à-vis the Parliamentary Service Commission.

### **4.3 The Parliamentary Service**

- 4.3.1 The 1985 legislation also established the Parliamentary Service as the administrative agency whose principal duties are *"To provide to the House of Representatives and to members of the House of Representatives such administrative and support services (including accommodation) as may be necessary or desirable"* (s.4(1) of the Parliamentary Service Act 1985). It specifically provided that the Parliamentary Service was not part of Executive Government (s.3 (2)).
- 4.3.2 The Parliamentary Service has the vital role of providing services to members of Parliament that promote effective, efficient parliamentary government in New Zealand. It supports individual members in carrying out their parliamentary duties, and maintains services and facilities essential to Parliament as an institution.

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<sup>7</sup> See Report of the Parliamentary Service Commission for Year Ended 30 June 1996, pp 4-5.

Its role in supporting New Zealand's democratic system is emphasised in the statement of outcomes to which the Commission requires the Service to contribute, which include contributing to "effective and efficient legislators and elected representatives".

4.3.3 The Service is wholly owned by the Crown, while its role is significantly influenced by the Parliament.

4.3.4 It has two distinct areas of administration:

- One is directly concerned with managing the operational functioning of Parliament, delineated by output classes and their associated outcomes and for which the Service is directly responsible in terms of efficiency and effectiveness. This role is equivalent to that of an operational government department. Outputs cover office support and travel services for members; information services and systems; catering services; management of buildings and facilities; policy advice; and personnel and financial services to members and other agencies.
- The other is concerned with funding members of Parliament as members. The latter is in effect an agency role for the administration of Crown payments, including those whose level the Higher Salaries Commission determines, covering members' salaries and allowances; their travel and communication costs; costs of running members' offices outside Parliament and other activities associated with being an elected representative; and support for parliamentary party leaders' offices.

#### **4.4 Relevance of public management principles and framework**

4.4.1 The Public Finance Act 1989 did not directly bring about consequential amendments to the Parliamentary Service Act but did significantly alter accountability arrangements and responsibilities under the Parliamentary Service Act.

4.4.2 Specifically, section 82 of the Public Finance Act 1989 designated "the Speaker" as the "Responsible Minister" for Vote : Parliamentary Service, for the purposes of that Act, and the Parliamentary Service was "deemed to be a department" for the purposes of that Act. The Parliamentary Service Act originally applied the old Public Finance Act 1977.<sup>8</sup> This was repealed, with the effect that the Parliamentary Service Commission had no statutory connection with the Public Finance Act 1989.

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<sup>8</sup> In section 55 of the 1985 Act: "The Public Finance Act 1977 shall apply in respect of the Parliamentary Service Commission as if it were a Government agency within the meaning of that Act."

It is the Speaker (and not the Parliamentary Service Commission) who receives and is responsible for the appropriations made to the Vote.

- 4.4.3 Since the Public Finance Act 1989, appropriations to Vote : Parliamentary Service have been made in the name of the responsible Minister (the Speaker) and the annual audited accounts are those of the Parliamentary Service (not the Parliamentary Service Commission). However, it has been the practice for the annual report and accounts of the Parliamentary Service to be included with the annual report to Parliament of the Parliamentary Service Commission.

#### **4.5 Issues that have arisen**

- 4.5.1 For some time there has been considerable awareness of shortcomings in the system as it has evolved and operated during the last few years. As noted in the Commission's 1998 Annual Report (page 8), "Because of the sequencing of the relevant legislation, the respective roles and responsibilities of the Speaker, the Commission and the Parliamentary Service are not as clear as they might be."

- 4.5.2 Features of the present system described above, and especially legislative developments since 1985, have in many respects cut across the apparent functional responsibilities of the Commission.

- 4.5.3 The Public Finance Act certainly establishes the authority of the Speaker to take budgetary control action in circumstances where the Parliamentary Service Commission is either unwilling or unable to do so. However, it leaves unanswered the issue of whether and to what extent the role and functions of the Parliamentary Service Commission are now appropriately expressed:

- a in light of the detailed and specific accountabilities between a Responsible Minister and Chief Executive of a department under the provisions of the Public Finance Act 1989 as applied to the Speaker and General Manager of the Parliamentary Service by s.82 of the Public Finance Act; and
- b given that the provisions of the Public Finance Act 1989 do not apply directly to the Parliamentary Service Commission.

Crown Law legal opinion has also identified a number of significant inconsistencies between the provisions of the Parliamentary Service Act 1985 and the Public Finance Act 1989.

- 4.5.4 These inconsistencies are more than matters of abstract principle. The Parliamentary Service Commission is in various significant ways clearly



constrained in exercising its statutory functions by not having access to relevant budgetary information. This applies especially to its functions of budgetary control and supervision of the administration of services. Budget baselines are not formally submitted to it, and hence it does not carry out the basic control function of budget sign-off. Because it is not provided with any funding directly through the appropriation process, it is unable to function fully as an executive agency. In respect of its supervisory role, the key purchase agreement document is, properly, between the Speaker and General Manager, although the Speaker in practice does submit a draft and allows the opportunity for Commission members to raise issues.

4.5.5 Although by and large potential conflicts are avoided in practice by the Speaker being both Chair of the Commission and Responsible Minister, proper lines of accountability are obscured both as between Parliament and the Responsible Minister and/or Commission, and between the General Manager and the Responsible Minister and/or the Commission.

4.5.6 A memorandum by the Speaker to the Commission in June last year puts the issues succinctly, as follows:

“Bringing all this together, then, the present situation can be summarised in the following terms:

- i. There are now confused accountabilities in terms of exactly what the Parliamentary Service Commission is responsible for in terms of its current statutory functions;
- ii. The Parliamentary Service Act is clearly out of step now with later legislative requirements and enactments;
- iii. The 1985 Act has already been substantially altered over the years (42 of the original 75 sections have already been subject to change or repeal) and the need for, and relevance of, many of the remaining provisions are out of date or unnecessary.”

4.5.7 Other issues drawn to the review team’s attention were:

- *Membership of the Commission* - present membership reflects the two-party emphasis of the FFP electoral system (see Appendix V to this report). Changes to accommodate the emphasis under MMP on Parliamentary parties, foreshadowed last year in a draft Parliamentary Service Amendment Bill, have not yet not been implemented.
- *Functioning of the Commission* - it was suggested to us that because the Commission is inherently representative in nature, decisions tend to be

made on the basis of consensus after members have consulted with their caucuses rather than in an executive manner. This will sometimes mean important decisions are delayed, or deferred indefinitely, or may be based on a compromise view rather than necessarily the optimal policy decision.

- *Risk management* - the Commission's exercise of budgetary control is constrained by the fact that members in general do not bear the risk of any negative impact their actions may have on expenditure and management.

4.5.8 In the next section, section 5.0 below, we address these issues.

## **5.0 PROPOSED CHANGES**

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### **5.1 Framework for change**

5.1.1 The review team saw its primary objective as being to find ways to align roles and responsibilities associated with support services for members of Parliament more immediately with accountability and responsiveness to MMP. These two considerations are fundamental matters of governance under the Parliamentary Service Act.

5.1.2 The following proposals involve five categories of change:

- First, legislative change to produce a new Parliamentary Service Act, and to make other legislation apply to the arena of parliamentary services.
- Second, structural change around the roles of Speaker and the existing Commission, and around the budget-setting process. Allocation of responsibility is central to determining who is accountable for decisions taken, and for performance.
- Third, the introduction of a process for external review the appropriate level of resourcing for members.
- Fourth, changes in the method of funding support for members, to place responsibility for budget management with those who in practice spend the money.
- Fifth, administrative change to overcome problems experienced with existing processes that constrain the effectiveness and efficiency of services to members of Parliament.

5.1.3 Our proposals deal primarily with the basic framework of the Act and the institutional arrangements laid out in the Act.

### **5.2 A new Parliamentary Service Act**

5.2.1 For three reasons, we propose an overhaul of the existing Act and preparation of a new statute for introduction and passing in the 1999 parliamentary session:

- The Act has been substantially amended many times over its 14-year life. Of the 71 sections in the original 1985 Act, 42 have been amended, repealed, or replaced. This has resulted in many inconsistencies that could be ironed out in a 'clean' Act.

- Our particular proposals, if adopted, would require a substantial overhaul of the existing Act which could not be readily achieved through clause-by-clause amending legislation.
- A re-write of the existing Act would allow the formulation of clear, up-to-date principles to underpin all the provisions in the Act and the flow-on to relationships with other newer legislation. In this respect the statute shows its age.

5.2.2 The main issues to address in the legislation are:

- the future role and functions of the Parliamentary Service Commission;
- the relationship of the Parliamentary Service Act to the Public Finance Act; and
- jurisdictional boundaries between the Parliamentary Service Commission and the Higher Salaries Commission, and any consequential amendments to the Civil List Act 1979.

5.2.3 We are pleased to note that approval has been given to allocate priority in the Government's 1999 legislation programme for a Bill to implement decisions arising from this review.

### **5.3 Governance Roles of Speaker and Commission**

5.3.1 Any changes to strengthen accountability should start from a clear understanding of what the accountabilities ought to be, and where they ought to lie. At the heart of the accountability relationships, as we saw them, are the respective roles of Speaker and Parliamentary Service Commission.

5.3.2 Currently, governance of the Parliamentary Service is divided between the Responsible Minister (the Speaker) and the Commission (with the Speaker as chair). This situation has arisen because, under the Act, the Commission is responsible for functions that amount to a governance role (for example, the statutory function of the Commission to exercise budgetary control over the Parliamentary Service). However, under the Public Finance Act the Speaker is designated as the Responsible Minister and is therefore required to fulfil a governance role also. This situation contradicts the principle of good governance that requires clear accountability arrangements.

5.3.3 While the Crown Law Office opinion clarifies the status of the Speaker in this regard (see para 1.2.1(iii) above), a number of issues remain in particular, how the Parliamentary Service Commission model compares with the detailed and specific accountabilities between a Responsible Minister and the Chief Executive of a department.

5.3.4 The review team considers that this problem should be resolved by amending the Parliamentary Service Act so that the functions of the Commission are not in conflict with the Public Finance Act. We propose that this be accomplished by reconstituting the role of the Commission to one akin to an advisory board, rather than an executive commission. It would remain a statutory body, providing a link between the Public Finance Act responsibilities of the Speaker, and the ongoing interests of the members of Parliament in resource allocation. We do not believe there are any reasons the Commission, as an advisory body, would need to remain a body corporate which it is at present. The membership structure would be changed on the lines contained in the draft Parliamentary Service Amendment Bill 1998 (see Appendix V), to reflect the MMP Parliament. As an advisory body, it is entirely appropriate that its membership should be representative of the parties in Parliament.

5.3.5 We believe that by focusing on advisory functions, the new Parliamentary Service Commission would be more truly effective than it is able to be at present. (For example, because the present Commission does not have a direct decision-making role in formulating budget proposals, does not see budget papers and does not receive the voted funding, it is unable to be truly executive as originally envisaged). We envisage that important areas for the new Commission to advise on would include:

- strategic direction for parliamentary services
- financial budgets
- high-level operational matters
- effective support for members - reflecting, for example, changing technology.

5.3.6 If this course were taken:

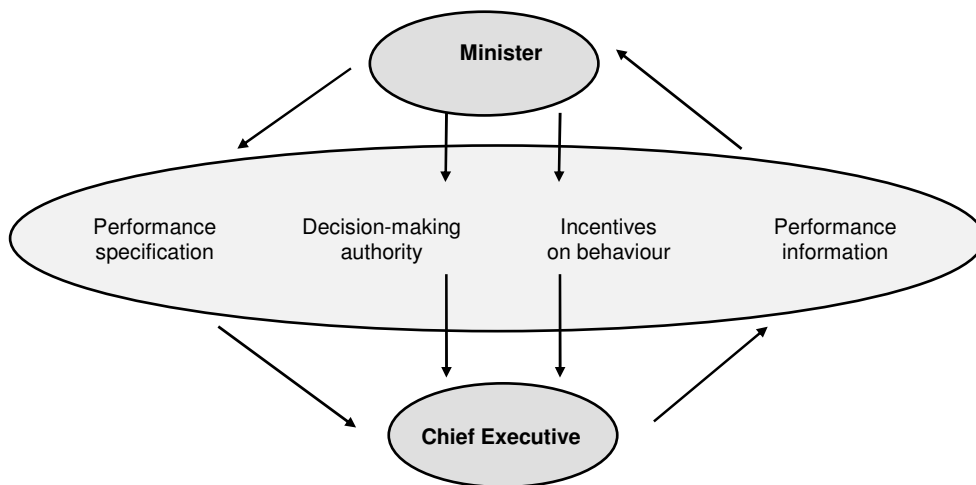
- the Speaker would be vested with full legal control as 'Responsible Minister' (Vote: Parliamentary Service would remain as is and continue to be considered by a select committee in the normal way);
- the Speaker would be obliged to consult with the re-constituted Commission about exercising powers in relation to resource allocation; and
- the financial review process would focus on a report from the Parliamentary Service. (Currently it is the Parliamentary Service Commission which is required to report, but because it does not receive

appropriated money, it does not present accounts. Under our proposals, the accountabilities would be clearer.)

5.3.7 The scope of matters on which the new Commission would advise would need to be worked through: for example, should it include the annual purchase agreement between the Speaker and the Parliamentary Service (which relates only to departmental outputs), and what issues of budget confidentiality would that entail. These need not be matters laid down in the statute however.

5.3.8 Another matter to determine is whether the Speaker should be bound to take the advice of the Commission, or whether to make this a matter for the Speaker's discretion. It may be best not to provide the Commission with any formal powers of this kind. On the other hand, we see no reason to constrain the nature of the advisory role unduly.

5.3.9 Our proposal would mean that the Speaker would bear the responsibilities that are at present distributed between the Commission and the Speaker. The structure would then parallel the public sector accountability framework represented in the following diagram<sup>9</sup>:



5.3.10 We believe that the unique position held by the Speaker, as servant of the whole House, would ensure that the Speaker would be able to carry out these responsibilities without unnecessary or undesirable challenge from members. The strong conventions and Standing Orders that define most of the Speaker's roles and responsibilities should suffice to ensure that the exercise of 'Responsible Minister' powers on behalf of members is accepted as legitimate, especially when combined with the advisory role of a new - and more representative - Commission.

<sup>9</sup> Source: *Putting It Together: An Explanatory Guide to the New Zealand Public Sector Financial Management System*, The Treasury, August 1996, page 17.

### 5.3.11 *Other Options: Office of Parliament; Presiding Officers Forum*

The review team seriously considered other proposed approaches to ensuring the fair control and administration of parliamentary resources. Two which we have considered are:

- (i) A proposal to give the Parliamentary Service Commission the same structure as other Offices of Parliament (the Offices of the Ombudsman, Privacy Commissioner and Parliamentary Commissioner for the Environment). This would involve establishing an Office of the Parliamentary Service and appointing a neutral, independent Parliamentary Commissioner of Parliamentary Service who has, like other Officers of Parliament, statutory functions and duties. The objective would be to distance decision-making on resourcing members from political and government influence. While appreciating the argument for this approach, we do not favour it because underlying the Offices of Parliament concept is the intent that they function outside any realm and possibility of party political interest. Party interests must inevitably be taken into account in the resourcing of politicians. We believe it is unrealistic to expect otherwise. Our proposal for a triennial review does, we believe, address the concern raised (see section 5.5).
- (ii) We also considered the approach taken in some European proportional representation assemblies of setting up a presiding officers' forum. In some cases, these are constituted as a formal Presidium with functions that include negotiating the budget resources for the assembly with the government, and having the associated accountability to the assembly for the use of those resources. Presiding officers are a natural and identifiable group to pursue and exercise the interests of Parliament in the nature and extent of the support services Parliament and its members receive. Furthermore, the number of presiding officers in the New Zealand Parliament (Speaker, Deputy Speaker and Assistant Speakers), and the negotiation and agreement among parties that goes into these appointments, means that the composition of the group reflects a degree of party representation. We have not put this forward formally as part of our proposed structure, because we would prefer to see the basic lines of accountability resolved first. We do however suggest that the Speaker consider it as a possible consequential development.

## **5.4 Application of Public Finance Act and State Sector Act**

5.4.1 The 1985 Act pre-dated the State Sector and Public Finance Act reforms of 1988 and 1989 respectively. These two Acts have had a significant impact on the way in which responsibilities and accountabilities for public sector management and financing are formulated. They are now regarded as statutes of fundamental importance in New Zealand's constitutional framework, to a large extent because of the principles of public accountability and of the good employer which underlie them. These are principles which transcend the separation of powers of the legislature and the executive.

In the light of this, we have considered how the two Acts should be thought of in relation to the parliamentary services arena.

### *5.4.2 Public Finance Act*

The present situation is that the Act generally applies. This is clear from section 82 which deems the Parliamentary Service to be a department in terms of the Act, and the Speaker to be the Responsible Minister (see Appendix VI to this report). The main difficulty has been conflict with the Parliamentary Service Act, which we cover above in section 5.3.

There does not seem to be a need for any further re-consideration of how the Act applies, except for the possible merit of incorporating into the Parliamentary Service Act, by way of deeming, those provisions which reflect transcending principles. This may have the advantage of highlighting in an explicit way the importance these principles have to Parliament. We offer this as a suggestion rather than a firm proposal. It would make constitutional conventions a basis of the Parliamentary Service statute so that it is absolutely clear what principles apply.

5.4.3 By way of general reflection, the review team notes that financial management in the public sector has continued to evolve and to incorporate continuing improvements and enhancements. It is pertinent to its application to the parliamentary service arena that:

- it is flexible;
- it is designed for accountability of Government (public sector financial management system supports the constitutional structure of Government accountability to Parliament) but equally relevant to anywhere public money is spent and there is a responsible agency spending the money and able to account for it.



#### 5.4.4 *State Sector Act*

The State Sector Act applies only in specific respects to the Parliamentary Service and the General Manager (identified in Appendix VI to this report).

We were presented with differing views on whether the State Sector Act should apply in its entirety. One view is that inconsistencies in the current arrangements with the Act are of sufficient concern to warrant the Parliamentary Service becoming a department under the Act, with the Speaker as Minister and with the necessary exclusions of any responsibility on the part of the General Manager in relation to other ministers of the Crown or the policies of the Government.

The alternative view, expressed by a number of other parties we met with, is that this is inappropriate because it runs counter to the principle of the independence of Parliament from the Executive. It is true that that Act has great strengths in core aspects of accountability such as CEO performance. However, it was also designed to be a means for government management, strengthening the alignment of public sector performance with the interests of Executive Government.

We are in agreement with the fundamental principles of the Act, and with the view that the governing principles for the Parliamentary Service should line up with those in the Act. Rather than apply the Act (which would bring with it the need for some careful modifications to avoid undermining the independence of Parliament), we have sought to resolve the issues by targeting specific problems with the existing system, namely:

- providing for the Speaker to request the State Services Commission, in relation to the Parliamentary Service, to exercise its usual functions under section 6 of the State Sector Act in respect of departments (paragraph 5.7.3(i));
- changing the appointment process for the General Manager (paragraph 5.7.3(iii));
- establishing a direct line of accountability from the General Manager to the Speaker as Responsible Minister (paragraphs 5.3.9 and 5.4.5);
- re-constituting the role of the Parliamentary Service Commission, leaving the General Manager with full responsibility, in practice as well as principle, for the input mix required to meet the objectives set for the Parliamentary Service (section 5.3).

We believe these proposals should meet all concerns.

#### 5.4.5 *Budgetary Control and the Role of the General Manager*

One of the major reforms under the Public Finance Act was to put departmental appropriations on an Output Class basis, replacing the input focus of pre-1989 modes of appropriation. The annual purchase agreement between the Minister and the Chief Executive is the process whereby the nature and extent of services to be provided are determined. Within the funding provided, it is a Chief Executive's responsibility to determine what mix of inputs might be necessary, and to be accountable for the effective and efficient use of those resources.

The Public Finance Act, as it presently applies, establishes a clear hierarchy of accountabilities between Parliament, the Speaker (as the Responsible Minister for Vote: Parliamentary Service) and the General Manager who is responsible and accountable for Output Class expenditure. This follows the same pattern of accountabilities applicable to government departments generally, and effectively treats the Parliamentary Service as a government department. That was the evident intent of section 82 of the Public Finance Act in deeming the Parliamentary Service (and the Office of the Clerk of the House of Representatives), to be departments for the purposes of that Act.

At variance with this set of arrangements however are the Parliamentary Service Commission's functions "to determine the size and organisation of the Parliamentary Service and the services to be provided by the Parliamentary Service", and its function "to supervise the administration of the services provided by the Parliamentary Service". If the general model of public finance accountabilities is to be adhered to, then the budgetary role of the Commission needs to be modified to take into account the provisions of the Public Finance Act.

Our proposal to re-establish the Commission as an advisory body, leaving the Speaker wholly responsible for budgetary control, supported by the General Manager as effectively the Chief Executive, resolves this problem.

### **5.5 Independent triennial review**

5.5.1 Our emphasis on the potential constraint public perceptions may place on Parliament's ability to ensure proper levels of resourcing led us to consider some means for externally assessing members' legitimate resource requirements.

5.5.2 We propose that there be a three-yearly review by an independently appointed body whose task would be to recommend the dollar benchmark for the funding of members' support, for the forthcoming Parliament. We envisage that the review would be in the nature of an expert investigation, not

a public inquiry. Its report would be recommendatory, to assist in the budget process. The review body would have clear terms of reference charging it with producing a cost-effective, soundly-based assessment of resource needs. Its work would encompass all aspects of the physical resources necessary for members to carry out their functions effectively. (It would not deal with expenses paid to members. We propose in section 5.8 below that these, along with salaries and benefits, be determined solely by the Higher Salaries Commission. But the review body would need to be cognisant of Higher Salaries Commission determinations. It would need to be cognisant of the work of the Electoral Commission on the number of members of Parliament, given a mutual interest in the efficiency and effectiveness of Parliament.)

- 5.5.3 We envisage a membership of three, appointed every three years by the Governor-General on the recommendation of the Speaker after consulting the reconstituted Parliamentary Service Commission. Members would be appointed for the confidence they commanded among parliamentarians and the public, and for their ability to contribute experienced judgement and technical expertise; eg, skills in information technology and its use in successful organisations.
- 5.5.4 The review body would make its recommendations to the Speaker who would have the authority to disclose them to the Government and make the report public, possibly tabling it in the House. The Speaker should invite the Parliamentary Service Commission to consider the report prior to tabling, and in a covering report indicate as appropriate the views of the Commission. The Speaker would retain full responsibility for allocating funding within Parliament in the normal budget round, subject of course to procedures to ensure fair allocations among parties and members.
- 5.5.5 We accept that there is a cost attached to this proposal, but this will be counterbalanced by sound financing of members' and parties' support needs into the future and the external assurance (currently lacking) it will provide. We also propose that the running costs of the review body be contained by setting it a short, finite time for each triennial review.
- 5.5.6 An alternative we considered was to have the Higher Salaries Commission take on the present policy setting functions of the Parliamentary Service Commission. We note that in Australia (at federal and state levels) there has been an increasing move to take decision-making on members resourcing away from the members themselves and place it with the independent remuneration tribunals. We do not regard this as a viable solution in New Zealand since 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. We believe that by combining the clear responsibility of the Speaker for the Vote with a periodic external benchmark-setting review, the necessary independence will be achieved while retaining the close identification of resource needs with those who hold the information on day-to-day and strategic needs.

## **5.6 Method of funding under Vote: Parliamentary Service**

5.6.1 Work that the Parliamentary Service and Treasury carried out jointly last year, at the request of the Speaker and Treasurer, has considered the issue of “bulk funding” of parliamentary parties or of individual members, as a means of improving accountability for expenditure on members’ support. An officials’ paper identifies bulk funding as a way of overcoming problems under the present system relating to:

- inflexibility (members and party groups have limited flexibility to determine how they configure the services available to them);
- blurred accountability and transparency (as highlighted elsewhere in our report); and
- Crown fiscal risk (resulting from the demand-driven nature of some areas of expenditure).

5.6.2 We note that electorate support and parliamentary party group activities are already appropriated to each party group as line items in the Estimates, leaving as the problem areas members’ travel and communications under Vote: Parliamentary Service Crown payments (for which the General Manager has a ‘stewardship’ role covering accounting and payments in accordance with the rules laid down by the Parliamentary Service Commission). Problems do not arise with Vote: Parliamentary Service departmental outputs (ie, functions for which the General Manager has full responsibility for management, operational and financial accountability.) Extending bulk funding to travel and communications would be a logical and realistic move because it overcomes the present difficulty that the General Manager is accountable for expenditure areas where there is little practical scope for management direction or intervention in priority-setting and budget control. We would support the principle that wherever discretion is involved in spending decisions, decision-making is best placed in the hands of those who have the immediate information about resource needs, and about the consequences of their actions.

5.6.3 The officials' paper sets out the criteria for a "good" budget system, as one which:

- is fiscally sustainable;
- promotes accountability;
- is transparent (of both funding provided, and services delivered);
- supports MPs' effectiveness; and
- can be readily understood and accepted by members, and by the public.

These criteria set a high threshold of performance, but we believe that they are sound and that a fuller system of bulk funding, while having some drawbacks, would come much closer to meeting them than the present system. We propose such a move.

5.6.4 The obvious items to include in an extended bulk fund are travel and communications. The other possible area is members' personal staff support costs (currently funded as departmental outputs) and other 'institutional' costs.

5.6.5 The system may not appeal to all members or parties, and the means of implementing it require further investigation and consultation. One way we believe it could be adopted is to allow members or party groups to 'opt-in' as far as they wish to take on managing their own resource decisions. In other words, not all members or party groups would necessarily choose to take on bulk funding to the same extent. Party groups could also have the options of bulk funds allocated to party groups; or full individual bulk funding. Under the last option, a member could assign the whole of their bulk funding to their party if desired. We ourselves believe that, once established, bulk funding will prove to be sufficiently attractive to draw in most parties or individual members.

5.6.6 For a system of bulk funding to work successfully, there will need to be:

- clear delineation, but not tight specification, of the purposes for which money may be spent from the bulk fund; and
- a high level of disclosure of how money is spent, and therefore good reporting systems.

Guidelines (policy rules or criteria) should be such as to help members justify their spending, and make it more easily understood by electors. Guidelines

should also, we suggest, specifically include the definition of parliamentary business arrived at by the Higher Salaries Commission and set out in its 1998 Determination.<sup>10</sup>

5.6.7 Some other aspects of putting a bulk funding system into effect include:

- devising the means for passing over the funding (the officials' paper envisages that the means would be delegated from the Speaker, which as Responsible Minister he has the power to do. We suggest that a 'tidy' model for the necessary delegations is the Cabinet process by which financial delegations are made to Ministers);
- arranging for Parliamentary Service to provide agency support services by the parliamentary party groups or members, such as accounting and payroll and other personnel support;
- making Parliamentary Service responsible to the Speaker for monitoring and reporting on the proper utilisation of the funding and for providing policy advice (ie, the General Manager would be accountable not for the funds themselves, but for the quality of monitoring and advice provided);
- having the Speaker as Responsible Minister direct the investigation of any expenditure; and
- having the party group or members' chosen form of bulk funding prevail at least for the duration of a Parliament.

The precise details of implementing a bulk fund approach would require more work, and possible variation from the features we suggest, to ensure the system is robust and workable.

## **5.7 Changes to Parliamentary Service and Senior Officers**

5.7.1 While our brief does not cover matters of internal management or organisational performance, we believe some important changes are needed within the Parliamentary Service to make it consistent with clear accountability.

5.7.2 There are three key issues:

- The status of the Parliamentary Service vis-à-vis the State Sector Act.
- The role of the General Manager, in particular his or her accountability relationships with both the Parliamentary Service Commission and the

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<sup>10</sup> Parliamentary Salaries and Allowances Determination 1998, s 3

Responsible Minister. As a direct result of budgetary control lying both with the Speaker and the Commission (paras 1.2.1(iii) and 5.3.1 above) the General Manager has in effect dual responsibility, to both. This dilutes the transparency of the General Manager's accountability.

- The General Manager's legal position as representative of the employer in respect of the control he or she exercises over funding appropriated for executive secretaries, party officers and electoral staff.

5.7.3 The following proposals address these three issues. We also propose some changes to the legislation as it relates to the appointment of senior officers, in order to improve the clarity of accountabilities in the Act.

*(i) Status of Parliamentary Service*

In paragraph 5.4.4 above, we have argued against constituting the Parliamentary Service as a department under the State Sector Act. We propose however that the Parliamentary Service Act include a provision similar to that in the Clerk of the House of Representatives Act 1988 covering the functions of the State Services Commission. Section 17 of the latter Act provides that "The State Services Commission may from time to time, at the request of the Speaker of the House of Representatives, exercise in respect of the Office of the Clerk of the House of Representatives any of the functions conferred on the State Services Commission by section 6 of the State Sector Act 1988". These functions include machinery of government reviews and reviewing efficiency, effectiveness, and economy including the "discharge by the chief executive of his her functions". The Clerk is deemed to be the Chief Executive for this purpose. A move to adopt these provisions will, we believe, be an important aid for the Speaker in the Responsible Minister-General Manager accountability relationship.

*(ii) General Manager's responsibility for departmental outputs*

The functions of the Parliamentary Service Commission under the present Act include determining the size and organisation of the Parliamentary Service and the services to be provided, and supervision of the Service. At the same time, the General Manager has responsibility under the Act (section 29), and is accountable to the Commission, for the "efficient and economical administration of the Parliamentary Service". Public sector reform has emphasised the responsibility of the Chief Executive for deciding the input mix to meet the objectives of the Minister. Reconstituting the Commission's role, as we propose in para 5.3.4, would meet this principle. It would leave the General Manager clearly responsible for deciding the input mix to meet the needs of Parliament and members, and directly

accountable to the Speaker for performance against objectives, in the same way as public service Chief Executives.

The reporting process (General Manager to Speaker) can be addressed in the re-drafting of the Parliamentary Service Act.

(iii) *Senior management positions*

- Appointment of General Manager: The means for appointing the General Manager under the present Act is unusual. He or she is appointed by recommendation to the Governor-General from a statutory committee comprising the Speaker, two members of the Parliamentary Service Commission, the State Services Commissioner and, at the discretion of committee members, up to two other persons. It is important that the method of appointment continue to reflect the institutional uniqueness of Parliament. We propose adopting the same process that applies to appointing the Clerk of the House of Representatives, which is appointment by the Governor-General on the recommendation of the Speaker of the House of Representatives after consulting the Prime Minister, the Leader of the Opposition, and such other members of the House of Representatives as the Speaker considers desirable. We would however recommend two additional procedures:
  - that the Speaker consult the Parliamentary Service Commission, given the Commission's proposed advisory role;
  - that the Speaker be enabled to constitute a panel to assist in the selection process, and to request State Services Commission participation on the panel and assistance with the process. Our concern here is to ensure appropriate emphasis on the professional management requirements of the job.
- As a related change, we further propose that the General Manager's remuneration be brought back under the jurisdiction of the Higher Salaries Commission, as it was between 1985 and 1988. (It is currently determined by the State Services Commission with the agreement of the General Manager and of the Parliamentary Service Commission.) The Higher Salaries Commission determines the remuneration of the Clerk of the House of Representatives and Chief Parliamentary Counsel.
- The present Act provides specifically for appointments to two further senior management positions, the Deputy General Manager and the Parliamentary Librarian. Not only are the procedures somewhat



cumbersome, they also cut across the General Manager's responsibility for determining the senior management structures required to meet objectives and respond to changing circumstances. We believe the provisions are unnecessary and should be taken out of the Act. It will then become the General Manager's job to ensure that the process of appointments, particularly for the Parliamentary Librarian, properly reflects the important nature of the position.

#### 5.7.4 *Employment Relationships*

Our inquiry has highlighted the problem of the General Manager's accountability for, but not control of, the costs associated with managing the employment contracts of staff employed to work for members in and away from Parliament, and in other parliamentary party office activities such as research and communications.

The usual departmental controls are applied to that strand of funding within the departmental output that provides for the general servicing of Parliament. However, individual members select out-of-Parliament staff, executive secretaries and other support staff - and also carry out performance management to the extent that it happens. This leaves the General Manager as the employer responsible for costs accrued against the funding appropriated for executive and out-of-Parliament secretaries, particularly for the personal grievance procedure costs which the Parliamentary Service budget is currently carrying, even though, because the Service is not the day-to-day manager for those staff, it has little real opportunity to manage or work through staffing problems.

One option for resolving this problem is for the General Manager, under existing powers of delegation, to delegate such employment contracts to managers in Parliamentary party offices. The incentives for cost-consciousness would then lie closer to those who manage staff.

An alternative, which we favour, is to rely on the incentives that would flow from a shift to the bulk funding of members' support services, under which party groups or members could recruit and employ staff from their own budgets, with agency support from the Parliamentary Service. (This is the current situation for staff engaged in leaders' office party research units.) It would include carrying the costs of employment settlements on the bulk budget.

If delegation is accepted as a direction for the future, we note that the General Manager already has sufficient powers of delegation to delegate employment responsibilities.

### 5.7.5 *Industrial matters*

Industrial matters are not directly within our brief, but would be affected by any move to bulk funding and the objective of resourcing flexibility.

The main matter brought to our attention - which we record here for the General Manager to take up as appropriate with the relevant industrial groups within the Parliamentary staffing structure - is the narrowly banded salary scale for electorate secretaries. This could be resolved by employing such staff out of bulk budgets, giving party offices the scope to decide on pay scales. If that does not happen, there would seem on the face of it to be a case for stretching the scale to allow adequate opportunity for reward at the top end, and more room for training up staff at the bottom end.

### 5.7.6 *Ministerial Services*

The Ministerial Services Unit of the Department of Internal Affairs administers support services for Ministers that are similar to those for members. It was suggested to us that the two services could be merged, with gains to efficiency. A merger is clearly feasible, but we believe that the balance of argument favours retaining the existing separation, which recognises the distinction between Parliament and the Executive. A practical illustration of the difficulties a merger could create is the conflicting demands that members and Ministers would make on the resources, which in all likelihood would be resolved in favour of Ministers. We understand also that efficiency gains would be minimal.

## 5.8 **Role of the Parliamentary Service Commission relative to that of the Higher Salaries Commission**

5.8.1 The matter of overlapping jurisdictions between the Parliamentary Service Commission (PSC) and the Higher Salaries Commission (HSC) was brought to the attention of the review team. The responsibilities of the HSC to determine allowances for members under section 12 of the Higher Salaries Commission Act have become less clearly defined over time, because PSC (and Ministerial Services) have exercised overlapping functions on the range of support for members. The three agencies each variously determine payments to members, including Ministers:

<b>Higher Salaries Commission</b>	Salaries, allowances and a range of personal expenses to support members, and members of the Executive
<b>Parliamentary Service Commission</b>	Support services to members and a range of personal expenses for members
<b>Ministerial Services</b>	Support services and a range of personal expenses for members of the Executive

The lines of responsibility and function are now quite blurred, with the possibility of confusion over whose jurisdiction prevails.

5.8.2 Whether or not the Parliamentary Service Commission is re-established as an advisory body rather than an executive body, consideration needs to be given to the process by which payments to individual members and the policy behind these are set.

5.8.3 In line with our terms of reference, the review team has considered the issue from the perspective of the Parliamentary Service Act, which deals with services for members of Parliament. In relation to Ministers, the Higher Salaries Commission determines a range of allowances, personal expenses and benefits that are administered by Ministerial Services and are outside our brief. The following proposal in paragraph 5.8.4 covers Ministers in respect of privileges they receive as members of Parliament.

5.8.4 We propose that responsibility for all entitlements for members in the nature of personal remuneration, including benefits, and allowances and personal expenses be placed clearly with the Higher Salaries Commission. This would leave clear responsibility within the Speaker/parliamentary services arena for establishing the level of physical resources required to support members in going about their work. Without particularising how entitlements should be defined and hence which ones fall on which of these bodies to determine, the review team proposes that the general principle be adopted that:

*matters to do with the remuneration of members, including benefits, and allowances and personal expenses be entirely in the hands of the Higher Salaries Commission to determine, while the determination of support services be entirely in the hands of the Speaker in consultation with the Parliamentary Service Commission and with advice from the Parliamentary Service.*

5.8.5 If this proposal is accepted, there will need to be discussion between the Speaker and the HSC to fine-tune the principle, and work through how it would be implemented including any transitional arrangements.

5.8.6 One transition issue that we recommend be dealt with by the PSC exercising its present functions is how travel privileges for former members and their spouses should be dealt with in the future. The continuation of the existing privileges was questioned by a number of members we met with, who thought that the original circumstances that justified their introduction no longer existed, and who took the view that they should in fact be phased out over time. We suggest that the PSC consider allowing no new members elected to Parliament at the next General Election access to travel privileges for former members, ie upon their leaving Parliament they would not have these

privileges available. The PSC, not the HSC, currently deals with this programme for former members and we think it would be desirable for the PSC to put in place procedures to conclude its operation - with appropriate grandparenting where necessary - in advance of a new Parliamentary Service Act.

- 5.8.7 The delineation of PSC and HSC functions as we propose may have implications for the way the HSC deals with remuneration in its determinations. We regard this as a matter for the HSC to take up as it sees fit, since it is the appropriate body to determine the ground rules covering changes to remuneration, including benefits and expenses.

One issue that may need attention is the effect on benefits available to Ministers, but that is outside our brief.

- 5.8.8 Implementing the principle in paragraph 5.8.4 above is likely to require legislative amendment, to express its intent. The statutes affected are the Higher Salaries Commission Act (primarily section 12, dealing with the Higher Salaries Commission's role in respect of members), and the Civil List Act (section 16 which covers the functions of the HSC, and section 25, to ensure the defining principle for the Commission's jurisdiction is not contradictory with this section).

## **5.9 Application of the Official Information Act 1982**

- 5.9.1 The Parliamentary Service Commission and Parliamentary Service are excluded from the Official Information Act (OIA).
- 5.9.2 The OIA, like the Public Finance and State Sector Acts, is a statute of constitutional importance designed to promote the accountability of public bodies. We do not see any fundamental reason the open government principles of that Act should not apply in the arena of parliamentary services, so long as there are necessary exceptions such as those protecting the independence of a member. This view was strongly advocated by a number of those we met with in the course of the review.
- 5.9.3 We understand that the original rationale for not including the Parliamentary Service Commission and Parliamentary Service was that it was considered constitutionally inappropriate to cover them, since they did not form part of the Executive. However, that rationale now holds less weight because other bodies are now covered which are not part of the Executive, such as the Parliamentary Commissioner for the Environment. We also note that the Parliamentary Service Commission (although not the Parliamentary Service) is covered by the Ombudsman Act 1975 which is also concerned with promoting the accountability of public bodies.

- 5.9.4 It is important that the terms on which the OIA might apply are carefully constructed. The focus should be on information relating to the services provided to Parliament and members, not the affairs of the individual member. We propose that the OIA be extended to cover the Speaker as Responsible Minister and the Parliamentary Service, these being the two groups which hold the appropriate accountability information.
- 5.9.5 It will be necessary to consider what should be regarded as official information. We believe, for example, that it would include information gathered by the Speaker in his/her official capacity and by the Parliamentary Service in carrying out its official functions. It would not include any information generated, collected and held directly by members in their capacity as members, or to information relating to Parliamentary party policies, or party organisational material - this would not be able to be sought under the OIA.
- 5.9.6 Section 6 of the OIA provides for withholding information in defined categories. These generic grounds would seem to cover most areas of legitimate concern about information held by the Speaker, the Parliamentary Service Commission and the Parliamentary Service to which the public should not have access. (The Privacy Act covers personal information.) A category not covered by these generic grounds is information of a politically sensitive nature - for example about the development of policy by the political parties.
- 5.9.7 While we have not investigated the detailed implications of applying the OIA to the Parliamentary Services arena, there are two possible means for providing any necessary exclusions (whatever means adopted must ensure information held directly by members is excluded):
- a new generic ground for withholding information could be added to section 6 of the Act, to cover politically sensitive information of the kind represented by party affairs such as policy papers<sup>11</sup>; and
  - a provision similar to that applying to tribunals, which provides 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).<sup>12</sup>

Either approach would avoid introducing into the OIA exclusions for specifically named types of information. We do not favour that approach, as it would be at odds with the design of the existing Act.

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<sup>11</sup> Further analysis is required of what classes of sensitive information might be held by the three groups, why they might be excluded and whether there might be some politically sensitive material whose release might nevertheless promote public accountability.

<sup>12</sup> These provisions are contained in the interpretation section, s 2 (6)(b) and s 2 (1)(d).

5.9.8 We note that with regard to the privacy of information about identifiable individuals, the Parliamentary Service Commission is totally excluded from the provisions of the Privacy Act, and that the Parliamentary Service has a partial exemption but is covered in respect of personal employee information. The Privacy Commissioner's recent review of the Act<sup>13</sup> recommends that consideration be given to including the Parliamentary Service Commission, with a partial exemption, and to removing or further restricting the Parliamentary Service's partial exemption.

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<sup>13</sup> Report of the Privacy Commissioner on the First Periodic Review of the Operation of the Privacy Act 1993, December 1998, p 39.

## **6.0 IMPLICATIONS OF PROPOSED CHANGES**

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### **6.1 General Observations**

- 6.1.1 Our aim with each of our proposals has been to establish a clear principle, present the supporting analysis, and suggest, indicatively, how we envisage the proposal working in practice. There are obviously further matters of policy and detail to be worked through.
- 6.1.2 In this section we set out in broad terms the main implementation issues, under the headings of cost, legislative requirements, process, and priorities and timing. It has not been possible to prepare a detailed breakdown of costings and actions, but we anticipate that the following analysis will be sufficient to support the Commission's consideration of our proposals. We note also that our proposals do not in all respects break new ground. Moves that have already been made towards funding parliamentary party offices, improving internal budget information flows and on some aspects of employment provide a basis for further initiatives.
- 6.1.3 Proposals we have put forward that deal with the core governance issues highlighted in our terms of reference would, we believe, achieve their desired impact only if they were considered and implemented hand-in-hand. These are: re-constituting the existing governance roles of the Parliamentary Service Commission and the Speaker; introducing a triennial independent review of resourcing support for members; enhancing the General Manager's responsibility for departmental inputs; and, if bulk funding is to achieve its full potential benefits, adopting it for party groups and members, covering specific items of expenditure.
- 6.1.4 Some of our proposals are capable of being implemented individually, with commensurate benefits. Examples are: changing the membership of the Parliamentary Service Commission to reflect the MMP environment; legislative amendments relating to the Public Finance Act; application of the Official Information Act; clarification of the jurisdictional boundary between the Parliamentary Service Commission and Higher Salaries Commission; the associated phasing out of former members' travel privileges; and the changes we propose (in section 5.7) within the Parliamentary Service, except for enhancing the General Manager's responsibility for departmental inputs which flows from other key proposals.
- 6.1.5 We have however designed our proposals as an overall 'package' of complementary changes and recommend strongly that they be considered in a comprehensive way. The risk of not doing so is the continuation of blurred

accountabilities and of shortcomings in how well the overall system aligns with MMP.

## **6.2 Cost Implications**

### *6.2.1 Short term cost implications*

We recognise that adopting changes in a comprehensive way will entail a great deal of work involving not just the Parliamentary Service Commission itself and the Parliamentary Service, but the relevant departments (central agencies and policy departments, and the Ministry of Justice in relation to the Official Information Act), and Parliamentary Counsel.

We have identified the following areas as creating short-term costs:

- policy work and legislative drafting (re-write of Parliamentary Service Act, amendments to other legislation listed below)
- the setting up of a triennial review process
- administrative work on setting up a bulk funding system (this should be relatively small given that some elements of 'bulk funding' are already in place).

### *6.2.2 Medium and longer term cost implications*

Over time, we expect our proposals to result in a material shift towards fully justifiable expenditure. The net effect on overall expenditure on support services for members will be a mix of:

- possible increases in expenditure, if the triennial review process results in upgrading resources to support members;
- possible reductions in expenditure, as a result of budgetary disciplines flowing from clearer responsibilities and accountabilities, and enhanced management;
- possible additional resources in the Speaker's office for purchase advice, to ensure the Speaker is able to fulfil the role of Responsible Minister (these could be procured as needed from external sources rather than in-housed);
- a possible additional resource in the Parliamentary Service for administration of the Official Information Act (this function may be able to be absorbed within the existing staff establishment);



- savings from phasing out travel privileges for future former members and their spouses; and
- costs that will arise three yearly from the triennial review (we see these as being contained by setting a specific timeframe for each review, and by not requiring any ongoing establishment).

### **6.3 Legislative Requirements**

#### *6.3.1 Affected legislation*

The following statutes will require amendment to implement our proposals:

- Parliamentary Service Act (to be re-written);
- Higher Salaries Commission Act (to deal with jurisdiction);
- Civil List Act (review of and possible amendment to section 25);
- Public Finance Act (our proposals relating to Public Finance Act would be enacted in the Parliamentary Service Act, but we note at least one direct amendment which should be dealt with, which is to correct an error in section 82 of the Public Finance Act. Section 82 exempts the Parliamentary Service from s 9(2A)(i) - one of the provisions specifying what must be included in the Estimates - when the exception should be from s 9(2A)(f) relating to the output-outcome link for Government);
- State Sector Act (as with the Public Finance Act, our proposals relating to the State Sector Act would be enacted in the Parliamentary Service Act; probably no further changes to the State Sector Act but there may be some consequential targeted amendments); and
- Official Information Act (to include Parliamentary Service and Speaker as Responsible Minister, in the terms we propose).

6.3.2 Clearly the re-write of the Parliamentary Service Act is the largest area of work. We note the advice in the submission seeking time on the 1999 legislation programme for a new Bill, that “No particular aspects are expected to be contentious” and that “As government policy issues are not involved, it is envisaged that policy decisions on the outcomes of the review will be channelled through the Parliamentary Service Commission ....”.

## **6.4 Process**

- 6.4.1 Consultation will be a major feature of taking our proposals forward. We expect that the Parliamentary Service Commission will wish to consult all members, as it does now through the caucuses.
- 6.4.2 We are not aware that our proposals have any implications for the Standing Orders of the House, but should any become apparent they will be appropriately dealt with by the Speaker and through the Business Committee of the House.
- 6.4.3 The government agencies with a direct interest in the issues are the Office of the Controller and Auditor General, the Treasury, the State Services Commission and for the Official Information Act the Ministry of Justice, each of whom have had involvement with the review. We recognise that developing and implementing our proposals will entail significant of work for them, and for Parliamentary Counsel.

## **6.5 Timing**

- 6.5.1 The most significant factor in the timing of Parliamentary Service Commission decisions on our proposals and subsequent implementation is the 1999 General Election. A General Election represents a watershed in the cycle of parliamentary life, and there are advantages in linking the introduction of changes affecting members to a new Parliament. In the case of any changes to entitlements, such as we propose be considered for travel privileges, this becomes critical since it would be unreasonable to alter the grounds on which members expect support or benefits after their election.
- 6.5.2 Membership of the Parliamentary Service Commission is an urgent matter, given that the existing arrangements were designed for a two-party system. Continuation of this situation into a new Parliament would be highly unsatisfactory.
- 6.5.3 The timing of changes to the Parliamentary Service and its processes is not necessarily linked to General Elections, but since these mostly require new legislative provisions, they should be incorporated into the re-write of the Parliamentary Service Act so that the new Bill - already scheduled for the 1999 session - is complete and does not require further amendment.
- 6.5.4 Taking these factors into account, enactment prior to the end of the current Parliament is highly desirable.

## **7.0 CONCLUSIONS AND SUMMARY**

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### **7.1 Conclusions**

7.1.1 The climate since 1985 has been one of fundamental public sector reform, with major re-organisation of the state sector, and the overhaul of public finance legislation, including the later Fiscal Responsibility Act 1994 which provides for statutory disclosure of information concerning the management of government finance.

These represent considerable enhancements in the means for Parliament to scrutinise Government. The same enhancements need to apply to Parliament itself. Indeed, Parliament should model the standards of accountability it expects of government generally, and be able to meet the tests of accountability reflecting the obligations of publicly funded institutions to justify their use of public resources.

7.1.2 Equally there have been considerable advances in the understanding of 'good governance'. We believe that our proposals meet the following tests of good governance:

- the roles of the parties involved in governance should be clearly specified;
- the lines of responsibility and accountability should be clear, and capable of execution by those concerned;
- the exercise of management authority, and especially the exercise of statutory functions, should be matched by clear control of performance.

Two additional accepted aspects of good governance are that:

- resources should be allocated on the basis of the results being sought;
- information and reporting should reveal the relationship between expenditure and results achieved.

We believe these features can evolve from our proposals, but it needs to be recognised that there are limits to applying the conventional tools for accountability based on cost-efficiency and effectiveness to the work of members of Parliament since their work is not easily, or perhaps even desirably, defined in terms of outputs, outcomes and performance measures.

7.1.3 Responsiveness to the MMP environment will be improved by our proposals for restructuring the membership of the Parliamentary Service Commission, and, significantly, for widening the application of bulk funding.

7.1.4 Finally, we conclude that the approach adopted in New Zealand in 1985 remains broadly appropriate, albeit that it now requires substantial updating.

For the longer term, and looking at the experience of other legislatures, we suggest consideration be given to the way that in some countries the independence of Parliament is recognised formally by establishing a separate Appropriation Bill. We note, however, that where that is done, it is still found quite hard to match the formal appearance of independence with effective budgetary independence.

## 7.2 Summary of proposals and intended outcomes

PROPOSAL	OUTCOME
<b>A new Parliamentary Service Act:</b> re-write of existing Act (section 5.2)	Updated legislation incorporating review team proposals and based on clear principles.
<b>Governance roles of Speaker and Parliamentary Service Commission (PSC):</b> re-constitute PSC as a statutory advisory body with membership reflecting MMP Parliament; Speaker vested with clear legal control as 'Responsible Minister'; Speaker obliged to consult with Commission (section 5.3)	Clarity of role and function and clear lines of accountability; present conflict between functions of Commission and Public Finance Act and budget processes removed; PSC remains link between the Public Finance Act responsibilities of the Speaker, and the ongoing interests of members and parties in resource allocation, but able to be more effective; representative membership.
<b>Application of Public Finance Act and State Sector Act:</b> possible merit of incorporating into the Parliamentary Service Act the transcending principles of the PFA eg by way of deeming that those principles apply; targeting specific inconsistencies between the Parliamentary Service and the SSA (section 5.4)	Reinforces financial management and operations based on public sector-wide principles of responsibility and accountability for budgetary control and management.
<b>Independent triennial review:</b> establishment of a three-yearly review of members' support by an independently appointed expert body to carry out the review and recommend a funding benchmark, for the forthcoming Parliament (section 5.5)	Independent, objective assessment of the proper resourcing needs to support members, taking into account strategic needs as well as day to day resourcing, leading to improved public confidence in expenditure on members' support.
<b>Method of funding under Vote: Parliamentary Service:</b> extension of the existing system for allocating bulk funding to party groups, to cover travel and communications (and possible further extension to other budget items) and for bulk funding to be allocated to party groups or individual members according to what can be effectively managed at the party group/member level (section 5.6)	Improved accountability for expenditure on members' support; compliance with appropriations promoted; greater flexibility at party group/member level;.

<p><b>Changes to Parliamentary Service and Senior Officers:</b></p> <p>(i) <i>Status of Parliamentary Service</i> - Parliamentary Service Act to include a provision similar to that in section 17 of the Clerk of the House of Representatives Act 1988 providing for the State Services Commission, at the request of the Speaker, to exercise its functions under section 6 of the State Sector Act (para 5.7.3(i))</p> <p>(ii) <i>General Manager's responsibility for departmental outputs</i> - clarification of responsibility for deciding input mix to provide services to members, by re-constitution of role of PSC from executive to advisory (as proposed in paras 5.3.4 - 5.3.9) (para 5.7.3(ii))</p> <p>(iii) <i>Senior management positions</i> - adoption of the same process as applies to the appointment of the Clerk of the House of Representatives, with the addition of consultation with the PSC, and provision for Speaker to constitute a selection panel; General Manager's remuneration be brought back under the jurisdiction of the HSC; remove provisions covering appointment of Deputy General Manager and Parliamentary Librarian positions from Parliamentary Service Act (para 5.7.3(iii))</p> <p><i>Employment Relationships:</i> link responsibility for recruitment and management of staff employed in Parliamentary party offices and electorate offices to new system of bulk funding (para 5.7.4)</p>	<p>Strengthen Responsible Minister-General Manager accountability relationship.</p> <p>General Manager directly accountable to the Speaker for performance against objectives, in the same way as are public service chief executives</p> <p>Method of appointment and process for setting remuneration of General Manager would reflect the institutional uniqueness of Parliament and standardise the process for senior officers in the legislature</p> <p>General Manager to have responsibility for senior appointments within the Parliamentary Service</p> <p>Incentives for good staff management strengthened; potential cost savings on employment disputes</p>
<p><b>Roles of Parliamentary Service Commission and Higher Salaries Commission:</b></p> <ul style="list-style-type: none"> <li>- Matters to do with the remuneration of members, including benefits, and allowances and personal expenses to be placed entirely in the hands of the HSC to determine, while the determination of support services be entirely in the hands of the Speaker in consultation with the PSC and with advice from the Parliamentary Service (section 5.8);</li> <li>- The PSC to exercise its present functions in relation to travel privileges for former members and their spouses, and put in place procedures to phase out this programme - with appropriate grandparenting where necessary - in advance of a new Parliamentary Service Act (paragraph 5.8.6 and 6.5.1)</li> </ul>	<p>Resolves problem of overlapping functions of the two bodies and establishes clear lines of responsibility commensurate with their respective interests and expertise</p> <p>Allows the PSC, rather than the HSC under proposal for future jurisdiction over benefits, to determine this matter based on the its historical jurisdiction over travel privileges for members.</p>
<p><b>Application of the Official Information Act 1982:</b> extension of Act to apply to parliamentary services arena and hence to Speaker as Responsible Minister, and to Parliamentary Service, subject to necessary exemptions to protect independence of members (section 5.9)</p>	<p>Acknowledgement of the constitutional importance of official information legislation; improved transparency and accountability to the public</p>

Part Three

## **Appendices**

### TERMS OF REFERENCE FOR A REVIEW OF THE PARLIAMENTARY SERVICE ACT

#### 1.0 BACKGROUND

1.1 It is now 13 years since the Parliamentary Service Act 1985 was enacted, establishing the Parliamentary Service Commission (the Commission) as a statutory body with powers of a separate body corporate and independent of the Executive. The primary functions of the Commission as set out in section 6 of the 1985 Act are:

- (a) To exercise budgetary control over the Parliamentary Service:
- (b) To determine the size and organisation of the Parliamentary Service and the services to be provided by the Parliamentary Service:
- (c) To supervise the administration of the services performed by the Parliamentary Service:
- (d) To provide premises for Parliamentary purposes.

1.2 The Commission occupies a unique constitutional position in so far as it, and the Parliamentary Service, are independent of the Executive Government. There are important reasons for this which remain relevant, but also aspects which bear fresh consideration.

1.3 Two factors suggest that it is both timely and appropriate to review the arrangements for determining and administering the resources available to members to support them in their roles as members:

(i) The introduction of MMP

The introduction of MMP brought many changes to the Parliamentary system and its administration.

It is recognised that MMP demands structures and systems for conducting and facilitating the business of Parliament that reflect a multi-party Parliament and Government.

With the benefit of experience under MMP, there is an opportunity now to assess more thoroughly the ongoing requirements for decision making and administration, against present arrangements which to a large extent have carried forward features of the former two-party, FPP system.

(ii) Public sector management

The establishment of the Commission and the Parliamentary Service pre-dates the introduction of comprehensive public sector reforms in New Zealand which have been applied almost universally across government. Implementation has seen a wide range of new approaches adopted in all areas of executive government and throughout its organisational structures. The framework is set in the State Sector Act 1988 and the Public Finance Act 1989.

Almost all public sector reforms in New Zealand have focused on the need to clarify accountability and responsibility, with stringent requirements for effective and efficient performance, and enhanced accountability of public activities and the associated expenditure which has in many cases included resolution of conflicts of interest.

The Commission is not fully subject to either Act so that it has not been a statutory requirement that the principles of these reforms be brought to bear on the exercise of its functions.

The Parliamentary Service on the other hand is subject to Parts V, VI and VIII of the State Sector Act 1988 as if "the Parliamentary Service were a Department of the Public Service", and, under section 82 of the Public Finance Act 1989, the

Parliamentary Service is deemed to be a 'department' for the purposes of that Act. Just as significantly that section also designates The Speaker as the Responsible Minister under that Act for Vote : Parliamentary Service. As a consequence, it is the Speaker (and not the Parliamentary Service Commission) who receives and is responsible for the appropriations made to that Vote.

These developments have in many respects cut across the apparent functional responsibilities of the Commission.

- 1.4 Related to both these factors in the current environment is the increasing public expectation of transparency and constraint in matters of parliamentary expenditure, as in all areas of government. Public perceptions are influenced by how well the decision processes are or can be understood outside the institution, and views on whether the system seems robust, reasonable and appropriate.
- 1.5 Section 17 of the Parliamentary Service Act provides that the Commission may "commission any person, who in its opinion possesses expert knowledge or is otherwise able to assist it in connection with the exercise of its functions, to make such enquiries or to conduct such research or to make such reports as may be necessary for the efficient carrying out of any of its functions."
- 1.6 Accordingly, the Commission has decided to institute a review of the 1985 model in the light of the experience and developments of the past decade or so, and to look at the means by which the Commission is able to exercise its functions and the scope and options for enhancing or modifying these.

## **2.0 OBJECTIVES**

- 2.1 The Commission's objectives in undertaking this review are to:
  - (i) ensure the relevance, suitability and adaptability of the arrangements governing the Commission's exercise of its responsibilities to the current and future needs of a modern Parliament;
  - (ii) identify the scope to enhance effective, efficient budgetary control and administration over the provision of services to Parliament, including appropriate accountability taking account of the Commission's independence from the Executive Government and in particular the statutory responsibilities of the Speaker of the House and the Parliamentary Service for Vote: Parliamentary Service under the Public Finance Act 1989;
  - (iii) consider whether and what changes might desirably be made to the Commission's powers, authorities and responsibilities that would promote these objectives, including as appropriate the relationship between the Commission, the Speaker as the Responsible Vote Minister, and other bodies especially the Higher Salaries Commission.

## **3.0 TASKS**

- 3.1 The tasks of the review are to inquire into and propose options for:
  - (i) an appropriate framework for accountability requirements and processes including decision-making authorities, the delegation of these authorities and the management of jurisdictional responsibilities;
  - (ii) a clearer differentiation and complementarity of responsibilities as between the Commission itself and the Higher Salaries Commission;
  - (iii) an effective process for consideration of matters of policy arising within the Commission's jurisdiction;
- 3.2 In respect of options for change which the review may propose, it shall also report on:
  - (i) its assessment of the implications, including legislative, administrative and cost implications;
  - (ii) its view on priorities for and practical sequencing of actions implied by its proposals and possible avenues for implementation.



#### **4.0 SCOPE**

4.1 The scope of the review shall include:

- (i) consideration of structure, functions and process in the present system and any areas for possible future change;
- (ii) a stock-take of existing arrangements as they relate both to the effective functioning of the Commission and its accountabilities, and to meeting the needs of Parliament and its members;
- (iii) clarification of the key aspects of what would constitute a well-functioning system and the rationale these provide for any options proposed;
- (iv) the consistency of its proposals with the aims of cost effectiveness and efficiency.

4.2 The reviewers shall consider:

- (i) the extent to which the functioning of the Commission can be informed by established principles of good public sector management.
- (ii) the extent to which overseas experience in matters of parliamentary and members' support, and any parallels in New Zealand experience with governance models, might be relevant;

#### **5.0 TIMING AND PROCESS FOR THE REVIEW**

5.1 The reviewers are to report back to the chairman of the Commission by 1998 or 31 January 1999.

5.2 The reviewers may undertake such consultations and inquiries as may be necessary or appropriate to required tasks and scope of the review as set out above.

In particular, the reviewers shall consult with existing members of the Parliamentary Service Commission and the Higher Salaries Commission, the Leaders of each Parliamentary Party and such other Members as may be considered appropriate (including Independent Members) and necessary to ensure that a representative cross section of views from Members is obtained. The reviewers may, with the concurrence of the Chairman of the Commission, extend a general invitation to all Members to make written or other submissions to the reviewers, and may also consult with such other persons or organisations as may be able to contribute to the review.

5.3 Where it is considered necessary for any additional expertise to be engaged, no such engagement shall be undertaken except with the express agreement of the Chairman of the Parliamentary Service Commission.

## **APPENDIX II**

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### **CONSULTATIONS, DISCUSSIONS HELD AND SUBMISSIONS RECEIVED**

Significant input and advice was received from the following persons and organisations.

#### **PARLIAMENTARY SERVICE COMMISSION**

##### **Chair:**

Hon Doug Kidd, Speaker and Chairman

##### **Members:**

Jim Anderton (*written submission also received*)

Rt Hon Paul East

Rt Hon Jonathan Hunt

Trevor Mallard

Hon Richard Prebble

Hon Roger Sowry

##### **Observers:**

Hon Peter Dunne, Leader, United New Zealand

Ron Mark, NZ First Senior Whip

#### **MEMBERS OF PARLIAMENT NOT COVERED ABOVE**

Mark Burton, Labour Senior Whip

John Carter, Senior Government Whip

Rt Hon Helen Clark, Leader, Labour Party

Hon Wyatt Creech, Minister for Ministerial Services

Rod Donald, Alliance Party

Rodney Hide, ACT Party

#### **OFFICIALS**

##### **Parliamentary officials:**

John O'Sullivan, General Manager, Parliamentary Service

David McGee, Clerk of the House of Representatives

George Tanner, Chief Parliamentary Counsel

##### **Parliamentary Party office staff:**

Heather Simpson, Labour Parliamentary Party Office

Chris Milne, ACT Parliamentary Party Office

**Other officials:**

*As well as meeting with the review team, the three central agencies provided substantial written submissions.*

State Services Commission

The Treasury

Office of the Controller and Auditor General

Trevor Pope, Ministerial Services Unit, Department of Internal Affairs

**HIGHER SALARIES COMMISSION**

Hutton Peacock, Chairman

Commission members

**INDEPENDENT ADVICE**

Hon David Caygill, former member of Parliament and former Minister of Finance

John Roseveare, Principal, JR Consulting Group Ltd

John Martin, Senior Lecturer, Public Policy, School of Business and Public Management, Victoria University of Wellington

Rt Hon Sir Geoffrey Palmer, former Minister in charge of Parliamentary Service Bill 1985; Partner, Chen and Palmer, Public Law Specialists

**OTHER PARTIES**

Public Service Association

Ian Matheson, former Parliamentary Librarian

### OTHER PARLIAMENTARY JURISDICTIONS SUMMARY OF OTHER MODELS OF GOVERNANCE SYSTEMS FOR PARLIAMENTARY ADMINISTRATION

#### 1.0 INTRODUCTION

- 1.1 The review provided an opportunity to compare the New Zealand system with systems adopted in other comparable legislatures, and in particular to consider the more recent innovations adopted to provide Parliament with modern, responsive and financially sound administrative support.
- 1.2 Ideally, there would be a way of identifying 'best practice' in parliamentary administration world-wide, and using that to establish benchmarks for improving the New Zealand system. In reality, systems have evolved to reflect their own unique history, culture and the current environment in which they operate. They must be judged in those terms.
- 1.3 That is not to say however that there is not something useful to learn from the ways other legislatures have developed their systems. The means for securing effective financing for Parliament has been closely examined in many countries. Some, such as Canada, have done so with the express purpose of introducing modern financial management into the parliamentary environment, on lines similar to those which have driven public sector reform in New Zealand.
- 1.4 Most other parliamentary systems relevant to this review are bi-cameral. The following summary concentrates on the core structures and practices of other legislatures, irrespective of whether they are affected by the existence of two Houses.

#### 2.0 MODELS

- 2.1 As in New Zealand, other jurisdictions have placed the highest level of importance on the independence of Parliament from Executive Government in the systems adopted for funding parliamentary activity and for its administration.
- 2.2 Speaking very broadly, the various systems fall into three categories. They are not mutually exclusive - some Parliaments have elements of more than one. They are presented here in ascending order of Parliamentary financial autonomy from the Executive.
  - *The 'departmental' model* - Federal and (generally) State Parliaments in Australia; Canada; New Zealand in certain respects. The system is essentially that of an ordinary government department in terms of Estimates and the role played by Treasury, and relies on specific processes to maintain appropriate regard for the needs of a Parliament, compared with a normal government institution.

- *The 'Commission' model* - UK House of Commons (see below); Queensland until 1995;<sup>14</sup> New Zealand. The primary purpose has been to increase Parliament's control over its funding, and especially to provide Member input. The Commission is established by statute (where it is not, it seems destined to fail eg New South Wales which set up a Commission by resolution of the House in December 1995 which was not re-established after the March 1995 General Election). The influence of Government is diminished, but does remain.
- *The 'separate Appropriation Bill' model* - United States Congress; Australia (eg Federal, New South Wales and Victorian Parliaments). The purpose of an exclusive appropriation bill for parliamentary purposes is to differentiate funding for Parliament totally from government services. Government still retains the sole power to raise and spend money. The Bill therefore requires the support of Government to be passed, and the Government can still determine the amount allocated in the Bill.

### 3.0 MAIN FEATURES

- 3.1 In all cases studied, Parliament, by one means or another, largely approves the parliamentary budget reflecting Parliament's right to determine its own internal affairs. But in every case the government still retains overall responsibility for the sum of money allocated to provide services to members, which is seen to be a necessary consequence of the exclusive power of Executive Government to raise and spend taxes.
- 3.2 All other jurisdictions we looked at have in common that the position of the Clerk of the House is also the equivalent of the Chief Executive, and the principal 'Accounting Officer' for the administration vote.<sup>15</sup> New Zealand seems to be unique in having a clear institutional separation of the procedural business of the House and the administration of support services, and hence separate leadership positions for Clerk and General Manager. Separation has been considered elsewhere, eg the Western Australian Commission on Government posed the question in a 1995 Discussion Paper on the Financial Independence of Parliament.<sup>16</sup>
- 3.3 We did not find any examples of a move towards introducing an external element into the budgetary determination of resource allocation to Parliament, or into the ex post review of the use of resources.
- 3.4 Other key features of legislatures elsewhere of particular interest are:
  - Moves to make annual reports more informative eg published reports reflecting the integration of procedural and administrative functions. In Canada, the Annual Report on the Administration of the House of Commons emphasises the democratic functions of Parliament alongside reporting on developments in support, such as information technology.

<sup>14</sup> The Queensland PSC was abolished because its dominance by members of the party in Government was seen as inhibiting the independence and effectiveness of Parliament.

<sup>15</sup> Sweden has for the past 30 years operated a system with two 'departmental' heads but is in the process of consolidating these. See page 64 below.

<sup>16</sup> "Would it be more efficient and effective to employ a Chief Executive to oversee all of Parliament's administrative and financial matters?" Specified Matters November 1995, p 11.

- A select committee structure for the management of the House (a relatively recent development in the UK.).
- The introduction of strategic and/or corporate plans. In 1998 the Canadian House of Commons Board of Internal Economy promulgated a first-ever Report on Plans and Priorities for 1998/99; intended to be a clear statement of the planned long term results for House administration. In the Australian House of Representatives the corporate plan is designed to set out for MPs realistic expectations about support services.

#### 4.0 EXAMPLES

The following notes relate to systems of administration adopted in legislatures elsewhere which are relevant in varying degrees to the New Zealand Parliament.

##### **Canada**

Canada has a federal, bicameral Parliament.

The Senate and the House of Commons operate under the *Parliament of Canada Act 1985*. Each House is managed as a separate entity.

##### *Board of Internal Economy*

The principal managing body is the Board of Internal Economy. It is a statutory body and acts upon all financial and administrative matters respecting Members of the House of Commons, the House of Commons itself, its premises, its services and its staff pursuant to the provisions of the *Parliament of Canada Act*. The membership of the Board is set out in the Act and is made up of nine members of the House of Commons representing the government party and the two largest recognised parties in opposition, with provision for additional members when there are two or more parties in opposition with at least 12 members.

The Speaker chairs the Board and is the link between the Board of Internal Economy and the House Administration. An important feature of this link to the administrative structure of the House is the Executive Committee. This committee, with the Speaker as chairperson, is responsible for management policy and major decision-making involving general administrative practices, security, and financial and personnel administration of the House.

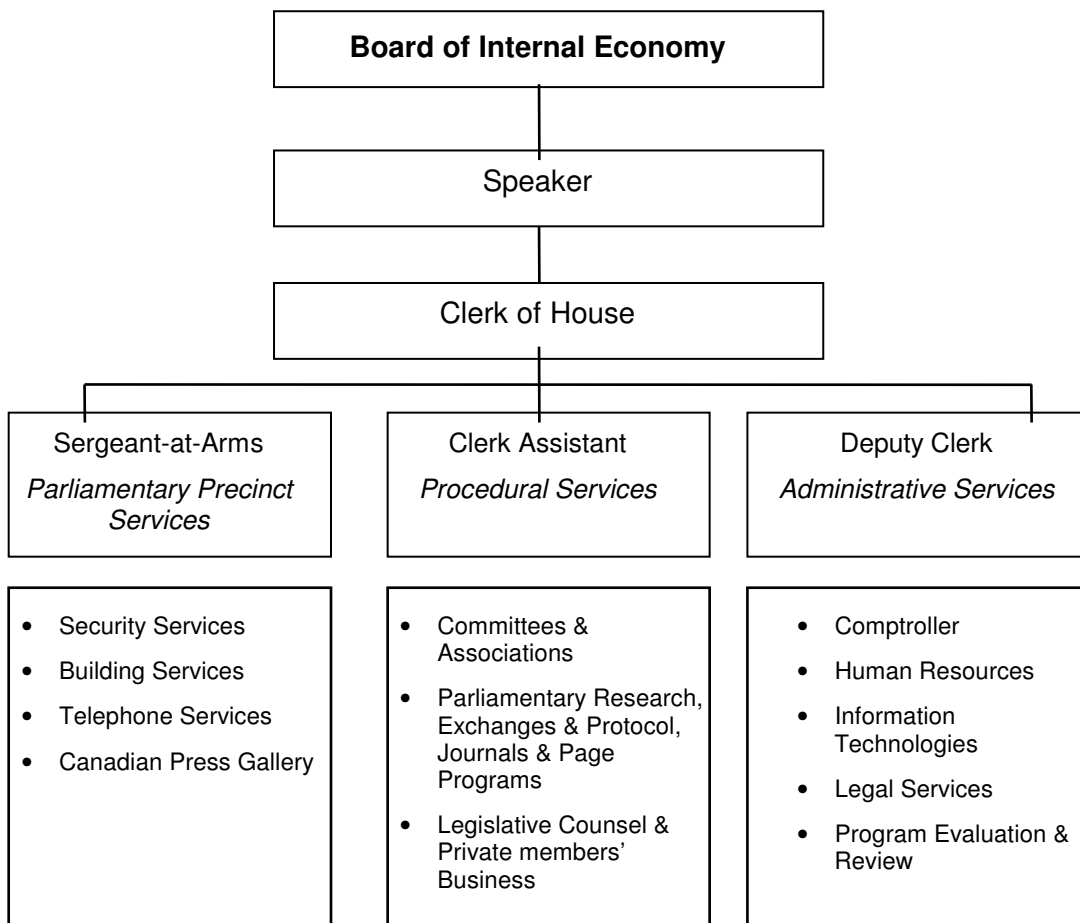
##### *Clerk and Senior Officers*

Members, officers and committees are supported by resources and services administered under the Clerk who reports to the Speaker. Under the direction of the Clerk (see House of Commons' organisation chart below), three senior officials have specific authority for the control, management and direction of defined areas of responsibility:

- The Clerk acts as the chief executive officer of the House, provides advice and supports the Speaker and the House on all procedural and administrative matters, and acts as Secretary to the Board of Internal Economy.

- The Clerk Assistant provides advice and supports the Speaker, the Clerk and the House on procedural matters, and directs research and support services on procedural and legislative matters.
- The Deputy Clerk advises on administrative matters and directs the corporate activities and functions of financial management and control, personnel administration, communication and Members' services, information technologies, legal services, and program evaluation and review. The Deputy Clerk also advises the Speaker and Members on procedural matters.
- The Sergeant-at-Arms advises on matters of security, ensures the protection of the House of Commons and maintains functional accommodation for Members and committees.

### Canadian Commons' Organisation Structure



## United Kingdom - House of Commons

The House of Commons has its own administration, operating under the *House of Commons (Administration) Act 1978*. The organisational structure of the House of Commons is shown in the diagram below.

### *House of Commons Commission*

Since 1978 the principal managing body of the House of Commons has been the House of Commons Commission. The Speaker chairs the Commission. It prepares the House's financial estimates which are laid before the House as part of the normal budgetary process. There has been no formal role for Treasury for many years, a feature which is regarded as providing a degree of independence for Parliament.

### *Other Management Committees*

In addition, there are eight other committees that are involved in the management of the House: the Board of Management, which comprises six departmental heads chaired by the Clerk of the House; the Administration Committee, chaired by the Head of the Finance and Administration Department and comprising the deputy department heads; and six recently established select committees of the House of Commons relating to various aspects of the management of the House.

### *Board of Management and Officers*

The Board of Management advises the Commission on all matters affecting the House of Commons Services as a whole and is responsible for implementing Commission decisions.

The Clerk of the House is also Accounting Officer for the **whole** of the House of Commons Administration vote (not including Members' salaries and allowances), and is therefore ultimately responsible for the expenditure of all six House of Departments and for other expenditure covered by the Administration Vote, including superannuation, police and security services, postage, telecommunications and computer services. The Board of Management appoints the Administration Committee to give first consideration to most proposals on staff matters, to conduct or oversee consultations and negotiations with the Unions, and to make recommendations to the Accounting Officer or the Board of Management as appropriate.

With respect to the broad powers available to the Commission relating to House of Commons staffing, the practice has been for the Commission to delegate staff appointments to the department heads.

The Clerk of the House, the Clerk Assistant, and the Serjeant-at-Arms are Crown Appointments.

### *Select Committee of Finance and Services*

Finally, the nine-member Select Committee of Finance and Services advises the Commission on financial matters including questions of priority for expenditure and the other five Select Committees on the specific matters referred to in their titles.

With respect to the buildings, the current Leader of the House of Commons has recently negotiated with Treasury for a 10 year program of capital expenditure on



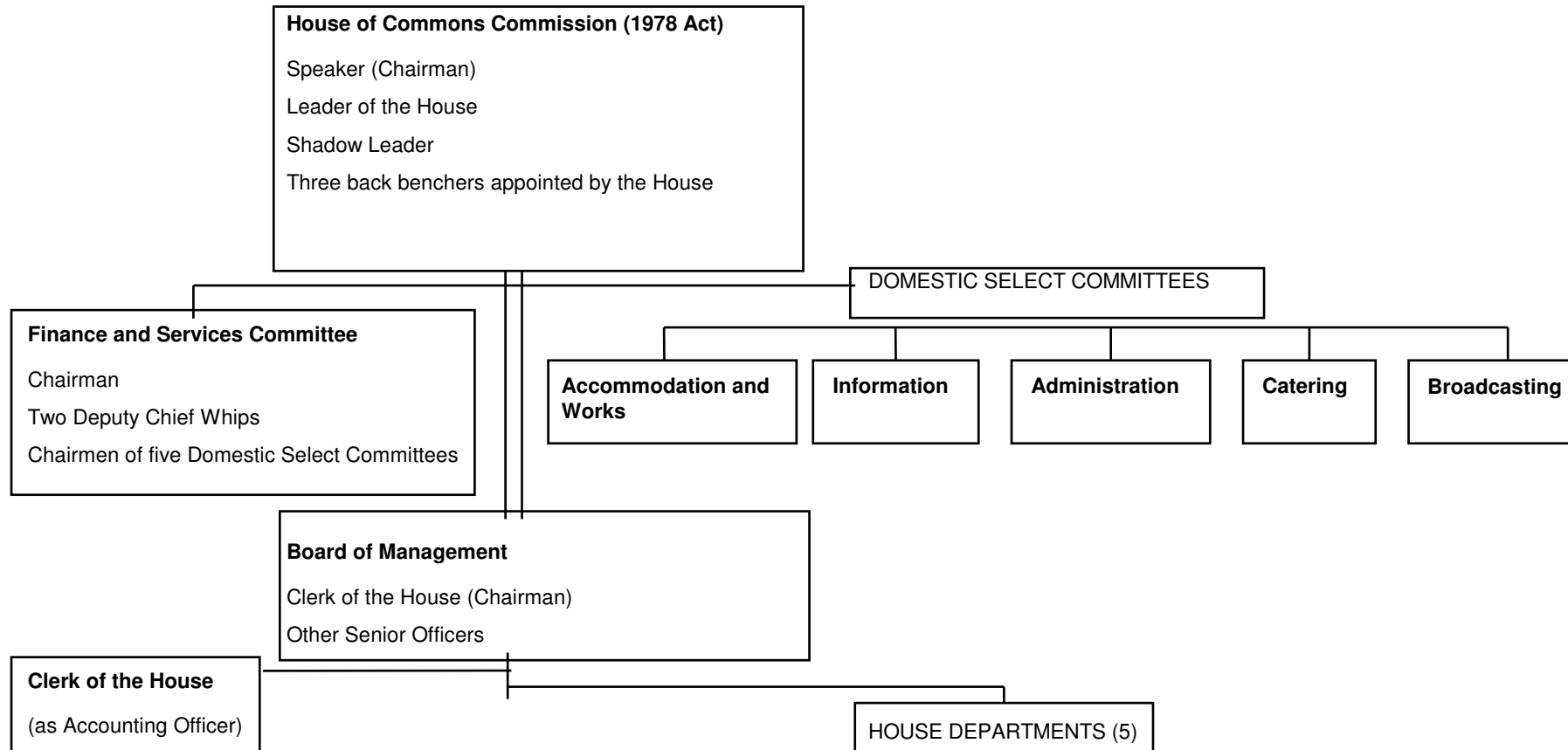
maintenance and rebuilding to accommodate the current levels of Members and staff. The Leader of the House will chair the key committee on these matters as an interim arrangement.

### *Scotland under Devolution*

The operational aspects of the devolved Scottish Parliament are under close consideration, being recognised as crucial to the Parliament's future viability and effectiveness. There is seen to be scope for creating new forms of operation, including the resourcing of members, provided that the formal mechanisms are designed with room to allow experimental practices and philosophies.

The Scotland Act 1998 establishes a body corporate (the Scottish Parliamentary Corporate Body, generally called the 'Parliamentary corporation') to perform the function, among other functions, of providing Parliament, or ensuring Parliament is provided, with the property, staff and services required for Parliament's purposes

## House of Commons Organisation Structure



## **Australia**

The Commonwealth Parliament and each of the States has evolved its own system for funding and providing services to members.

### *Commonwealth*

With its own separate and amendable appropriation bill, the Federal Parliament has adopted a system that distances its funding from the funding of government services generally.

The Senate has a Standing Committee on Appropriations and Staffing. Despite resolutions of the Senate objecting to the practice, successive Governments have however modified the Estimates produced by the Standing Committee, thus asserting control of Senate funding.

In the House of Representatives, which does not have such a committee, the Speaker is in effect the Minister for the Department of the House of Representatives which provides the administrative support for the efficient conduct of the House. The administrative head is the Clerk.

### *Queensland*

Queensland, which up to 1985 used the 'Commission' model, introduced a Parliamentary Service Act in 1998 which explicitly assigns to the Speaker responsibilities that in key respects are borrowed from the present functions of the New Zealand Parliamentary Service Commission. Thus, under section 6(1) of the Queensland Act

"the general role of the speaker in relation to the parliamentary service is to:

- a) decide major policies to guide the operation and management of the parliamentary service;
- b) prepare budgets;
- c) decide the size and organisation of the parliamentary service and the services to be supplied by the parliamentary service;
- d) be the employing authority, for the Legislative Assembly, of parliamentary service officers and employees deciding their remuneration and conditions of service; and
- e) supervise the management and delivery of services by the parliamentary service."

The Speaker may delegate these and other powers to the Deputy Speaker, Chairperson of Committees, Clerk or a Parliamentary Service officer or employee.

The Clerk is the chief executive of the Parliamentary Service as well as having the usual range of responsibilities relating to the procedures and business of the House, and hence is responsible for the full range of functions for the running of the Parliament.

### *Accountability and public office*

There has been a tendency in Australia to respond to the misuse of public money or position by elected and appointed officials, by establishing formal statutory 'anti-corruption' bodies. Two examples are the New South Wales Independent Commission Against Corruption, and the Queensland Criminal Justice Commission. Both cover the public sector, public officials and public authorities. We refer in our main report (para 1.4.1) to the inquiry by the former Commission into parliamentary and electorate travel.

## **Sweden**

For the past 30 years the Swedish Parliament (Riksdag) operated with a two-headed system, comprising two governing boards each with its own structure and senior executive position. The boards, both of which have been chaired by the Speaker, were:

- a board to deal with the administration of parliamentary work, headed by the Clerk (or Secretary-General);
- a Board of Administration to deal with administration services and provision of support and services for members and staff, with the semi-autonomous Administrative Office of Parliament as its executive body headed by the Administrative Director (or Director-General). Membership of the board has comprised 8 members of Parliament and 3 staff representatives.

Ways to consolidate the parliamentary leadership are now being investigated. In 1998 on the retirement of the former Secretary-General, the Administrative Director was appointed Secretary-General with a coordinating responsibilities for the entire parliamentary administration. The objective is to create in some form a single body with representation for the political parties, to govern the work of the amalgamated administration. The work is carried out by a temporary committee, chaired by the Speaker.

A high degree of openness throughout the political and legislative system is an integral part of the political accountability system in Sweden, and over the last decade the Parliament has focused on modernising its procedures to meet what is seen as the 'publicity principle'. (It is notable that although Sweden is the 'home' of the ombudsman system, the powers of the Ombudsman do not extend to the Parliament itself.)

## **Germany**

The Lower House of the German Parliament, the Bundestag, is formally a self-sufficient body, services to members being provided by Parliament's own Administration.

The Administration is a public authority headed by the President of the Parliament (the President is the Presiding Officer), with some clouding of the separation of legislative and administrative powers. The President chairs a Presidium (committee of presiding officers) which deals with the management of the internal affairs of the Parliament including personnel matters, contract letting and public relations.

The budget for the Bundestag is part of the Government's Budget Act which stipulates how many civil servants and other staff ministries, and the Bundestag, may employ and sets their salary levels.

Parliament itself sets salaries and allowances for its members. Salary adjustments must be made legislatively; the Administration inflation-adjusts the tax-free allowances annually.

Members do not have to account for how they spend their tax-free allowances but there is a high degree of scrutiny of the use of allowances for the purposes intended. A code of conduct was (amid controversy) introduced in 1987 to overcome public distrust in the parliamentary system. Present regulations require all extra-parliamentary activities to be accounted for, but divided into 'confidential' (reported only to the President of Parliament) and 'publicised'.

Staff engaged for research and administrative support are nominally employed by the members themselves with costs met by the administration.

## **APPENDIX IV**

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### **FUNCTIONS OF PARLIAMENTARY SERVICE COMMISSION AND PARLIAMENTARY SERVICE AND GENERAL MANAGER: EXTRACTS FROM PARLIAMENTARY SERVICE ACT 1985**

#### ***PARLIAMENTARY SERVICE COMMISSION***

**Section 6. Functions and powers of Parliamentary Service Commission-**(1) The general functions of the Parliamentary Service Commission shall be-

- (a) To exercise budgetary control over the Parliamentary Service:
- (b) To determine the size and organisation of the Parliamentary Service and the services to be provided by the Parliamentary Service:
- (c) To supervise the administration of the services performed by the Parliamentary Service.

(2) The Parliamentary Service Commission shall have such other functions as are conferred or imposed on it by or under this Act or any other enactment.

(3) The Parliamentary Service Commission shall have power to make such grants as it considers necessary or expedient for the purposes of this Act.

(4) The Parliamentary Service Commission shall have such other powers as are conferred on it by or under this Act or any other enactment and such other powers as may be reasonably necessary to enable it to carry out its functions.

(5) Notwithstanding anything in subsections (1) to (4) of this section, the Parliamentary Service Commission shall have no role in relation to-

- (a) Business transacted at meetings of the House of Representatives or meetings of Committees of the House of Representatives; or
- (b) Any other proceedings in Parliament.

#### ***PARLIAMENTARY SERVICE***

**Section 4. Duties of Parliamentary Service-**(1) The principal duties of the Parliamentary Service shall be to provide to the House of Representatives and to members of the House of Representatives such administrative and support services as may be necessary or desirable-

(2) The Parliamentary Service may, with the approval of the Parliamentary Service Commission, provide administrative and support services for

- (a) Any instrument of the Crown in respect of the Government of New Zealand, whether a Department, a corporation, an agency, or other instrument:
- (b) Any visitor to New Zealand who is a member or an officer of a legislature of another country or of an international parliamentary organisation.

(3) The Parliamentary Service shall have such other duties as are conferred or imposed on it by or under this Act or any other enactment.

(4) Nothing in this section limits the provision to the House of Representatives and to members of the House of Representatives of administrative and support services by any instrument of the Crown in respect of the Government of New Zealand, whether a Department, a corporation, an agency, or other instrument.

#### ***GENERAL MANAGER OF THE PARLIAMENTARY SERVICE***

**Section 29. Functions of General Manager of the Parliamentary Service-**In addition to any other functions or duties conferred or imposed by any other Act or by any other provision

of this Act, the General Manager of the Parliamentary Service shall be responsible to the Parliamentary Service Commission for the efficient and economical administration of the Parliamentary Service.

## APPENDIX V

### MEMBERSHIP OF THE PARLIAMENTARY SERVICE COMMISSION: MEMBERSHIP UNDER PRESENT ACT, AND PROPOSED CHANGES

PARLIAMENTARY SERVICE ACT 1985	PROPOSED MEMBERSHIP <sup>17</sup>
<p>7. Membership of Parliamentary Service Commission - subject to section 10 of this Act<sup>18</sup>, the Parliamentary Service Commission shall consist of</p> <p>(a) The Speaker of the House of Representatives, who shall be the Chairman of the Commission:</p> <p>b) The Leader of the House of Representatives or a member of the House of Representatives nominated from time to time by the Leader of the House of Representatives:</p> <p>c) The Leader of the Opposition or a member of the House of Representatives nominated from time to time by the Leader of the Opposition:</p> <p>(d) Four other members of House of Representatives to be appointed from time to time by resolution of the House of representatives, of whom at least 2 shall be members of the Opposition.</p>	<p>Retained</p> <p>Retained</p> <p>Retained</p> <p><b>Substitute:</b> “Such number of members of the House of Representatives as are appointed from time to time by resolution of the House of Representatives, that number to be determined in accordance with <b>subsection (1A)</b>”.</p> <p><b>NEW (1A):</b> “The number of members to be appointed under <b>subsection (1) (d)</b> is to be determined as follows:</p> <p>(a) One member for each party that is represented in the House of Representatives by more than 5 members; and</p> <p>(b) An additional 1 member for each party -</p> <p>i. That is represented in the House of Representatives by 30 or more members; and</p> <p>ii. That does not include among its members the Speaker, or the Leader of the House, or the Leader of the Opposition; and</p> <p>(c) One additional member, if there are 1 or more parties that are represented in the House of Representatives by 5 members or fewer”.</p>

<sup>17</sup> These changes are contained in the draft Parliamentary Service Amendment Bill 1998.

<sup>18</sup> Section 10 makes provision for membership after a dissolution of the General Assembly or expiration of the House of Representatives.



## APPENDIX VI

### RELATIONSHIPS BETWEEN PARLIAMENTARY SERVICE ACT, PUBLIC FINANCE ACT AND STATE SECTOR ACT

Public Finance Act 1989	Parliamentary Service
Section 2 - defines "department" under the Act	Included
Section 82 - application of Public Finance Act to Office of Clerk of House of Representatives and Parliamentary Service.  Speaker is deemed as Responsible Minister.	Public Finance Act applies to Parliamentary Service with the exception of s 9(2A)(f) which requires that estimates include the output - outcome link for Government. (The actual exception under s.82 is 9(2A)(i) which is a legislative drafting error).  Under section 6 of Parliamentary Service Act PSC deemed to be responsible for budgetary control; size and organisational issues; supervision and oversight; and provision of actual premises for Parliament.  Under section 10 of Parliamentary Service Act the Speaker is deemed to be chairman of PSC.

State Sector Act 1988	Parliamentary Service
Section 6 - functions of State Services Commission in relation to public service	Exempt, however, under section 56 of the Parliamentary Service Act, SSC responsible for reviewing the efficiency and economy of the Parliamentary Service including the discharge by the General Manager of the responsibilities placed on him by either the Act of the PSC.
Section 27 - defines public service	Not included in first schedule therefore Parliamentary Service not defined as a public service department.
Section 32 - principal responsibilities of chief executives	Under s 29 of Parliamentary Service Act the General Manager is, in addition to any other statutory functions or duties, responsible to the PSC therefore General Manager responsibilities similar to those of chief executives under State Sector Act.
Parts V, VI and VIII - personnel provisions, application of the Employment Contracts Act 1991, miscellaneous provisions	Section 39 of the Parliamentary Service Act applies these parts of the State Sector Act as if: <ul style="list-style-type: none"> <li>the Parliamentary Service were a Department of the Public Service;</li> <li>all references to the chief executive were references to the General Manager</li> </ul>