

Report of the

**Controller and
Auditor-General**

Tumuaki o te Mana Arotake

**Members of Parliament:
Accommodation Allowances
for Living in Wellington**

Interim Report

March 2001

ISBN 0 477 02876 4

Foreword

Throughout the course of my review the issues surrounding the payment of accommodation allowances to the two Ministers have been the subject of intense interest by the media and the public. Many people have already expressed their own view on the appropriateness of the payments.

The personal circumstances of the two Ministers have also been the subject of detailed public scrutiny.

I and my staff have been given the fullest co-operation by Ms Bunkle and Ms Hobbs, and they have been extremely open in the way they have responded to the enquiries we have made.

Our findings have been based on the results of those enquiries and have taken into account the processes that are in place by the agencies that are involved in administering the entitlements to allowances. The findings show that it is essential that the rules for the payment of allowances are reviewed in the near future, and our final report on the subject will contain detailed recommendations.

D J D Macdonald
Controller and Auditor-General

21 March 2001

Summary of Findings and Conclusions

This is the Audit Office's first report (of two) on the system of accommodation entitlements for Members of Parliament (MPs). This report:

- examines the respective roles and responsibilities of the Higher Salaries Commission (HSC), the Parliamentary Service, and the Department of Internal Affairs (Ministerial Services Unit) in relation to accommodation entitlements;
- examines the systems, policies and procedures of the three agencies relating to the Wellington accommodation allowance, the night allowance and Ministers' travelling allowances;
- considers the specific cases of Marian Hobbs MP and Phillida Bunkle MP in relation to the Wellington accommodation allowance; and
- examines the circumstances in which a Ministerial residence was allocated to Ms Bunkle after her appointment as a Minister in 1999.

The Entitlements Regime

Our key findings in respect of the entitlements regime are:

- No single agency is responsible for the entitlements system as a whole. Responsibility is disjointed, with each agency being concerned with their own role within the system.
- The entitlements system is complex and potentially confusing. This is further complicated by eligibility for allowances being unclear and difficult to apply based on MP's residential status.
- The systems for providing advice to MPs and Ministers are not strong, and there is a lack of documentation of actual advice given.
- The nature of the internal control systems over MPs' and Ministers' discretionary expenditure and allowances is inherently weak, with significant reliance placed on individual trust.
- The extent of communication between the agencies involved in the entitlements system is variable.

- The process for allocating Ministerial residences appears to be based on political convention rather than a standard, transparent allocation system.

The Specific Cases of Ms Bunkle and Ms Hobbs

At the heart of the issue concerning Ms Bunkle and Ms Hobbs is whether an MP's place of residence, for the purpose of registering as an elector under the Electoral Act 1993, determines the MP's "primary place of residence" for the purpose of claiming a Parliamentary accommodation allowance. Both MPs claimed the allowance while being registered as electors in the Wellington Central electorate.

We sought independent advice from the Crown Law Office on the meaning of the residence test in the HSC Determinations, and its relationship to the Electoral Act test.

In summary, the Crown Law Office told us that:

- the test under section 72 of the Electoral Act is not entirely objective, as one's registered place of residence may be other than the place where a person regularly lives, at least for the time being;
- the test under the HSC's Determinations is, however, objective – in that it requires consideration of where an MP would be living when not on Parliamentary business; and
- an MP could therefore be properly registered in a Wellington electorate but still claim a Wellington accommodation allowance.

Our key conclusions in respect of each MP are –

Ms Bunkle

We are satisfied that Ms Bunkle:

- frequently sought advice from Parliamentary Service staff about a range of matters – including her eligibility for the Wellington accommodation allowance;
- made sufficient disclosure of her personal circumstances to enable Parliamentary Service staff to advise her properly;
- received advice that she could regard her normal or primary place of residence as Reikorangi, and accordingly that she was

eligible to claim the Wellington accommodation allowance from June 1997; and

- acted reasonably on that advice when claiming the allowance.

We are satisfied that the advice which Ms Bunkle received from the Parliamentary Service was reasonably consistent with the HSC's Determinations.

Ms Hobbs

We are satisfied that Ms Hobbs:

- sought advice from Parliamentary Service staff about her eligibility for the Wellington accommodation allowance on the two occasions when her circumstances changed significantly – namely, when she separated from her husband, and when she was selected as a candidate in Wellington Central; and
- received advice that, for as long as she was financially supporting her Christchurch property and staying there whenever she returned to Christchurch, she was eligible to claim the Wellington accommodation allowance.

The Crown Law Office advised us that, in its opinion, the advice given to Ms Hobbs was probably wrong, and that an objective examination of Ms Hobbs' circumstances would have revealed that her home had shifted to Wellington.

Despite this, we are satisfied that Ms Hobbs:

- made sufficient disclosure of her personal circumstances to enable staff to advise her properly; and
- acted reasonably on that advice when claiming the allowance.

The Non-disclosure of the Electoral Enrolments

Neither Ms Bunkle nor Ms Hobbs informed the Parliamentary Service of their decisions to enrol in Wellington Central.

We considered whether it would have been prudent for each MP to have considered the significance of her enrolment decision, and the possibility of it affecting her eligibility for the allowance.

Had either MP made the connection between the two sets of rules, it would have been a matter of personal judgement on her part whether to disclose the fact of her enrolment to the Parliamentary

Service. However, there is no evidence that Ms Bunkle made the connection. Ms Hobbs did not.

The matter of the need for an MP to disclose his or her electoral enrolment had never arisen before, the allowance system made no reference to it, and there was no evidence of any deliberate intention to withhold the fact. In these circumstances we cannot say that either Ms Bunkle's or Ms Hobbs' non-disclosure, or her claiming of the allowance, was unreasonable.

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1 Purpose of This Report

101 This is an interim report of the findings of our review of the regime of entitlements to various accommodation allowances – which include the Wellington accommodation allowance payable to MPs and residences in Wellington for Ministers of the Crown.

102 The report also contains our findings on:

- the particular circumstances surrounding the claiming of the Wellington accommodation allowance by Ms Phillida Bunkle and Ms Marian Hobbs; and
- the allocation of a Ministerial residence to Ms Bunkle.

103 We will make a final report in the near future on certain aspects of the entitlements regime for accommodation allowances – including a wider examination of MP eligibility issues.

2 Our Review

201 On 15 January 2001, the Controller and Auditor-General received a request from the Shadow Leader of the House, Hon Roger Sowry MP, for an inquiry into the payment of out-of-town accommodation allowances to MPs during the last (Forty-Fifth) Parliament.

202 We decided that there were questions of principle regarding the entitlement of MPs to such allowances out of public funds, which required closer examination. Consequently, on 25 January 2001 we released terms of reference for a review of MP Wellington accommodation entitlements.

203 The terms of reference that we determined for our review are set out in Appendix 1 on page 59. Our approach involved:

- preliminary work, to confirm the scope of the review and identify the respective roles and responsibilities of key agencies in the entitlements regime;
- research into the system for claiming the Wellington accommodation allowance, and the policies and procedures employed by the key agencies involved in administering the system –
 - the Parliamentary Service;
 - the Ministerial Services Unit of the Department of Internal Affairs (Ministerial Services); and
 - the Higher Salaries Commission (HSC);
- analysis of the information from the research phase, assessment of the financial management control environment, and identification of emergent issues; and
- interviewing Ms Bunkle, Ms Hobbs, and key staff of the Parliamentary Service and Ministerial Services.

204 As our review progressed, it became clear that the cases of Ms Bunkle and Ms Hobbs required further consideration. We decided to expedite a report on their circumstances, to provide some clarity on the issue for both Parliament and the public. We issued a media statement to this effect on 22 February 2001 – refer Appendix 2 on pages 60-61.

Part I

Accommodation Allowances Generally

3 Why Do MPs Get the Entitlements They Do?

A Short History

301 MPs' pay and allowances have been the subject of debate since the very earliest days of the New Zealand Parliament. An honorarium payable to MPs for each Parliamentary session was introduced in 1854.¹ Indeed, in both New Zealand and in Australia at that time, there was concern that parliamentarians should receive any payment at all for what was at that time a part-time role.

302 However, the view to emerge was that, in order for elected MPs to have an equal opportunity to represent their communities in Parliament, MPs needed to be paid. In New Zealand, this was clearly expressed by Julius Vogel in 1871:

*in the colonies payment of members would be necessary, and was necessary, to secure the best possible Government.*²

303 This echoed similar comment in the State of New South Wales in 1861:

*....it is necessary, to the adequate representation of the people in this House that members be compensated for their attendance.*³

304 The notion that the costs incurred by MPs in travelling to a metropolitan centre to attend a sitting should be recognised is neither a recent nor a particularly New Zealand phenomenon. In New Zealand in 1880, provision was made for actual and reasonable travelling expenses to be met for MPs residing more than three miles from the General Assembly buildings, for one return journey a session.⁴

¹ von Tunzelmann, Adrienne (1985), *Membership of the New Zealand Parliament – A study of conditions 1854-1978*.

² *ibid.*

³ NSW Parliamentary Library (1966), *Payment of members in New South Wales – Pros and Cons from 1912*.

⁴ von Tunzelmann *op.cit.*

305 In Germany, travel passes were granted to MPs to enable them to travel between the Parliament and their place of residence in 1873.⁵ Similarly, in New South Wales, a daily allowance for non-metropolitan MPs for attendance at each sitting day of the House was introduced in 1956.⁶

306 A constant theme over the years has been the level of pay and allowances necessary to secure representation of the people in Parliament. There is a clearly recognisable tension between two distinct interests:

- the need to pay MPs “what the job is worth”, in order to recognise the effort involved and to attract candidates of good quality; and
- the need to recognise that serving in Parliament involves an element of public service.

How MPs’ Pay Has Been Set

307 The responsibility for setting Parliamentary salaries and allowances first was held by MPs themselves from 1854 to 1951. Responsibility then passed to a succession of Royal Commissions from 1951 to 1973. This transfer of responsibility was a response to the need for objective salary setting by an independent body, and recognised continued public debate about the level and nature of MPs’ remuneration.⁷

308 Responsibility for setting salaries and allowances passed to the HSC in 1974.⁸

⁵ Cope, R.L. (2000), *Parliamentary Allowances and Travel Passes in the German Reichstag: Review of a Study by Herman Butzer* – in *Legislative Studies*, Vol 15, No.1, Spring 2000.

⁶ NSW Parliamentary Library (1966), *Payment of Members in New South Wales – Pros and Cons from 1912*.

⁷ von Tunzelmann op.cit.

⁸ *ibid.*

Underlying Principles

309 The influence of the Royal Commissions in establishing principles to guide the setting of parliamentary salaries and allowances was far reaching. In this regard, the Royal Commission upon Parliamentary Salaries and Allowances of 1973 accepted and restated the following principles, which had been variously established by previous commissions:

- (a) that the occupation of a member of Parliament should be regarded as virtually full time and professional in nature;*
- (b) that it should be assumed that a member of Parliament has no other income;*
- (c) that it should be accepted that members are married with family commitments; and*
- (d) that regard should be had to the sacrifices a member and his wife (or husband) have to make in their enjoyment of leisure and family life.⁹*

310 The HSC accepted these principles when it took over responsibility for Parliamentary pay and allowances in 1974. But its task is an unenviable one. It must set remuneration having regard to the requirements of the job and the conditions and remuneration paid to those in comparable positions. And it also has to take account of the following specific statutory criteria when setting levels of remuneration:

- *the need to achieve and maintain fair relativity with the levels of remuneration received elsewhere;*
- *the need to be fair both:*
 - *to the persons whose remuneration is being determined; and*
 - *to the taxpayer; and*
- *the need to recruit and retain competent persons.¹⁰*

311 The HSC's dilemma was aptly summarised in this comment which it made in the Explanatory Memorandum to the 1994 Determination on Parliamentary Salaries and Allowances:

2.3 It is no part of the Commission's role to pass judgement on the performance of any member of Parliament. The task is to determine a rate for the job, no matter who happens to hold it.

⁹ Report of the Royal Commission Upon Parliamentary Salaries and Allowances 1973.

¹⁰ Section 18, Higher Salaries Commission Act 1977. These criteria apply regardless of who is subject to the particular determination.

The evaluation of a politician's performance lies with the electors and is not to be usurped by the Commission.

2.4 It would nevertheless be idle to pretend that public disenchantment with Parliament and its Members, and the degree of public hostility with which even minimal adjustments to Parliamentary salaries are invariably greeted, have not influenced the work of independent remuneration tribunals like the Commission in seeking a result which is fair both ways. Similar influences doubtless account for the propensity of Parliamentarians, when awarded an adjustment, to decline it. Parliamentary salaries, as the Commission has noted before, have tended increasingly to lag behind those which a totally dispassionate job measurement assessment would produce. As a recent report by a Canadian Commission observes, "what Members should be paid is quite a bit different from what they can be paid."

2.5 This is not to say that Members should be remunerated solely by reference to market rates. All public office carries with it an element of public service which, in money terms, means a discount. While there may be reason to doubt whether existing terms and conditions of Parliamentary service are acceptable to all candidates of high quality, there is no lack of candidates. Finally, the Commission does not see its way to produce a totally detached and cold-blooded assessment of the monetary worth of Parliamentary workloads and responsibilities without regard to those many people who are out of work or, if employed, have lately achieved only minimal increases or none. They are all, in one way or another, taxpayers, and the Commission is required to be fair to them as well as to those whose remuneration it fixes.

312 However, it would be true to say that the result of these tensions has been a tendency for MPs' salaries to be kept at a relatively low level. For example, in 1998 the HSC estimated that the salary of an ordinary MP was 77% of the salary payable in the public sector, and 63% of that payable in the private sector, for positions requiring similar skills and experience.

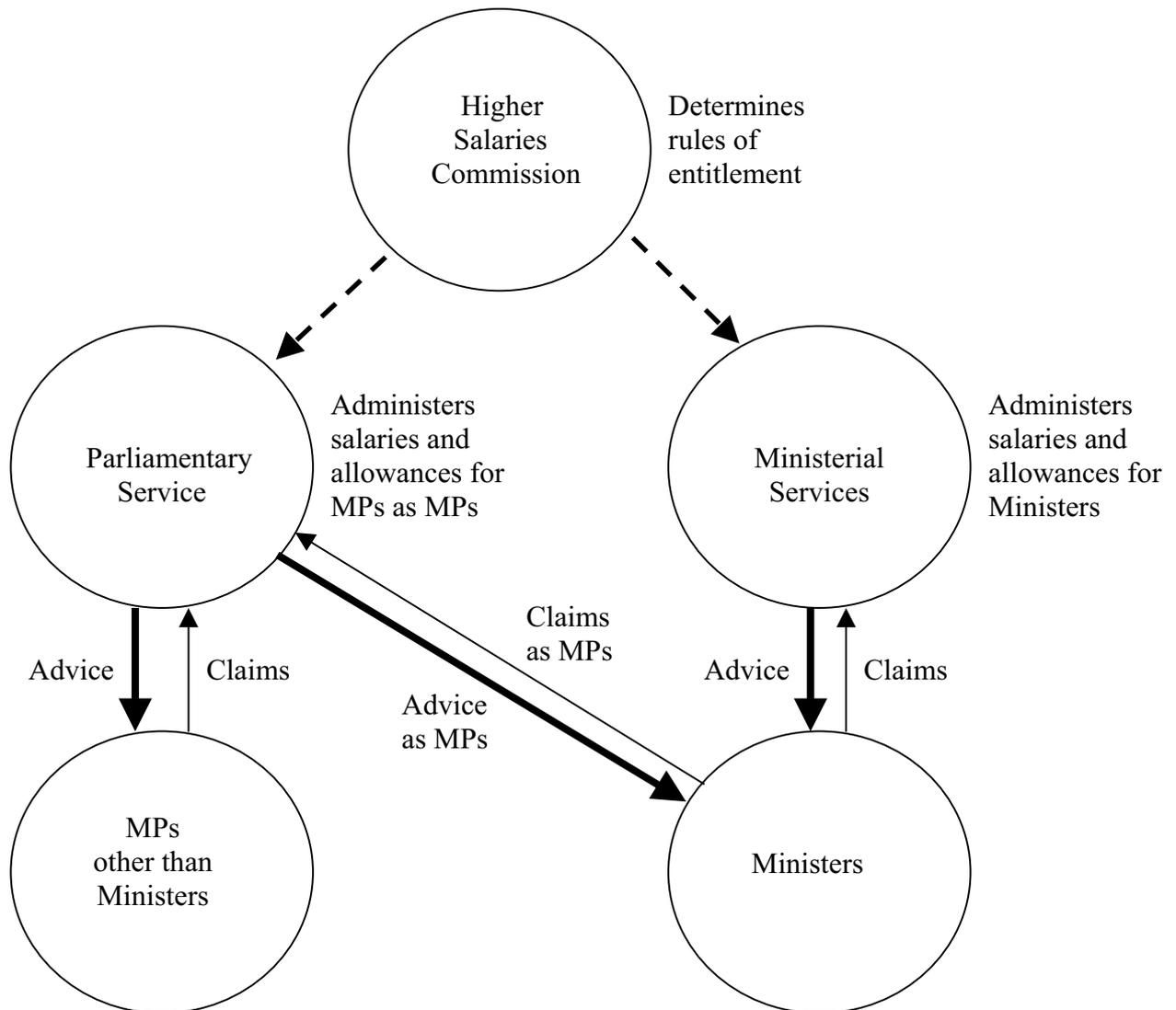
313 The tendency to keep MPs' salaries relatively low may have reflected and partly satisfied public sentiments over politicians' performance. But it may also have had the unintended effect of increasing the emphasis on the system of allowances – both to recognise what the job is worth in market terms and to meet the financial costs which MPs must incur in doing the job.

314 It is in this context that our review of accommodation allowances must be addressed.

4 Key Agencies, Their Roles and Responsibilities

401 The entitlements regime involves close relationships between three agencies – the HSC, the Parliamentary Service and Ministerial Services. These relationships are illustrated in the diagram below.

Relationships Between the Three Key Agencies



402 The relationships revolve around:

- development of rules about entitlements;
- establishment of MPs' and Ministers' eligibility to entitlements;
- administering the of claiming and payment of allowances; and
- provision of ongoing advice to MPs and Ministers about their entitlements in the event of their changing circumstances.

The Higher Salaries Commission

- 403 Under the Civil List Act 1979, the HSC promulgates yearly Determinations that set out the entitlements for salaries and a number of allowances for MPs and the circumstances in which they can be claimed.
- 404 The HSC's statutory role is to fix levels of salaries and allowances according to the prescribed statutory criteria (paragraph 311), and to publish its Determinations. However, in practice, it also provides advice to MPs and Ministers regarding their entitlements – either directly or through the Parliamentary Service or Ministerial Services.
- 405 The current salaries and allowances for the 15 months from 1 July 2000 to 30 September 2001 are set out in the Parliamentary Salaries and Allowances Determination 2000 (the 2000 Determination).

The Parliamentary Service

- 406 The Parliamentary Service is a statutory body established under the Parliamentary Service Act 2000.¹¹ Its role is to provide administrative, advisory and support services to MPs.
- 407 In respect of the entitlements to allowances, the Parliamentary Service:
- notifies MPs of the HSC's Determinations regarding salaries and allowances; and
 - administers the processes for claiming of allowances by MPs and paying those allowances.

Ministerial Services

- 408 Ministerial Services is a business unit within the Executive Government Support branch of the Department of Internal Affairs. It exists separately from the Parliamentary Service, in recognition of the constitutional separation between the roles of MPs and Ministers of the Crown.

¹¹ Previously the Parliamentary Service Act 1985.

409 Ministerial Services:

- notifies Ministers of the HSC's Determinations regarding salaries and allowances; and
- administers the processes for claiming of allowances by Ministers and paying those allowances.

410 Ministerial Services is also responsible for the management and allocation of Ministerial residences.

5 What Are the Accommodation Allowances?

- 501 It is a fact of life that Parliament sits in Wellington, and that MPs incur costs in travelling to, and staying in, Wellington (and indeed elsewhere), for Parliamentary business. The taxpayer meets these expenses as part of the cost of democracy.
- 502 Our review focused on four different entitlements available to MPs and Ministers of the Crown, which assist them to meet the costs of living in Wellington.
- 503 An MP or Minister is not eligible for accommodation allowances as of right – they must meet a legal test to prove eligibility.

Wellington Accommodation Allowance

- 504 The underlying basis for the Wellington accommodation allowance is outlined in the HSC principle:

Every member should reside in his or her primary place of residence at the member's own cost. However, when a member is required to stay away from his or her primary place of residence on Parliamentary business then that member should be able to recover the actual and reasonable costs incurred or a reasonable allowance on account of those costs.¹²

- 505 MPs can claim the Wellington accommodation allowance when their primary place of residence is outside the Wellington commuting area (an area comprising the cities of Wellington, Lower Hutt, Upper Hutt, and Porirua, and the Paraparaumu Ward of the Kapiti Coast District). Qualifying MPs can elect to be reimbursed for the actual and reasonable costs they incur for accommodation they own or rent in the Wellington commuting area, for use when they are in Wellington on Parliamentary business. Under the 2000 Determination, the maximum amount that can be claimed is either \$8,000 for an MP or \$8,500 for a Whip for each 6-month period.
- 506 Where the MP rents a property, all or a portion of the monthly rent can be claimed. Where the MP owns a property, all or a portion of the interest on a mortgage associated with the property can be

¹² Parliamentary Salaries and Allowances Determination 2000.

claimed (up to the 6-monthly maximum). In addition, some irregular monthly costs such as rates and heating costs can be claimed, as long as the overall maximum limits are not exceeded.

Night Allowance

507 The night allowance is designed to meet MPs' actual and reasonable costs of obtaining accommodation when they have to be away from their primary place of residence (whether in Wellington or elsewhere) on Parliamentary business.

508 An MP can claim the night allowance in two cases:

- First, where the MP is staying overnight in Wellington because she or he cannot reasonably be expected to return to their primary place of residence by conventional methods or safely, and they are not claiming a Wellington accommodation allowance. The MP is entitled to a maximum refund of \$160 a night for the actual and reasonable costs of overnight accommodation. Under the 2000 Determination the maximum amount able to be claimed for each six months is \$9,100 for an MP, or \$10,100 for a Whip.
- Secondly, where the MP is travelling on Parliamentary business away from Wellington, and is over 100 kilometres away from their primary place of residence. If the MP cannot reasonably be expected to return to their primary place of residence by conventional methods or safely, the MP is entitled to a maximum refund of \$160 a night for the actual and reasonable costs of overnight accommodation.

509 The night allowance cannot be used to meet meal costs.

Travelling Allowance

510 The travelling allowance is only available to members of the Executive (including Ministers) who, when travelling in New Zealand on Parliamentary business, are away from both the Wellington commuting area and their primary place of residence.

511 Under the 2000 Determination, a Minister can claim up to \$320 a day or part day for actual and reasonable expenses, or up to \$480 a day or part day if they are attending an official function and their spouse is required to attend.

512 The travelling allowance can be used to meet meal costs.

Ministerial Residences

- 513 Ministerial residences are an entitlement of Ministers of the Crown. They are not available to MPs.
- 514 Allocation of any particular house to a Minister is usually arranged between the Minister and Ministerial Services. The Prime Minister (or Minister to whom the responsibility has been delegated) makes the final decision in the event of any dispute.¹³

What the Allowances Mean In Practice

- 515 The following examples demonstrate how the accommodation allowances can work in broad terms for MPs and Ministers engaged on Parliamentary business.
- 516 **MP "A"** has a primary place of residence outside the Wellington commuting area, and rents a flat in Wellington on a continuous basis in lieu of overnight accommodation. The MP can claim:
- a Wellington accommodation allowance; and
 - a night allowance when staying overnight outside the Wellington commuting area and over 100 km from their primary place of residence while on Parliamentary business.
- 517 **MP "B"** has a primary place of residence outside the Wellington commuting area, and stays at a hotel or home-stay on a nightly basis when in Wellington. MP "B" claims the night allowance instead of the Wellington accommodation allowance for the costs of staying in Wellington. Otherwise, she or he can claim the same allowances as MP "A".
- 518 **MP "C"** has a primary place of residence in Wellington. MP "C" cannot claim a Wellington accommodation allowance or a night allowance for their accommodation costs in Wellington. However, when MP "C" stays overnight over 100 km from their primary place of residence while on Parliamentary business, she or he can claim the night allowance for overnight accommodation costs.
- 519 **MP "D"** is a Minister who, while having a primary place of residence outside the Wellington commuting area, occupies a

¹³ Ministerial Services *Handbook for New Ministers*.

Ministerial residence. MP "D" cannot claim a Wellington accommodation allowance or night allowance for their accommodation costs in Wellington. However, when MP "D" travels outside the Wellington commuting area and is away from their primary place of residence while on Parliamentary business, she or he can claim the travelling allowance for overnight accommodation and meal costs.

6 Our Observations On the Administration of Accommodation Allowances

601 It was clear from our discussions with the agencies that administer the entitlements to accommodation allowances that the desire to provide a high-quality service to MPs and Ministers was their clear objective.

602 In our discussions with MPs and former Ministers, it was clear that they relied upon and respected the advice provided by the Parliamentary Service to a high degree. They also acknowledged the difficulties that the agencies face in carrying out their tasks, and respected the professionalism shown by the agencies for MPs' and Ministers' particular circumstances.

603 However, on the basis of our discussions with the agencies, and our documentation of the systems, policies and procedures they employ, we observed the following generic and specific areas of concern.

Generic Areas of Concern

No Single Agency Is Responsible for the Entitlements Regime

604 We found that no single agency is responsible for the "health and welfare" of the entitlements regime as a whole. Instead, responsibility for the regime was disjointed, with each of the key agencies being predominantly concerned with their specific role.

605 To a large extent this is a by-product of the statutory framework and, in particular, the limited role which the HSC has as a rule-making body. In practice, the HSC demonstrates somewhat more of an "ownership" role through the provision of advice to the Parliamentary Service, Ministerial Services, and individual MPs. However, the HSC does not have a legislative mandate to oversee the regime or to issue formal guidance as to the law that should be applied.

The Entitlement Regime Is Complex and Potentially Confusing

606 The regime of entitlements for MPs and Ministers is very complex, and potentially confusing. There is a range of entitlements –

covering such items as telecommunications, travel, taxis, home security arrangements, grounds maintenance, daily costs, and nightly accommodation costs – for which the basic unit of entitlement may change, depending on an MP’s role in the party, political party requirements, and residential circumstances.

- 607 On becoming a Minister, the complexity is not diminished, as some of the entitlements available to MPs continue in parallel with those available to Ministers, and eligibility depends on the nature of the duties (Ministerial or electorate) that an MP may carry out day to day.

The Residential Requirements Are Unclear, and Difficult to Apply

- 608 The common element that defines eligibility to the night allowance, Wellington accommodation allowance, and travelling allowance is where an MP lives when not on Parliamentary business. This is an inherently difficult area, which we comment on in Chapter 5 (pages 22-25).
- 609 The administration of accommodation allowances by the key agencies also has inherent difficulties. Until 1 January 2001, MPs were not required to make any formal statement as to ‘normal’ or ‘primary’ place of residence. In respect of the Parliamentary Service, the staff relied on the signing of the relevant claim form for a night allowance or a Wellington accommodation allowance by an MP, and its certification by a whip, as confirmation that they were eligible to claim the allowance. A similar approach is applied in respect of the travelling allowance administered by Ministerial Services. However, the wider implications of signing, while implicit in the claim forms, are not explicit.
- 610 The practice of leaving an MP or Minister to establish their own eligibility in the absence of clear written guidelines placed the MPs, and the advisers themselves, at risk of breaching the rules of entitlement. Since 1 January 2001 the HSC has been making individual determinations as to the primary place of residence of MPs and Ministers. The extent to which this process may be an improvement on the historical situation is yet to be ascertained. We expect to address this issue further in our final report.

Lack of Sound Systems for the Provision and Documentation of Advice

- 611 While the Parliamentary Service and Ministerial Services regularly interact with MPs and Ministers respectively, we found a lack of procedural guidance as to how such advice was to be provided by the agencies to individual MPs and Ministers. There was also a lack of documentation of the specific advice given.
- 612 Where the Parliamentary Service and Ministerial Services provide advice about entitlements to MPs and Ministers, the role of the agencies goes beyond that of *administrator* to that of *adviser*. This dual role has to some extent been necessitated by the entitlements regime. In such circumstances we would expect advice to be tendered to their MP and Ministerial clients with a similar level of care and attention that exists between an advisory department and its responsible Minister.

Specific Administrative Concerns

- 613 We found several administrative problems in the system, some examples of which we describe in the following paragraphs.

Nature of Internal Control Systems

- 614 **The nature of the internal control systems over MPs' and Ministers' discretionary expenditure and allowances is inherently weak, with significant reliance placed on individual trust.**
- 615 This problem is demonstrated in several ways. For example, party whips certify MPs' claims but some also approve their own. The Audit Office has raised this issue previously in annual audits of the Parliamentary Service, and this has led to positive changes (for example, the requiring of receipts).
- 616 Ministers are supposed to verify their claims, but on some occasions Senior Private Secretaries verify the claims instead. However, a compensating factor is that the travelling allowance is payable directly to the suppliers of the services rather than to the Ministers themselves.

617 Practices of this nature would not be considered sound in the financial management systems of other entities.

“Actual and Reasonable” Expenses

618 **The application of the policy of reimbursement for “actual and reasonable” expenses is difficult**, as decisions about the reasonableness of costs – in the absence of clear guidelines – depend solely on individual judgement.

619 It can be unsatisfactory for such judgements to be made by administrators. Yet the HSC, which is independent and whose members are perhaps in a position to exercise judgement on sensitive expenditure issues, has no mandate to do so.

Communication Between the Agencies

620 **The extent of communication between the agencies involved in the entitlements regime is variable.**

621 The HSC has an effective communication with the Parliamentary Service, but it has infrequent contact with Ministerial Services. Also, the extent of communication between the Parliamentary Service and Ministerial Services is variable. For example, information on MPs’ residential circumstances is not passed on as a matter of course to Ministerial Services by the Parliamentary Service on an MP becoming a Minister.

Allocation of Ministerial Residences

622 **The process for allocating Ministerial residences appears to be based on political convention rather than a standard, transparent allocation system.**

Our Conclusions

623 Our observations lead us to draw the following conclusions:

- the financial management control environment surrounding MP accommodation entitlements is not sound;

- the lack of a sound control environment could either give rise to unwitting actions by MPs which are inconsistent with the intent of the allowances system, or support actual exploitation of the system;
- the financial controls surrounding Ministerial expenditure are stronger than those over MPs' expenditure, but there are apparent areas of weakness;
- all of the above problems stem from a lack of ownership of the whole system, coupled with a complex set of legal entitlements and an over-reliance on trust in defining eligibility; and
- fundamental to the above risks, is the manner in which:
 - eligibility for entitlements is established; and
 - ongoing advice as to eligibility is provided.

624 Our conclusions raise two issues for MPs and Ministers. As mentioned previously, we consider that the advisory relationship between the administering agencies and MPs and Ministers is similar to the relationship between an advisory department and its responsible Minister. The following broad principles define the nature of such a relationship:

- the recipient of advice should be able to rely on the advice provided to them;
- in deciding to accept or act upon advice received, the recipient of the advice should take into account all the consequences of their decision, and take responsibility for such consequences.

625 In respect of the first principle, the advice provided to an MP or Minister depends on the quality of the initial and ongoing disclosures regarding the MP's residential circumstances. It is therefore essential that an MP or Minister provides enough information to the key agencies to enable these agencies to ascertain the appropriate eligibility to entitlements. For the MP or Minister concerned, the test requires a trade-off between their individual and family's privacy, and providing enough disclosure to establish eligibility.

626 In respect of the second principle, an MP or a Minister should have regard to the risk that an entitlement they claim – while within the legal framework – could be perceived to be inappropriate by the public. In such circumstances, the claimants – not the administrators of the system – are responsible for their actions.

627 The considerations in paragraphs 624-626 are particularly relevant to the cases of Ms Hobbs and Ms Bunkle.

Part II

The Wellington Accommodation Allowance

7 The Cases of Individual Members

701 In this part of the report we consider the specific compliance issue which triggered Mr Sowry's approach to the Controller and Auditor-General. At the heart of the issue is whether an MP's place of residence for the purpose of registering as an elector under the Electoral Act 1993 determines the MP's "primary place of residence" for the purpose of claiming an accommodation allowance.

How the Issue Arose

702 The issue arose initially in two cases, involving Phillida Bunkle MP and Marian Hobbs MP. Both were MPs who:

- were List MPs in the previous Parliament (and Ministers in this Parliament);
- claimed the Wellington accommodation allowance to meet the costs of their accommodation in Wellington for Parliamentary business, on the basis that their primary place of residence was outside the Wellington commuting area; and
- while claiming the Wellington accommodation allowance, registered as voters in the Wellington Central electorate but continued thereafter to claim the allowance.

The HSC and Parliamentary Service Reviews

703 In December 2000 and January 2001 the HSC and the Parliamentary Service examined the individual circumstances of Ms Bunkle and Ms Hobbs, at the request of their respective party leaders. The two agencies reported on 18 January 2001. They found that in each case there were grounds for the MP to have claimed the Wellington accommodation allowance, notwithstanding their enrolment in the Wellington Central electorate.

704 In its report the HSC said:

The issue for both members is whether or not they were each entitled to the Wellington accommodation allowance over the relevant periods when they had both chosen to be resident in Wellington solely for the purpose of being registered as a voter under the Electoral Act 1993.

It is important to realise that there is no direct linkage between the Electoral Act 1993 and the determinations that the Higher Salaries Commission makes for the purposes of establishing a member's right to recover actual and reasonable costs under the Wellington accommodation allowance.

The issues that have been raised do, however, bring into question for consideration by the Commission whether or not, in the future, a member who chooses to declare a Wellington residence for the purposes of the Electoral Act 1993 should also be able to maintain that their primary place of residence is outside Wellington in respect of the nightly allowance or the Wellington accommodation allowance.

In the past there has never been any need for us to consider this issue, however in the light of what has arisen we now believe that the Commission should review the situation.

Our Review

- 705 Mr Sowry then asked us to undertake our own review of the allowances system so that, as he put it, taxpayers could be assured that appropriate rules and accountability measures for the receipt of accommodation allowances were in place and had been followed by MPs and those officials responsible for administering the system.
- 706 To give that assurance, we decided to examine and report on the full circumstances of Ms Bunkle's and Ms Hobbs' cases. Both cases had already been the subject of intense public comment and speculation. This led, in due course, to both MPs resigning their Ministerial positions pending the outcome of our review.
- 707 In fairness to each MP, our report sets out the full circumstances which led, in each case, to them claiming the Wellington accommodation allowance and, at later stages, registering as electors in Wellington Central. We also include a summary of the legal advice which we have received on the relationship between the Electoral Act and the HSC's determinations.
- 708 We hope that our report will assist public understanding of the issues and the motivations of Ms Bunkle and Ms Hobbs, as well as shed light on what can only be described as a difficult set of legal interrelationships.

How We Went About Our Review

709 It became clear at an early stage that both Ms Bunkle and Ms Hobbs had sought advice from the Parliamentary Service about their accommodation entitlements. We examined, in respect of each MP:

- the nature of the advice they had sought, and were given;
- the amount of information they had disclosed to Parliamentary Service staff about their residential circumstances, for the purpose of obtaining the advice; and
- whether they had relied on the advice they received and, if so, in what way.

710 We then sought to form an opinion on:

- whether the advice given by the Parliamentary Service to Ms Bunkle and Ms Hobbs was consistent with the HSC's Determinations; and
- whether Ms Bunkle and Ms Hobbs ought reasonably to have informed the Parliamentary Service of their becoming Wellington Central electors when it happened.

711 In forming our conclusions we:

- took legal advice from the Crown Law Office on the meaning of the HSC's Determinations and their relationship with the Electoral Act 1993;
- consulted the HSC;
- considered written statements by Ms Bunkle and Ms Hobbs; and
- interviewed Ms Bunkle and Ms Hobbs and the staff of the Parliamentary Service who had been responsible for advising them.

8 The Relevance of Electoral Registration to Entitlement

The Electoral Act 1993

801 Section 72 of the Electoral Act 1993 contains the requirements for the registration of voters. The full text of the section is set out in Appendix 3 on page 62.

802 The key provision is section 72(3), which says:

A person resides at the place where that person chooses to make his or her home by reason of family or personal relations, or for other domestic or personal reasons.

The Higher Salaries Commission Determinations

803 The test for eligibility of MPs for the Wellington accommodation allowance has evolved over a number of years. The following changes took place over the period covered by our review:

- The 1996 HSC Determination provided for payment of the Wellington accommodation allowance to any MP “who normally resides within an electoral district outside the [Wellington commuting] area”.
- Following the introduction of MMP and the election of list MPs, the 1997 and 1998 HSC Determinations provided for payment of the allowance to any MP “whose normal place of residence is outside the Wellington commuting area” – i.e. the reference to “an electoral district” was removed;
- The 1999 and 2000 HSC Determinations provided for payment of the allowance to any MP “whose primary place of residence is outside the Wellington commuting area”. The term “primary place of residence” (which replaced “normal place of residence”) was defined, in relation to an MP who resides outside the Wellington commuting area when not on Parliamentary business, as the MP’s residence outside that area; and
- Effective from 1 January 2001, the 2000 Determination defines “primary place of residence” to mean, in each case, “such place of residence as the HSC approves from time to time as the MP’s primary place of residence in New Zealand”.

The Relationship Between the Two Tests

804 At first sight, the test for electoral registration appears similar to the test of residence which underpins the regime of Parliamentary allowances. However, both Ms Bunkle and Ms Hobbs argued strongly, through their legal representatives, that neither the purpose nor the language of the tests is the same. They submitted to us that it was legally quite possible in each case to satisfy the test for residence in Wellington for electoral purposes and, at the same time, qualify for an accommodation allowance on the basis that the MP's normal or primary place of residence was elsewhere.

805 We sought independent advice from the Crown Law Office on the meaning of the residence test in the HSC Determinations, and its relationship to the Electoral Act test.

806 In summary, the Crown Law Office told us that:

- the test under section 72 of the Electoral Act is not entirely objective, as one's registered place of residence may be other than the place where a person regularly lives, at least for the time being;
- the test under the HSC's Determinations is, however, objective – in that it requires consideration of where an MP would be living when not on Parliamentary business; and
- an MP could therefore be properly registered in a Wellington electorate but still claim a Wellington accommodation allowance.

807 The degree of relevance of electoral registration to an MP's eligibility for an accommodation allowance depends on the facts of the case and may be only one of several other relevant factors.

The Usefulness of the Residence Test to List MPs

808 Both Ms Bunkle and Ms Hobbs were also critical of the lack of specificity and guidance in the HSC's residence test, and its lack of relevance to the circumstances of List MPs. The following quote from the submissions of Ms Hobbs' legal representative reflects the sentiments expressed by both MPs:

The simple reality of parliamentary life is that members in most cases have at least two places of residence. One of those places is in Wellington, where they reside in order to conduct the business of the House of Representatives. The other is where they usually reside for other purposes.

The Electoral Act 1993 saw the creation of two types of member, the list and electorate member. The responsibilities and duties of the list

member and electorate member, outside of the business of the House, are determined in different ways. The principal duties of the electorate member are to serve the people resident in their electorate. To that end it is common for the electorate member to have a residence in their electorate. It appears that the electorate residence is deemed to be the primary place of residence. If it happens to be outside of the Wellington commuting area, the member is entitled to the allowance.

The situation of the list member is not so clear. Their duties outside of the business of the House are generally determined by their Party. The list member may be given responsibility for a geographic area, a particular population based constituency, or a policy area. Where that member may need to be located when the House is not sitting could be dictated by such duties or by other considerations, such as location of family. An added complication, which was present for the first time during the lead up to the 1999 election, was the fact that sitting list members were candidates for electorate seats. The system of providing allowances must take into account the different considerations that apply to list members in assessing their entitlement to the Wellington accommodation allowance.

The [2000 HSC] Determination does set out different allowances for the two types of member generally, but it fails to incorporate this distinction in the provisions relating to the Wellington accommodation allowance. In addition there is no manual or other formal guidance about the application of the test. The lack of guidance on what might be relevant restricts the ability of list members to assess for themselves their entitlement to the allowance.

809 Instead, both Ms Bunkle and Ms Hobbs told us that they relied on advice which had been given to them by the Parliamentary Service about their entitlement. We examine the circumstances of each case later.

810 However, for general purposes we find the comments in paragraph 808 persuasive. They are consistent with the comments we have made earlier in this report about the inherent difficulties in the entitlements regime, and the lack of practical guidance as to how the entitlements should be applied.

9 The Case of Ms Bunkle

The Factual Background

901 Ms Bunkle set out her circumstances in a letter to us dated 7 February 2001 and we also interviewed her. These circumstances can be summarised as follows.

902 Before entering Parliament, Ms Bunkle had a position as a senior lecturer at Victoria University of Wellington. It was a tenured position, which offered considerable financial security. She was also a member of the Government Superannuation Fund.

903 In 1996, Ms Bunkle had to consider the implications for her financial security should she be elected an MP. She ascertained that she would have to resign her tenured position. Ms Bunkle had been informed that she had been promoted to Associate Professor effective from 1 January 1997, with realistic prospects of further advancement. She approached the Alliance Party leader about the “portability” of her superannuation should she become an MP. He referred her to the Parliamentary Service for advice.

904 The Parliamentary Service offered Ms Bunkle oral advice about the possibility that she would be eligible for a housing allowance should she be elected. She was at that time unaware of the existence of the allowance system.

905 In 1996, she owned two properties:

- a small cottage in Thorndon in central Wellington; and
- a lifestyle block at Reikorangi on the Kapiti Coast north of Wellington.

906 She had bought the Thorndon property for her University work. This involved limited hours and a presence at the University on about three days each week.

907 When not working in Wellington, she and her partner spent most of their time developing the property at Reikorangi. They intended it to be their permanent home. Ms Bunkle was registered as a voter in the Otaki electoral district.

908 The Parliamentary Service orally advised her that, if Reikorangi was her normal place of residence, she would be entitled to an allowance to meet her costs of attending Parliamentary business in Wellington were she elected. At Ms Bunkle’s request, the Service later confirmed its advice in writing on 11 June 1996.

- 909 On 12 October 1996, Ms Bunkle became an MP as a result of the first MMP General Election. She was a list MP.
- 910 At this time, the Reikorangi property did not have a permanent dwelling on it. However, Ms Bunkle and her partner had found a house which they hoped to move to the property as soon as possible.
- 911 In the event, the house was moved to the property in May 1997 and became habitable shortly afterwards.
- 912 From October 1996 until she moved to Reikorangi, Ms Bunkle's place of residence for Parliamentary allowance purposes was Thorndon. However, she made it clear to the Parliamentary Service from the outset that the Reikorangi property would be her place of residence as soon as it was ready for occupation.
- 913 From May 1997 she lived at Reikorangi, and stayed at the Thorndon property when she was in Wellington on Parliamentary business.
- 914 Reikorangi is outside the Wellington commuting area, as defined in the HSC's determinations. Ms Bunkle therefore qualified for the Wellington accommodation allowance from June 1997. The fact that she had a property in Thorndon did not disqualify her, as the allowance is available to any MP:
- whose "normal" or "primary" place of residence is outside the Wellington commuting area; and
 - who either owns or rents Wellington accommodation for use while on Parliamentary duties.
- 915 In early 1998, Ms Bunkle's adult daughter became chronically ill. Her daughter's circumstances made it necessary for her to live at the Thorndon property, where she could be looked after by Ms Bunkle and her partner while they were in Wellington for Parliamentary and work purposes.
- 916 At a later stage, Ms Bunkle's daughter moved to Nelson, where she also needed frequent care by Ms Bunkle and her partner.
- 917 Because of her daughter's illness, Ms Bunkle spent more time in Wellington in 1998 and 1999 than may have been necessary to attend to Parliamentary business. She also spent considerable time in Nelson.
- 918 In October 1998, Ms Bunkle was endorsed by the Alliance Party as its likely candidate for the Wellington Central Electorate in the

General Election (scheduled for the following year). At that time, Ms Bunkle was still registered as a voter in Otaki.

919 In January 1999, Ms Bunkle decided to register as an elector in Wellington Central, where the Thorndon property was located. She told us that:

- she believed that she checked her enrolment in response to publicity concerning the possibility that there would be an early general election;
- she completed an enrolment form which asked her to state her address as where she had “lived for at least the last month”;
- the Parliamentary rules entitled her to have two places of residence (one in Wellington for Parliamentary business, and the other at her normal or primary place of residence, which she regarded as Reikorangi);
- for electoral roll purposes she could have only one place of residence, and she therefore had to make a choice;
- she tried to choose truthfully the place of residence the enrolment form asked her to choose;
- she chose Wellington Central because, at the time, she was spending much of her time there owing to her Parliamentary duties and the need to care for her daughter, and her partner was also doing more paid work in Wellington than previously; and
- by contrast, Reikorangi was where she spent as much as possible of her time when not in Wellington or on Parliamentary business elsewhere.

920 At this time, it was also likely that Ms Bunkle would be standing as the Alliance party candidate for Wellington Central. However, she told us that:

- as an Alliance list MP she had party responsibilities throughout the central and southern North Island;
- she was also the party’s health spokesperson;
- she was travelling frequently as a result;
- her focus was on policy issues nationally and regionally, and the fact that she may have been a candidate for Wellington Central had no impact on where she enrolled;
- her enrolment decision was made in a context of ensuring that she complied with the electoral rules; and

- any perceived convenience to her from being on the Wellington Central roll was a result of her registration, not the reason for it.

Ms Bunkle's Dealings With the Parliamentary Service

921 We are satisfied that Ms Bunkle:

- had good reason – given her personal circumstances at the time – for approaching the Parliamentary Service in July 1996, to seek advice relevant to her likely financial position should she become an MP;
- kept both the Alliance Party whip and the staff of the Parliamentary Service adequately informed of her residential and family circumstances between 1996 and 1999;
- frequently sought advice from Parliamentary Service staff about a range of matters – including her eligibility for the Wellington accommodation allowance;
- made sufficient disclosure of her personal circumstances to enable Parliamentary Service staff to advise her properly;
- received advice that she could regard her normal or primary place of residence as Reikorangi, and accordingly that she was eligible to claim the Wellington accommodation allowance from June 1997; and
- acted reasonably on that advice when claiming the allowance.

Was the Advice Given to Ms Bunkle Consistent With the HSC's Determinations?

922 The fact that an MP spends more time in Wellington than he or she would otherwise, because of family circumstances, does not automatically disqualify that member from receiving the Wellington accommodation allowance. It is possible that sick or dependent relatives or partners may choose to live in the place where the parliamentarian spends most of his or her time, which may be in Wellington. It may then become a question of fact or degree whether the family can be said to have moved to Wellington, or whether they are temporarily residing there because of the MP's duties.

923 In this respect, Ms Bunkle's case is not in our view unusual or exceptional. Putting aside the issue of her electoral status – of which the Parliamentary Service was not aware – there is no evidence that she intended to stay in Wellington more than was necessary for Parliamentary business and the temporary need to

care for her daughter. And there is ample evidence that she intended Reikorangi to be her permanent home. As she put it to us, Reikorangi was “where her books and her treasures and her family photos were”.

924 The Parliamentary Service advised Ms Bunkle on this basis. We are satisfied that the advice was reasonably consistent with the HSC’s determinations.

Ms Bunkle’s Non-disclosure of Her Electoral Enrolment in Wellington Central

925 Ms Bunkle did not inform the Parliamentary Service of her Wellington Central enrolment decision in early 1999. Nor was she ever asked about it. Indeed, the issue had never arisen before in anyone’s experience. It is clear to us that no one thought to ask, nor did Ms Bunkle think it necessary to disclose.

926 The Parliamentary Service told us that, had disclosure been made, it would have referred the issue to the HSC for its consideration – as is the practice in respect of new issues affecting the application of HSC Determinations.

927 It is by no means certain that knowledge of Ms Bunkle’s registration in Wellington Central would have affected her eligibility. Registration as an elector may be one of several indicators of an MP’s normal or primary place of residence for the purposes of receiving a Parliamentary allowance. As indicated earlier, the legal advice we have received is that it is possible to have different residences for electoral purposes and for the purposes of an accommodation allowance.

928 We considered whether it would have been prudent for Ms Bunkle to have considered the significance of her enrolment decision, and the possibility of it affecting her eligibility for the allowance.

929 Had she made the connection between the two sets of rules, it would have been a matter of personal judgement on her part whether to disclose the fact of her enrolment to the Parliamentary Service. However, there is no evidence that she made the connection.

930 The matter of the need for an MP to disclose their electoral enrolment had never arisen before, the allowance system made no reference to it, and there was no evidence of any deliberate intention to withhold the fact. In these circumstances we cannot say that Ms Bunkle's non-disclosure, or her claiming of the allowance, was unreasonable.

10 The Case of Ms Hobbs

The Factual Background

- 1001 Ms Hobbs set out her circumstances in a letter to us dated 16 February 2001, and we also interviewed her. These circumstances can be summarised as follows.
- 1002 Like Ms Bunkle, Ms Hobbs became an MP on 12 October 1996, as a result of the General Election. She was also a List MP.
- 1003 At the time she entered Parliament, Ms Hobbs lived in Christchurch with her husband and daughter. There is no doubt that she was entitled to the Wellington accommodation allowance to meet the costs of her accommodation in Wellington while on Parliamentary business.
- 1004 Late in 1997, Ms Hobbs purchased a flat in Aro Street, Wellington. She paid for the outgoings on the property with the Wellington accommodation allowance, as she was entitled to do.
- 1005 Shortly after she bought the Aro Street property (but as an unrelated event), Ms Hobbs separated from her husband. However, she and her husband agreed that for family reasons they should keep the Christchurch property (where her husband and daughter would live) and that Ms Hobbs would continue to contribute substantially to supporting the property and the family.
- 1006 As a Labour Party List MP, Ms Hobbs had responsibilities all over the South Island – especially in Kaikoura and Blenheim (where she had an ‘electorate’ office). She also spent considerable amounts of time in Wellington on Parliamentary business. Whenever she returned to Christchurch she stayed at her property there.
- 1007 Ms Hobbs sought advice from the Parliamentary Service in early 1998 about whether she could still claim the Wellington accommodation allowance to meet the outgoings on her Aro Street property. She expected that she and her husband would have to sell the Christchurch property so that she could afford to keep her Wellington property without an accommodation allowance.
- 1008 Instead, Parliamentary Service staff told her that, because she was still financially supporting her Christchurch property where her husband and daughter lived, and staying there whenever she returned to Christchurch, she remained eligible for the Wellington accommodation allowance.

- 1009 After her separation, and until September 1998, Ms Hobbs continued to spend as much time at her Christchurch residence as she had before her separation. However, she increasingly spent time in Wellington when not on Parliamentary business. She started to become involved with the local community in the Aro Valley. Her daughter had begun to travel on occasions to be with her in Wellington.
- 1010 On 28 August 1998, Ms Hobbs registered as an elector in Wellington Central, which is where the Aro Street property was located. She told us that she did this because:
- the 1998 local authority elections were imminent; and
 - she mistakenly thought that she could register as a voter in Wellington while remaining eligible to vote as a ratepayer in Christchurch.
- 1011 For family reasons, Ms Hobbs and her husband kept the Christchurch home and Ms Hobbs continued to support it financially. Many of her possessions remained there. Her daughter continued to attend school in Christchurch.
- 1012 In December 1998, Ms Hobbs was selected as the Labour Party's candidate for the Wellington Central seat. She told us that the first approach for the candidacy came from local party members, and that until then she had not been expecting to stand there because as a list MP her responsibilities had been elsewhere.
- 1013 Ms Hobbs told us that she disclosed to the Parliamentary Service the fact of her selection, because she believed that she would no longer be eligible for the Wellington accommodation allowance. Indeed, she had again advised her husband that she would no longer be able to help maintain the Christchurch family home and that it would have to be sold.
- 1014 She told us that staff of the Parliamentary Service advised her that, because she was still supporting her Christchurch home, she was still eligible for the Wellington accommodation allowance. Ms Hobbs acted on that advice.
- 1015 Staff of the Parliamentary Service did not recall giving this advice but told us that, whatever advice they gave, they would have used the HSC's Determinations and its previous guidance about the determinations, as the basis for the advice.
- 1016 In April 1999, Ms Hobbs was selected as a candidate on the Wellington regional Labour Party list. From then on, she knew that in all likelihood she would be living in Wellington after the

General Election – either as a Wellington Labour List MP or as the elected member for Wellington Central.

1017 In August 1999 she and her husband put the Christchurch property on the market for sale. The property did not sell before the General Election, at which Ms Hobbs was elected the constituency member for Wellington Central. She ceased claiming the Wellington accommodation allowance at the time of her election.

Ms Hobbs' Dealings With the Parliamentary Service

1018 We are satisfied that Ms Hobbs:

- kept Parliamentary Service staff adequately informed of her residential and family circumstances throughout 1998 and 1999;
- sought advice from Parliamentary Service staff about her eligibility for the Wellington accommodation allowance on the two occasions when her circumstances changed significantly – namely, when she separated from her husband, and when she was selected as a candidate in Wellington Central;
- made sufficient disclosure of her personal circumstances to enable Parliamentary Service staff to advise her properly;
- received advice that, for as long as she was financially supporting her Christchurch property and staying there whenever she returned to Christchurch, she was eligible to claim the Wellington accommodation allowance; and
- acted reasonably on that advice when claiming the allowance.

Was the Advice Given to Ms Hobbs Consistent With the HSC's Determinations?

1019 It appears that when staff of the Parliamentary Service gave Ms Hobbs advice on her entitlement, an important factor in their minds was that Ms Hobbs was financially supporting her Christchurch property at which her separated husband and her daughter lived.

1020 This advice is understandable, because Parliamentary Service staff would have been aware of other MPs who, for family reasons, spent much of their off-duty time in Wellington and returned to their electorate for Parliamentary business. The HSC later attempted, in the context of other cases, to formulate a guideline based on the number of nights each year an MP spent at his or her

electorate residence. However, it soon became apparent that such an approach was unrealistic.

- 1021 In Ms Hobbs's case, she was not an electorate Member during the period she claimed the Wellington accommodation allowance. However, while it may be easier for an electorate Member to claim that his or her electorate residence is still the normal or primary place of residence – even though the Member spends most of his or her time in Wellington – the reality is that many list MPs will also have links and obligations outside Wellington. Certainly Ms Hobbs had such links and obligations in the South Island, if not in Christchurch itself.
- 1022 Despite this, it would appear that at some time between her separation from her husband in late-1997 and the General Election in November 1999 Ms Hobbs' normal or primary place of residence changed from Christchurch to Wellington.
- 1023 It is by no means certain that the change occurred at a definitive moment. But it would seem that Ms Hobbs was in a state of gradual transition until the time of her election as the Member for Wellington Central, and that she increasingly came to regard Wellington as her home.
- 1024 It is very difficult in this sort of case to lay down a hard and fast rule of eligibility. We also think that a subjective test would be unsatisfactory to administer. It seems preferable to consider more objective criteria. Since the very purpose of accommodation allowances is to reimburse additional accommodation costs, it is understandable that the Parliamentary Service and the HSC (in its report) took most account of the level of financial commitment to Ms Hobbs' Christchurch residence.
- 1025 But it seems to us that the transitional nature of Ms Hobbs' family circumstances, which she disclosed to the Parliamentary Service, might also have prompted a review of her eligibility for the allowance after a period of time. The amount of time someone spends in a particular place does not by itself determine whether it is their home. But the person must spend some time living there.
- 1026 In Ms Hobbs' case, regularity of visits back to Christchurch, especially after September 1998, would have helped determine objectively whether Christchurch was still her primary place of residence.
- 1027 The Crown Law Office advised us that, in its opinion, the advice given by the Parliamentary Service was probably wrong – at least by the time when Ms Hobbs informed staff of her selection as a candidate for Wellington Central, but possibly from the time when

she first discussed with the Service the implications of her separation from her husband.

1028 In the Crown Law Office's view, an objective examination of Ms Hobbs' circumstances would have revealed that her home had shifted to Wellington. In those circumstances, the appropriate advice would have been that, while no longer eligible for the Wellington accommodation allowance, she could claim the night allowance when in Christchurch on Parliamentary business.

1029 Ms Hobbs told us that, from the time of her separation until September 1998, she continued to spend as much time as possible at her Christchurch residence as she had before the separation. As noted earlier, staff of the Parliamentary Service had no recollection of the advice that they gave to Ms Hobbs following her selection as a candidate for Wellington Central.

1030 As we have said, we are satisfied that Ms Hobbs:

- reasonably relied on the advice given to her by Parliamentary Service staff; and
- made sufficient disclosure of her personal circumstances to enable the staff to advise her properly.

Ms Hobbs' Non-disclosure of her Electoral Enrolment in Wellington Central

1031 Ms Hobbs did not inform the Parliamentary Service of her enrolment decision in September 1998. She told us that it did not occur to her that the residence test for electoral purposes may have been a relevant factor in her eligibility for the Wellington accommodation allowance.

1032 Ms Hobbs said that her decision to register in Wellington Central was not motivated by her future candidacy in the electorate. However, when she became a candidate she told the Parliamentary Service about it and asked again about her eligibility for the allowance. She also informed staff of:

- her family situation;
- the details of her support for the Christchurch property;
- her Aro Street property; and
- her intention to open an 'electorate' office in Wellington.

- 1033 There was no evidence to suggest a deliberate intention not to disclose the fact of the electoral enrolment. Indeed, Ms Hobbs told us of her great distress at having had her honesty brought into question as a result of this issue.
- 1034 It did not occur to the Parliamentary Service to ask Ms Hobbs if she had registered in the electorate where she had been selected as a candidate. Indeed, the issue had never arisen before in anyone's experience.
- 1035 The Parliamentary Service told us that, had disclosure been made, it would have referred the issue to the HSC for its consideration – as is the practice in respect of new issues affecting the application of HSC Determinations.
- 1036 It is by no means certain that knowledge of Ms Hobbs' registration in Wellington Central would have affected her eligibility for the Wellington accommodation allowance. Registration as an elector may be one of several indicators of an MP's normal or primary place of residence for the purposes of receiving a Parliamentary allowance. As indicated earlier, the legal advice we have received is that it is possible to have different residences for electoral purposes and for the purposes of an accommodation allowance.
- 1037 We considered whether it would have been prudent for Ms Hobbs to have considered the significance of her enrolment decision, and the possibility of it impacting on her eligibility for the allowance.
- 1038 Had she made the connection between the two sets of rules, it would have been a matter of personal judgement on her part whether to disclose the fact of her enrolment to the Parliamentary Service. However, she did not make the connection.
- 1039 The matter of the need for an MP to disclose their electoral enrolment had never arisen before, the allowance system made no reference to it, and there was no evidence of any deliberate intention to withhold the fact. In these circumstances we cannot say that Ms Hobbs' non-disclosure, or her claiming the allowance, was unreasonable.

Repayment of the Allowance

- 1040 Ms Hobbs told us that, had she decided on the sale of her Christchurch property immediately after her separation, and moved her home entirely to Wellington, she would have been better off financially.

- 1041 It is also important to point out that, had she sold the Christchurch property, she could have claimed the night allowance whenever she returned to Christchurch on Parliamentary business.
- 1042 During our review Ms Hobbs informed us that, in early February 2001, she had repaid the amount of the allowance which she had received for the period September 1998 to November 1999 – a sum of \$18,540. She had done so, not because she thought she had not been entitled to the payment, but because, as she put it, she had been deeply wounded by the suggestions which had been made publicly to that effect and would rather not accept the allowance than be considered a cheat.
- 1043 Ms Hobbs sought no publicity for her action in returning the money, and it was the Audit Office’s decision to disclose this fact.

Part III

Ministerial Residences in Wellington

11 Ms Bunkle's Eligibility for a Ministerial Residence

1101 In this part of the report we examine the circumstances in which Ms Bunkle was offered a Ministerial residence in early 2000, following her appointment as a Minister in the new Government.

1102 This issue was not the subject of Mr Sowry's complaint to us. However, it had attracted considerable publicity in December 2000 and had led to Ms Bunkle voluntarily relinquishing her occupation of the residence.

Availability of Residences

1103 It is a very longstanding practice in New Zealand to make available to Ministers of the Crown furnished accommodation in Wellington at public expense. The Crown owns a number of houses, apartments, and townhouses for this purpose.

1104 Indeed, the practice predates by a long time the system of allowances for ordinary MPs.

1105 After the 1999 General Election the incoming Prime Minister wrote a letter to the General Manager of Ministerial Services, Mr Trevor Pope, which said:

... I wish to confirm that it is my intention as Prime Minister to put in place new rules regarding the availability of houses and cars for Ministers and Undersecretaries in the new government.

The effect of this is that

- ◆ *Ministers who normally reside in the Wellington region should not be allocated Ministerial houses.*

...

I would appreciate it if you could put these new arrangements into place immediately on the new government taking office.

1106 The full text of the letter is reproduced at Appendix 4 on page 64.

1107 Mr Pope told us that he did not interpret the letter as placing any duty on him to inform Ministers of the policy. The letter was the only written advice of the policy. However, the policy was the subject of some media publicity at the time.

Ms Bunkle's Situation At the Time She Was Allocated a Ministerial Residence

1108 Ms Bunkle was appointed a Minister outside Cabinet in the new Government. Her residential circumstances at the time have been described elsewhere in this report. In summary:

- her primary place of residence was Reikorangi, which is outside the Wellington commuting area;
- she owned a cottage in central Wellington, which she used when in Wellington on Parliamentary business, the cost of which had been met through the Wellington accommodation allowance; and
- she had also spent some time living in Nelson during 1998 and 1999 caring for her daughter.

1109 On this basis, Ms Bunkle was clearly entitled to a Ministerial residence under the Government's policy as interpreted by Ministerial Services staff (see paragraph 1116). The fact that she owned or rented a property in central Wellington, which she had used for Parliamentary business when an ordinary MP, was irrelevant. Indeed other Ministers would have been in the same situation. Likewise, the fact that Ms Bunkle had owned the Wellington property before she became an MP, and used it for her University work, was irrelevant to her entitlement.

1110 However, Ms Bunkle told us that:

- when she took Ministerial office, she was uncertain about whether she would be entitled to a Ministerial residence; and
- she was never made aware of the policy communicated in the Prime Minister's letter to Mr Pope.

How the Allocation Took Place

1111 The incoming Government arranged for a senior Labour Party figure, Rt Hon Jonathan Hunt, to allocate residences to those Ministers who were eligible. Ministerial Services staff provided him with a booklet containing a description of the available residences, with photos. He allocated some, but not all, of the available residences to individual Ministers before the Government took office. His role ceased when the Government took office.

1112 After some delay, the remaining allocations – including that of Ms Bunkle – were made by Ministerial Services staff.

- 1113 The question of a Ministerial residence first arose at the end of a meeting between Ms Bunkle and Ministerial Services staff on 13 December 1999. The main purpose of the meeting was to discuss Ms Bunkle's office budget and staffing requirements. No written record of the meeting has been found.
- 1114 Ministerial Services staff told us that they were unaware, before the meeting on 13 December, of Ms Bunkle's place of residence. However, it appears that they assumed from their general knowledge that she was Wellington based. They told us that they raised the question of a residence, and that Ms Bunkle informed them she was living in Nelson. Ms Bunkle's recollection is that she said that she lived at Reikorangi but had been spending time in Nelson and would be going there for Christmas.
- 1115 In any event, the difference is immaterial because Ms Bunkle would have qualified under the Government's policy (as interpreted by Ministerial Services staff) whether she lived at Nelson or Reikorangi. There is also no suggestion that Ms Bunkle actively sought allocation of a residence to her.
- 1116 Ministerial Services staff were aware of the Prime Minister's instruction concerning Ministers who normally resided in the Wellington region. In the absence of any guidance as to what this meant, they applied the HSC's criterion of the "Wellington commuting area".
- 1117 The question of a residence arose again at a meeting between Ms Bunkle and Mr Pope on 24 December 1999. Ms Bunkle told us that she was uncertain about whether she should have a Ministerial residence, or whether she should instead continue to claim the Wellington accommodation allowance for her Thorndon property. But Mr Pope told her that she was entitled to be given accommodation at public expense.
- 1118 This advice was reflected in the brochure of papers which Ministerial Services gave to all Ministers about their entitlements and other administrative matters. Ms Bunkle produced to us a sheet of paper from the brochure headed "Ministerial Services: Information Regarding Ministerial Residences" This stated:

Ministers are provided in Wellington at the public expense with a fully furnished residence which may be Crown/Department owned or rented accommodation (house, apartment or townhouse). Otherwise Ministers may continue to live in their own Wellington residences for which an allowance is payable and some services are provided.

- 1119 A copy of that paper is reproduced as Appendix 5 on page 65. Significantly, it makes no reference to the new Government's policy on Wellington-based Ministers.
- 1120 Ms Bunkle told us that she found this advice confusing, because it effectively provided her with a choice but gave no guidance as to how the choice should be made. In other words, she was uncertain about whether she should continue to use her Thorndon property using her allowance as an ordinary Member, or whether she should be given a residence at public expense.
- 1121 She told us of several efforts which she made to clarify the matter, including with the Alliance Party whip, Grant Gillon MP. Mr Gillon recalls the policy on Wellington-based Ministers being mentioned, whereas Ms Bunkle had no such recollection and was certain she was not aware of the policy.
- 1122 At a later point Ms Bunkle took steps to confirm with the Deputy Prime Minister and Alliance Party Leader, Hon Jim Anderton, that she was entitled to a Ministerial residence. His response was that Ms Bunkle should rely on the advice she had been given by Ministerial Services.
- 1123 Ms Bunkle was adamant that she did not actively seek a residence. She recalled saying only that she would prefer a two-bedroomed residence so that her daughter could visit her. (Ministers are entitled to make their official residences available for use by family members.)
- 1124 As things transpired, the allocation of a residence to Ms Bunkle was made by the Ministerial Services official responsible for Ministerial residences. He showed her an apartment in Oriental Bay which, he confirmed to us, had been surplus to requirements and would have been sold if Ms Bunkle had not taken it.
- 1125 The apartment needed considerable renovation before it could be available for use. Ms Bunkle took up occupation of it on 1 May 2000. She claimed the Wellington accommodation allowance until the end of March 2000, and lived at the Thorndon property when in Wellington. Afterwards, she rented the Thorndon property out – an action that was fully consistent with her being entitled to a residence in Wellington at the public expense, as her primary place of residence was outside the Wellington commuting area.

Our Conclusions

1126 We have set out these facts because they reveal some inadequacy in the process involved in allocating a Ministerial residence to Ms Bunkle. In particular:

- the incoming Government's policy on entitlement of Ministers in Ms Bunkle's situation was unclear because of the lack of any definition of "the Wellington region";
- in particular, it is not clear from the policy whether "the Wellington region" included an area such as Reikorangi, which is some distance north of Wellington but possibly not far north enough to be considered, for example, to be part of Horowhenua;
- in the absence of guidance, Ministerial staff interpreted the words "Wellington region" to mean "the Wellington commuting area" as defined in the HSC's determinations;
- in any event, Ms Bunkle was never formally advised of the "Wellington region" policy and so had no opportunity to make her own judgement as to whether she was eligible under it;
- instead, she was led to believe (from the papers given to her by Ministerial Services staff) that all Ministers were entitled to Ministerial accommodation in Wellington at public cost; and
- the Government's intention appears to have been that the allocation of residences to Ministers was a task for a senior Parliamentarian, but this process was never completed – leaving Ministerial Services staff to make the remaining allocations.

1127 We conclude that:

- Ministerial Services staff acted reasonably and sensibly in applying the HSC's criterion of the "Wellington commuting area" to Ms Bunkle's situation;
- from what she was told, it was reasonable for Ms Bunkle to have believed she was entitled to a Ministerial residence;
- because Ms Bunkle's normal or primary place of residence was at Reikorangi, it is likely that she would have been eligible under the Government's policy on entitlement – had she been aware of it;
- she was certainly entitled under the "Wellington commuting area" approach adopted by Ministerial Services staff;
- the existence of her Thorndon property did not make any difference to her entitlement, because it had not been her

normal or primary place of residence for allowance purposes when she was an ordinary MP; and

- Ms Bunkle did not actively seek a Ministerial residence, and took several steps to check whether she was entitled to the residence which was offered to her.

Appendix 1

Terms of Reference for Our Review

The Audit Office will examine the procedures, including internal controls, used by the Parliamentary Service and the Department of Internal Affairs in relation to expenditure on Wellington accommodation allowances and Ministerial residences for Members of Parliament.

The Review will focus on, but not necessarily be limited to

- a. the implementation by the Parliamentary Service of the Parliamentary Salaries and Allowances Determinations issued by the Higher Salaries Commission for the 1999/2000 and 2000/2001 financial years. This will include examination of the systems, policies and procedures for:
 - ◆ determining the eligibility of Members of Parliament for the Wellington accommodation allowance;
 - ◆ the lodging of claims for the Wellington accommodation allowance; and
 - ◆ the processing and payment of the Wellington accommodation allowance;
- b. the systems, policies and procedures administered by the Department of Internal Affairs relevant to the allocation of Ministerial residences, including the determination of eligibility.

As part of its examination under terms of reference (a) and (b), the Audit Office will also review any individual member's eligibility issues should these arise.

Appendix 2

Media Statement By the Auditor-General



CONTROLLER AND AUDITOR-GENERAL

D J D MACDONALD
B COM, FCA

Media Statement

22 February 2001

The Auditor-General, David Macdonald, today outlined how the Audit Office is approaching its review of the payment of Wellington accommodation allowances to MPs.

"The Audit Office will be producing two reports", said Mr Macdonald.

"The Audit Office will first:

- examine the respective roles and responsibilities of the Parliamentary Service, Higher Salaries Commission, and Ministerial Services;
- examine the systems, policies, and procedures of the Parliamentary Service and Ministerial Services relating to the Wellington accommodation allowance, the night allowance, and the Ministers' travel allowance; and
- consider the specific cases of Ms Hobbs and Ms Bunkle."

"Secondly, the Audit Office review will look more broadly at entitlement to the Wellington accommodation allowance and the implications of the use of 'primary place of residence' as a test for entitlement. We are still considering the extent of enquires we will be making in relation to all MPs who are claiming the Wellington accommodation allowance.

"Mr Macdonald said he expected the first report to be finished in about three weeks and the second report in about four to five weeks. He stressed that (as he had previously stated) both reports would be made to the House of Representatives.

Contact person for enquires: Terry McLaughlin
Assistant Auditor-General
Tel (04) 917 1508

Appendix 3

Section 72, Electoral Act 1993

PART V REGISTRATION OF ELECTORS

72. Rules for determining place of residence within New Zealand-

(1) Subject to the provisions of this section, the place where a person resides within New Zealand at any material time or during any material period shall be determined for the purposes of this Act by reference to the facts of the case.

(2) For the purposes of this Act, a person can reside in one place only.

(3) A person resides at the place where that person chooses to make his or her home by reason of family or personal relations, or for other domestic or personal reasons.

(4) Where the property on which a person's home is located is divided between 2 or more electoral districts, that person shall,-

(a) If his or her dwelling is located wholly within one of those electoral districts, be deemed to reside in that electoral district; or

(b) In any other case, be deemed to reside in the electoral district in which is located-

(i) The front door or other main entrance of his or her dwelling; or

(ii) Where his or her dwelling is an apartment, the front door or other main entrance of the building in which the apartment is situated.

(5) A person who is detained in any penal institution or hospital by virtue of any enactment shall not, by reason only of that detention, be treated for the purpose of subsection (3) of this section as residing there.

(6) The place where, for the purposes of this Act, a person resides shall not change by reason only of the fact that the person-

(a) Is occasionally or temporarily absent from that place; or

(b) Is absent from that place for any period because of his or her service or that of his or her spouse as a member of Parliament; or

(c) Is absent from that place for any period because of his or her occupation or employment or that of his or her spouse; or

(d) Is absent from that place for any period because he or she, or his or her spouse, is a student,-

even if such absence involves occasional or regular residence at another place or other places.

(7) Except as provided in subsection (8) of this section, a person who has permanently left his or her former home shall be deemed not to reside at that place, notwithstanding that his or her home for the time being is temporary only.

(8) A New Zealand citizen who is outside New Zealand shall be deemed to reside where he or she had his or her last home in New Zealand; but nothing in this subsection shall affect the application of section 80 (1) (a) of this Act for the purpose of determining the qualification of any person for registration as an elector.

(9) Notwithstanding anything in this section, a person who is residing on, or has resided on, Campbell Island or Raoul Island and who, before residing on Campbell Island or Raoul Island resided in some other part of New Zealand, shall be deemed to reside, or to have resided, throughout that period of residence on Campbell Island or Raoul Island, in the place in New Zealand where that person had his or her last home before beginning residence on Campbell Island or Raoul Island.

(10) In the case of a person who is appointed to be a member of the Executive Council, or who is the spouse of any person so appointed, the following provisions shall apply notwithstanding anything to the contrary in this section, namely -

(a) So long as he or she holds that office he or she shall be deemed to continue to reside at the place of residence in respect of which he or she was registered as an elector of an electoral district (in this subsection referred to as the original district), notwithstanding his or her absence therefrom at the seat of Government or otherwise, unless and until he or she duly applies for registration as an elector of another electoral district of which he or she is, apart from the provisions of this paragraph, qualified to be an elector:

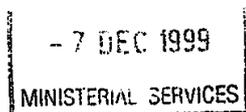
(b) Upon being registered as an elector of the other district pursuant to an application as aforesaid, the applicant shall cease to be entitled to continue to be registered under this subsection as an elector of the original district.

(11) A person whose home is on any ship, boat, or vessel permanently located in any harbour shall be deemed to reside in the electoral district in which the wharf or landing place or the main wharf or landing place in the harbour is situated. If any question arises under this subsection as to the district in which the wharf or landing place or main wharf or landing place in any harbour is situated, it shall be determined by the Representation Commission.

Cf. 1956, No.107, s. 37; 1989, No.31, s. 2; 1990, No.1,
s.7

Appendix 4

Rt Hon Helen Clark's Letter to the General Manager, Ministerial Services



*Leader of the Opposition
House of Representatives
Wellington*

6 December 1999

Trevor Pope
Manager
Ministerial Services

Dear Trevor

Further to your discussion with Heather Simpson from my office I wish to confirm that it is my intention as Prime Minister to put in place new rules regarding the availability of houses and cars for Ministers and Undersecretaries in the new government.

The effect of this is that

- ◆ Ministers who normally reside in the Wellington region should not be allocated Ministerial houses.
- ◆ All Ministers should only be allocated one self drive car each, for use in their electorates, with VIP holding a few self drive pool cars for use in Wellington by Ministers inside cabinet if required.
- ◆ Undersecretaries should not be provided with any self drive vehicles or housing.

I would appreciate it if you could put these new arrangements into place immediately on the new government taking office

Yours sincerely

Helen Clark
Labour Leader

Appendix 5

MINISTERIAL SERVICES

INFORMATION REGARDING MINISTERIAL RESIDENCES

The following information relating to Ministerial residential accommodation is provided for your assistance.

Ministers are provided in Wellington at the public expense with a fully furnished residence which may be Crown/Department owned or rented accommodation (house, apartment or townhouse). Otherwise Ministers may continue to live in their own Wellington residences for which an allowance is payable and some services are provided.

Ministerial Services, Property Section will provide a full maintenance service. All service requests should be directed to the Property Manager, Ministerial Services. Some residences are provided with intruder alarm systems and the use of these is strongly recommended.

Ministerial Services will assist by arranging the transportation of personal effects. Residences. will generally be available for re-occupation seven days after vacation. However, where redecoration and/or refurbishment is required a longer period will have to be negotiated with the incoming Minister.

Annual inspections of the residences will be carried out by the Property Manager to establish a schedule of maintenance requirements. Ministers must arrange for private insurance cover for personal belongings in Ministerial residences.

A backdoor refuse collection is provided by Wellington City Council.

The following services will be provided as required:

- CTV and VCR (does not include Sky or Cable TV);
- Full maintenance, including appliance repair;
- Garden maintenance as required, does not include development work;
- Window cleaning on request;

Cleaning of carpets and floor coverings as required.