

Regulatory Impact Statement 5: Provision of Funding for Members' Work Expenses

Coversheet

Purpose of Document	
Decision sought:	Analysis produced for the purpose of informing final Cabinet decisions
Advising agencies:	Office of the Clerk Parliamentary Service
Proposing Ministers:	Leader of the House
Date finalised:	6 September 2021

Problem Definition	
<p>This Regulatory Impact Statement considers three policy areas. The discrete policy problem in respect of each of those areas is set out below.</p> <p>The Members of Parliament (Remuneration and Services) Act 2013 (MoP Act) sets out the framework for providing publicly funded resources (support services and funding allocations) to members of Parliament and Ministers. The statutory review of the MoP Act in 2020 recommended change in a number of policy areas. All those recommendations can be addressed in the Parliament Bill. Three of those policy areas are detailed in this Regulatory Impact Statement (RIS). The other areas were considered to have minor impact, and exemptions have been provided by Treasury for them.</p> <h3>Family Travel Provisions</h3> <p>Under the MoP Act, the Remuneration Authority determines domestic travel services for members', Ministers', and Qualifying Electoral Candidates' (QECs') family members. Members face challenges that make a work-family life balance difficult to achieve and more flexibility for travel services could alleviate this to a certain extent. In addition, more flexibility in the provision of these services may assist in attracting a more diverse range of people to stand for Parliament.</p> <p>The MoP Act defines family members as being children, including step-children, who are under the age of 18, and the person's spouse or partner. This definition of "family member" prevents the eligibility for travel services for a member's spouse or partner being transferred to another person, such as a caregiver for a member's infant child when the member's spouse or partner cannot travel to Wellington with them. Similarly, dependent children over the age of 18 are not entitled to travel services.</p> <h3>Responsibility for Determinations</h3>	

The responsibility for determining members' support services and funding allocations is split between the Remuneration Authority and the Speaker. This can be confusing for members, and it increases the administrative burden for those two decision-makers. It requires separate procedures to resolve issues, and separate consultation processes, and those affected must navigate different pieces of secondary legislation.

The Remuneration Authority is a specialist independent body with expertise in setting the remuneration of public office holders. Its role under the MoP Act is unusual, however, as it determines accommodation services for members, and travel services for members' families under the Act. The Authority provides independent accommodation and travel decisions, but the approach fails to recognise the House's traditional privilege to determine its own affairs.

Guiding Principles for Members' Use of Publicly Funded Resources

The MoP Act requires that the Speaker, the Minister Responsible for Ministerial Services, and the Remuneration Authority (the three decision-makers) consider the appropriate use of public funds when determining the support services and funding allocations for members and others, when issuing secondary legislation. Currently, each piece of secondary legislation under the MoP Act contains its own set of principles for how funding allocated under that legislation should be used.¹ Those principles are therefore set by the decision-makers, not Parliament. There are inconsistencies in the principles, which creates confusion for members and administrators. Members are personally responsible for the use of the services and funding. Having those principles in the Parliament Bill would increase consistency in secondary legislation, reduce confusion for members, and further support public trust and confidence in Parliament's integrity.

¹ Except for the Parliamentary Salaries and Allowances Determinations

Executive Summary

Proposals in this paper reflect the recommendations in the statutory review of the MoP Act, which was tabled in the House in July 2020.

Family Travel Provisions

The objectives of this policy are to provide greater flexibility for travel services to enable members to better balance parliamentary duties with family commitments, and to support a diverse Parliament.

Two main options were considered: (1) maintaining the status quo; (2) expanding the definitions of: 44

- “family member”, to enable caregivers to access travel services to support: a member’s dependent child, a member’s spouse/partner with a disability, or a member with a disability
- “dependent child”, to include those over the age of 18 still in secondary education, and those with a disability such that they remain dependent on their parents beyond the age of 18. Disability, in this context, would include physical disability or impairment and intellectual or psychological impairment.

The preferred option is Option 2. This option would provide more flexibility for members with different family types; enable members to better balance parliamentary duties with family commitments; support a diverse Parliament by assisting members who have dependent children but no spouse or partner to assist with care when travelling; and address discriminatory gaps in accessing services for members affected by disability.

Responsibility for Determinations

The objectives of this policy are to make the process of issuing secondary legislation more consistent and mitigate unnecessary administrative burden for administering agencies. It would also uphold Parliament’s privilege of controlling its own operations, and maintain public trust and confidence in the integrity of Parliament.

We considered two main options: (1) maintaining the status quo; (2) transferring the responsibility for determining members’ and QECs’ accommodation services to the Speaker.

Our preferred option is Option 2 (Transfer responsibility for determining members’ and QECs’ accommodation services to the Speaker). This option would uphold Parliament’s privilege of controlling its own operations. It would also decrease confusion for members, and decrease administrative inefficiencies.

Guiding Principles for Members’ Use of Publicly Funded Resources

The objective of this policy is to provide clarity to members on the principles that apply to the use of publicly funded resources, whilst:

- increasing consistency with the constitutional principle that statutes should set out the policy and substance of the law, and that regulations should be limited to technicalities and detail
- increasing consistency in decision-making relating to members' and others' access to services and funding allocations, and
- maintaining public trust and confidence in Parliament's integrity.

Two main options were considered: (1) maintaining the status quo; (2) guiding principles to appear in primary legislation.

The preferred option is Option 2 (Guiding principles to appear in primary legislation). This option ensures guiding principles (which are substantial policy matters) are collected together in the primary legislation. This also has the benefits of increasing consistency of decision-making in similar matters, decreasing confusion for members, and increasing transparency for members' use of publicly funded resources.

General

We consulted with the following:

- Government agencies: the Department of Internal Affairs (Ministerial Entitlements and Policy Group), the Inland Revenue Department, the Ministry of Justice, the Ministry of Social Development, the Ministry for Women, the Office of the Auditor-General, the Office for Disability Issues, the Remuneration Authority, and the Treasury. The Department of the Prime Minister and Cabinet and the Parliamentary Counsel Office were also informed. The Ministry for Women support the proposal in relation to family travel provisions. The Ministry of Social Development and the Office for Disability Issues also support the family travel provision proposal, and suggested ensuring that members with disabilities and members' spouses/partners who have disabilities are also provided for, which has been taken into account. The Remuneration Authority supports all proposals except transferring the responsibility for determining members' accommodation services to the Speaker. The Authority's view is that it should be the single decision-maker for all members' and Ministers' travel and accommodation services, with the exception of funding for Ministers' additional travel services that are currently set by the Minister Responsible for Ministerial Services.
- parties in Parliament: the ACT Party, the Green Party, the Labour Party, the National Party, and Te Paati Māori. The Green Party supports the proposals, particularly the provisions relating to the definition of family member and dependent children to reflect the reality of some MPs' family situations. The ACT Party commented that the proposals seemed sensible. None of the parties raised any concerns regarding any of the policy proposals in this Regulatory Impact Statement.



Limitations and Constraints on Analysis

We had limited time to develop the policy because of the Speaker's preference that the Parliament Bill be introduced into the House in March 2022. This required policy decisions to be made by September 2021, which minimised the time available for policy analysis.

Because of the time constraint, we only considered the policy options recommended in the Report of the Speaker of the House of Representatives and the Minister Responsible for Ministerial Services on the review of the operation of the Members of Parliament (Remuneration and Services) Act 2013, presented to the House of Representatives in July 2020.

The 2020 review included consultation with members and Ministers, their staff, the Speaker, the Minister Responsible for Ministerial Services, the Remuneration Authority, the Clerk of the House of Representatives, Inland Revenue, and the Office of the Controller and Auditor-General. The public have not been consulted but will have the opportunity to have their say during the select committee process.

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Responsible Manager(s) (completed by relevant manager)	
David Wilson Clerk of the House  30 August 2021	Rafael Gonzalez-Montero Chief Executive Parliamentary Service  30 August 2021
Quality Assurance (completed by QA panel)	
Reviewing Agency:	A special quality assurance panel was convened to consider the Regulatory Impact Statements for the Parliament Bill. It had membership from the Ministry of Justice (Chair), Department of Internal Affairs, and the Parliamentary Service.
Panel Assessment & Comment:	<p>An independent quality assessment panel has reviewed the Regulatory Impact Statement (RIS) prepared by the Office of the Clerk and Parliamentary Service and considers that the information and analysis summarised in it partially meets the Quality Assurance criteria.</p> <p>The panel notes that the analysis of options in part 2 appears to weigh constitutional considerations of Parliament's exclusive cognisance most heavily and the RIS does not clearly articulate how this affects the scope of options. While ease for members is a goal of option 2, the constraints on design mean it will not achieve a one stop shop for members. Time constraints have precluded public consultation for all parts of the RIS, and although consultation with parliamentary parties was undertaken there was little engagement. This can be mitigated through consultation, and the panel recommends consideration be given to opportunities for targeted consultation, such as an exposure draft bill.</p>

Contents

Regulatory Impact Statement 5: Provision of Funding for Members' Work Expenses	1
Coversheet.....	1
PART 1 – FAMILY TRAVEL PROVISIONS	9
Section 1: Diagnosing the policy problem	9
What is the context behind the policy problem and how is the status quo expected to develop?.....	9

What is the policy problem or opportunity?	11
What objectives are sought in relation to the policy problem?	11
Section 2: Deciding upon an option to address the policy problem	12
What criteria will be used to compare options to the status quo?	12
What scope will options be considered within?	12
What options are being considered?	12
How do the options compare to the status quo/counterfactual?	15
What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?	16
What are the marginal costs and benefits of the option?	16
Section 3: Delivering an option	18
How will the new arrangements be implemented?	18
How will the new arrangements be monitored, evaluated, and reviewed?	18
PART 2 – RESPONSIBILITY FOR DETERMINATIONS	20
Section 1: Diagnosing the policy problem	20
What is the context behind the policy problem and how is the status quo expected to develop?	20
What is the policy problem or opportunity?	21
What objectives are sought in relation to the policy problem?	22
Section 2: Deciding upon an option to address the policy problem	23
What criteria will be used to compare options to the status quo?	23
What scope will options be considered within?	23
How do the options compare to the status quo/counterfactual?	27
What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?	29
What are the marginal costs and benefits of the option?	29
Section 3: Delivering an option	30
How will the new arrangements be implemented?	30

How will the new arrangements be monitored, evaluated, and reviewed?	31
PART 3 – GUIDING PRINCIPLES FOR MEMBERS’ EXPENDITURE ON WORK EXPENSES AND USING SERVICES.....	32
Section 1: Diagnosing the policy problem	32
What is the context behind the policy problem and how is the status quo expected to develop?.....	32
What is the policy problem or opportunity?	32
What objectives are sought in relation to the policy problem?	33
Section 2: Deciding upon an option to address the policy problem	33
What criteria will be used to compare options to the status quo?	33
What scope will options be considered within?	33
What options are being considered?	33
How do the options compare to the status quo/counterfactual?	36
What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?	37
What are the marginal costs and benefits of the option?	37
Section 3: Delivering an option	38
How will the new arrangements be implemented?	38
How will the new arrangements be monitored, evaluated, and reviewed?	38

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PART 1 – FAMILY TRAVEL PROVISIONS

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

1. Under the Members of Parliament (Remuneration and Services) Act 2013 (the MoP Act), the Remuneration Authority determines domestic travel services for members', Ministers', and Qualifying Electoral Candidates' (QEC's) family members. Public funding is used for travel services so that members may be accompanied by a family member when the member undertakes activities for a parliamentary or ministerial purpose. The travel services that members' families may be eligible for is listed in a Determination² made under the MoP Act and issued by the Remuneration Authority. The Authority must issue a determination each parliamentary term. The travel services listed in the Determination currently include:
 - 20 one-way trips within New Zealand on scheduled services (e.g. plane, train, ferry) a year for a spouse or partner³ of a member
 - unlimited domestic trips for a child of a member.
2. The provision of family travel services attempts to address the difficulties for most members and their families caused by having to spend much of their time working in Wellington when their families are based elsewhere. Many members' homes are far from Wellington, and the travel services for members' families helps sustain family connections whilst members undertake parliamentary activities. Having greater flexibility to support different family types (such as single parents) can contribute to a more diverse Parliament. However, the provisions need to also consider public perception and a fiscally challenging environment.
3. Currently, 64 of the 120 members have dependent children, as defined in the MoP Act. **9(2)(a) Privacy of natural persons**. Greater flexibility to support these members means those members (and any members whose spouse or partner isn't available to travel to provide support for a dependent child) would not have to incur a personal cost to have a caregiver travel with them.

Statutory definition of “family member”

4. Under the MoP Act, family members eligible to be funded for traveling with a member include members' children and step-children under the age of 18, and the person's spouse or partner.⁴

² Members of Parliament (Accommodation Services for Members and Travel Services for Family Members) Determination 2020

³ A spouse or partner of a specified member (Speaker, Minister, Leader of the Opposition) is entitled to 30 one-way trips.

⁴ Statutory definitions: Family member, in relation to a person, means — (a) a spouse or partner of the person:

5. Eligibility for funded travel cannot be transferred to another person. Select committee documentation before the MoP Act was enacted notes that this was the intent of the Act and cites the example of preventing the transfer of an entitlement to an adult child, which members had the ability to do prior to the MoP Act coming into force.⁵ However, in a now more diverse Parliament, one example of the impact of this is a member's partner may not transfer their travel funding eligibility to the member's mother so that she may travel with the member's infant child as a caregiver; nor does the current scheme provide support for members who are single parents.

The MoP Act Review (2020)⁶

6. The 2020 report on the review of the MoP Act stated:

In 2017, the Standing Orders Committee found members face challenges that make a work-life balance difficult to achieve. It considered more family-friendly conditions could incentivise more women to stand for election.⁷

Similarly, the 2019 Francis Report noted members' concerns about the prescriptive travel and accommodation determinations that made it difficult for them to spend enough time with family.⁸ The Report also noted the increasing diversity among members and their family circumstances, which had not been anticipated by the existing rules guiding member entitlements.⁹ The Report recommended the Authority consider relaxing its current determination on family travel.¹⁰

7. The review of the MoP Act was presented in the House of Representatives in July 2020.¹¹ Members' feedback during the review focused on the difficulties faced by members with young children. The review report recommended the following changes to the MoP Act:

(b) a child or stepchild of the person, if that child or stepchild is under 18 years of age; (c) a dependent child of the person. Dependent child, in relation to a person, means a child — (a) who is being maintained as a member of the person's family; and (b) in respect of whom the person either is the sole or principal provider of ongoing daily care or shares ongoing daily care substantially equally with another person; and (c) who is under 18 years of age; and (d) who is not living with another person in a marriage, civil union, or de facto relationship.

⁵ [Members of Parliament \(Remuneration and Services\) Bill – Initial briefing paper](#) p.4

⁶ *Report of the Speaker of the House of Representatives and the Minister Responsible for Ministerial Services on the review of the operation of the Members of Parliament (Remuneration and Services) Act 2013*, July 2020.

⁷ Review of Standing Orders 2017 I.18A at 6.

⁸ Debbie Francis [External Independent Review—Bullying and Harassment in the New Zealand Parliamentary Workplace](#) (May 2019) at 71.

⁹ At 71.

¹⁰ At 72, Recommendation 16.

¹¹ *Report of the Speaker of the House of Representatives and the Minister Responsible for Ministerial Services on the review of the operation of the Members of Parliament (Remuneration and Services) Act 2013*, Presented to the House of Representatives pursuant to section 67 of the Members of Parliament (Remuneration and Services) Act 2013, July 2020. During the review, the following were consulted: members from all parties (in their capacity as members of Parliament); Ministers (in their capacity as Ministers); the Speaker; the Minister Responsible for Ministerial Services; member and senior ministerial support staff, including senior private secretaries; the Remuneration Authority; the Clerk of the House; Inland Revenue; the Office of the Controller and Auditor-General; and the Department of the Prime Minister and Cabinet (responsible for the passage of the MoP Act).

- *Amend the definition of “family member” to enable the Authority to include caregivers for members’ children under age 18 in the family travel determination.* Many members felt another family member (e.g. a grandparent) should be able to use the spouse/partner entitlement to accompany young children travelling to be with a member. The limit on one-way trips available to children between ages 5 and 18 was another area of concern.
 - *Amend the definition of “dependent child” to include those over age 18 who are still in secondary education.* Currently, these children are ineligible for travel services even if they are still in school and being maintained by the member.
8. Since the 53rd Parliament began, several members of Parliament have inquired whether children who are over 18 and dependent on the member due to disability could also receive travel entitlements. They are not eligible under current arrangements.

The 2020 Determination

9. In response to the above, the Remuneration Authority made changes to provide more family-friendly entitlements when it issued the 2020 Determination.¹² However, it noted that it was constrained by the definition of “family member” in the MoP Act. Legislative change is required to enhance the family travel funding provision.

What is the policy problem or opportunity?

10. Members are required to be in Wellington when the House is sitting, which means those based outside Wellington are separated from their families for long periods. This can be especially difficult for members with young families. Enabling children to travel to be with their parents is a key way in which the system supports members when they are away from home for work.
11. Members’ spouses or partners may not always be able to take time away from their own careers and other obligations to accompany their children to Wellington. The current definition of “family member” prevents a spouse’s or partner’s eligibility for funded travel from being transferred to another person so they may accompany a member’s children to Wellington in their place.
12. The definition also does not allow the children of members who are over 18 but remain dependent on their parents due to disability to be funded for travel. This is a discriminatory gap in the provision of services for those children.

¹² The changes in the Determination: removed the limit on child travel (i.e. the limit on the number of one-way trips that may be taken by a member’s child who is under 18 years old was removed); enabled a child of a member who is separated or divorced to travel to and from the ex-partner or ex-spouse’s home (The 2017 Determination did not allow for a child living with a member’s ex-spouse or ex-partner, or who attends boarding school, etc., to have scheduled travel services funded to join a member for a parliamentary purpose); enabled spouses and partners to be able to claim mileage and vehicle operating costs (when travelling by private vehicle connected to an activity, undertaken by the member, for a parliamentary purpose).

13. During the consultation to inform the 2020 MoP Act review, members commented that the legislation is very restrictive for those with young families and who are divorced, separated, or whose partner is otherwise unable to accompany a dependent child. Members supported an approach where those with young families would benefit from greater flexibility for caregiver support. Most members were also concerned about the cost to the taxpayer of any general increase to family travel funding.
14. There was no public consultation undertaken as part of the 2020 MoP Act review. The public will have an opportunity to comment during the select committee phase of the Bill.

What objectives are sought in relation to the policy problem?

15. The objective of this policy is to enable members to better balance their parliamentary duties with family commitments and to support a diverse Parliament, while ensuring the public funding is used appropriately.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

16. The following specific criteria have been developed in order to assess the options:

Criterion	What it means
Transparency and Accountability	<ul style="list-style-type: none"> • The public has access to adequate information to hold participants to account
Participation	<ul style="list-style-type: none"> • Rules should not create unreasonable barriers for participation in parliamentary matters
Equity	<ul style="list-style-type: none"> • People are treated fairly and impartially

What scope will options be considered within?

17. We have looked at the provisions for members' family members in other jurisdictions including those in Australia, Canada, Scotland, and the United Kingdom. The definition of "dependent child" used to determine eligibility for parliamentary funding and services appears to be wider in other jurisdictions.¹³

What options are being considered?

18. The following options were considered:

¹³ In Australia, the equivalent definition of "family member" includes "a designated person [nominated by the member] who has significant caring responsibilities for the member's ... dependent child". In Canada, a dependent child includes "regardless of age, [a child who is] wholly dependent upon the Member by reason of physical or mental disability." In the United Kingdom, the definition extends (under certain circumstances) to a child who is financially dependent. In Canada, Scotland, and the United Kingdom, services can extend to nieces and nephews of a member's spouse.

- a. Option 1 – Status quo
- b. Option 2 – Amend the statutory definitions of “family member” and “dependent child.”

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Option 1 – Status quo

19. Under the status quo, the definition of “family member” would remain the same. The Remuneration Authority would continue to set travel services for immediate family members, without expanding the definition or providing additional support. This would not improve the current situation to better enable members to balance their parliamentary duties with their family commitments, and it would not support a diverse Parliament.

Option 2 – Amend the statutory definitions of “family member” and “dependent child”

20. Under this option, statutory definitions would be amended to make family travel funding more accessible and usable by a wider variety of family members. This would include amending the definitions of:
 - a. “family member” to enable caregivers to access travel services to support: a member’s dependent child, a member’s spouse/partner with a disability, or a member with a disability
 - b. “dependent child” to include those:
 - i. over age 18 who are still in secondary education; and
 - ii. over the age of 18 and who remain dependent on their parents because of disability. Disability (also referred to in 20(a)(i)) would include physical disability or impairment and intellectual or psychological impairment.
21. The Remuneration Authority has indicated that the effect of these changes on the next determination they could issue would be to provide funding for travel to a slightly wider range of children, and for a caregiver to travel in place of, or with, a spouse or partner.
22. It is the Authority’s intention that the total number of one-way trips a caregiver could take in a year would not exceed the limit for a member’s spouse or partner. In other words, a caregiver’s travel would be deducted from the spouse or partner’s annual trip entitlement. This approach is equitable for members in different family situations to achieve the same outcome for members of having a spouse/partner/caregiver to provide support.
23. The Ministry for Women support this option. The Ministry of Social Development and the Office for Disability Issues also support the option, and both made recommendations regarding caregivers for members with disabilities, and members’ spouses/partners with disabilities, that have been incorporated into this option.
24. Caregivers being able to travel to support a disabled spouse/partner of a member would be another matter for the Authority to consider when issuing the next determination. The Authority has indicated that it is likely a caregiver would have unlimited travel when accompanying a member who has a disability, and be eligible to travel when accompanying a member’s spouse/partner¹⁴ who has a disability.
25. The Green Party commented that the “proposals to improve the definitions of family members and dependent children are likely to be beneficial for some MPs and their

¹⁴ Currently limited to 20 one way trips a year for an ordinary member.

whānau. These are sensible changes to reflect the reality of some MPs' family situations.”

26. This option would meet the objective of enabling members to better balance parliamentary duties with family commitments by providing for caregivers to travel with members who require additional support to allow them to undertake their parliamentary duties. This option would also reduce disadvantage for members with disabilities who require support from people outside their immediate family to enable them to undertake their parliamentary duties. This option could also support a more diverse Parliament by reducing barriers to participation.

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How do the options compare to the status quo/counterfactual?

Key for qualitative judgements:

- ++ much better than doing nothing/the status quo/counterfactual
- + better than doing nothing/the status quo/counterfactual
- 0 about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- much worse than doing nothing/the status quo/counterfactual

	Option 1 – Status Quo	Option 2 – Amend the statutory definitions of “family member” and “dependent child”
Transparency and Accountability	0 Family travel is disclosed in the quarterly reports, though it is reported with member travel.	0 Family travel is disclosed in the quarterly reports, though it is reported with member travel.
Participation	0 Access to travel services for members who require family or personal support is limited. This may be a disincentive for some individuals (particularly single parents) to enter Parliament.	+ Increased access to travel services for members who require family or personal support enhances participation.
Equity	0 Members (particularly women) who care for other family members are disadvantaged. Members with disabilities who require support from people outside their immediate family are disadvantaged.	+ Decreased disadvantage for members who care for other family members. Decreased disadvantage for members with disabilities who require support from people outside their immediate family.
OVERALL ASSESSMENT	0	+ Better than doing nothing/the status quo

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What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

27. **We prefer Option 2:** amend the statutory definitions of “family member” and “dependent child”.
28. Enabling a designated caregiver to accompany a dependent child, in place of a member’s spouse or partner, or to accompany a member’s spouse or partner who has a disability would support a more family-friendly Parliament by making it easier for members’ children, spouses, or partners to join them when they are working. Enabling members with disabilities who require support from people outside their immediate family would facilitate a more diverse Parliament by reducing barriers to participation.
29. Extending eligibility for funded travel to children over the age of 18 who are still dependent on their parents, because of either continuing involvement in secondary education or the impact of a disability, also enhances member participation and decreases indirect discrimination.
30. These changes are consistent with how comparable parliaments arrange travel for members and their families.

What are the marginal costs and benefits of the option?

31. All members’ spouses or partners are eligible for funded travel when the member is travelling for work. The rationale for providing travel to a caregiver is so that when a spouse/partner is unable to travel with the member to assist with a dependent child, another person can travel with them to provide support. The Remuneration Authority has indicated that it’s resulting determination on funded family travel services would state that a caregiver travelling with a member to provide support with childcare in place of a spouse or partner would only be eligible for funded travel when a member’s spouse or partner was unable to travel with a dependent child.
32. As this would not increase the number of domestic flights taken overall, this proposal would not require additional funding to the Accommodation of Members and Travel of Members’ Families (PLA) appropriation.
33. The entitlement for spouse/partner travel of all 120 members and Ministers is not fully used. During the 2020/2021 financial year, the total spouse or partner entitlement is 2,660¹⁵ one-way trips. In the period 1 July 2020 until 30 April 2021 (when this RIS was compiled), 849 trips had been taken by spouses or partners.
34. The cost of expanding eligibility for funded travel to dependent children over the age of 18 who have a disability or are still in secondary education is likely to be minimal. During this parliamentary term, there have been inquiries from three members who have

¹⁵ The current 91 members’ spouses/partners are eligible to 20 one-way trips each, totalling 1,820 trips. The 28 Ministers’ (including the Speaker, Deputy Speaker, and Leader of the Opposition, but excluding the Prime Minister, as specified in the Speaker’s Directions 2020, cl52 (5)) spouses/partners are entitled to 30 one-way trips each, totalling 840 trips.

children in such situations. We are not aware of any members or the spouse/partner of a member in the 53rd Parliament who have a disability and require support whilst travelling. While this will change on a Parliament by Parliament basis it is unlikely to ever be a substantial number in any Parliament.

35. For the same time period as above, the total number of trips taken by children was 653¹⁶ (an average of six trips per child, with an average cost of \$308¹⁷).
36. We do not know whether the limited use of family travel services is because members and their families are uncomfortable with their dependent children travelling unaccompanied. If that is the case, there would be an increase in cost if a caregiver were able to travel with them to provide support. This is unlikely to require an increase to the appropriation, considering that there are no limits on the number of funded trips that can be taken by children, and the appropriation is not fully used.

Affected groups (identify)	Comment <i>nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. compliance rates), risks.</i>	Impact <i>\$m present value, where appropriate, for monetised impacts; high, medium, or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
Regulated groups	Nil	Nil	High
Regulators	<i>Parliamentary Service and Remuneration Authority (one-off, implementation)</i> Cost for Remuneration Authority and the Speaker to amend secondary legislation (fiscally neutral)	Negligible	High
Others (e.g. wider govt, consumers, etc.)	<i>Nil</i>	Nil	Low
Total monetised costs	<i>Parliamentary Service and Remuneration Authority (one-off, implementation)</i> Cost for Remuneration Authority and the Speaker to amend	Negligible	High

¹⁶ Currently, there are only 64 members/Ministers that have dependent children eligible to use the entitlement.

¹⁷ The total cost for the specified period was \$201,211.03.

	secondary legislation (fiscally neutral)		
Non-monetised costs	<i>Nil</i>	Nil	Low
Additional benefits of the preferred option compared to taking no action			
Regulated groups	<i>Members of Parliament (ongoing)</i> Members with dependent children are better supported, and a discriminatory gap in eligibility to travel services is addressed.	Medium	High
Regulators	Nil	Nil	High
Others (e.g. wider govt, consumers, etc.)	<i>Society (ongoing)</i> Potential incentive for more diverse participation in Parliament	Medium	Medium
Total monetised benefits	N/A	N/A	N/A
Non-monetised benefits	<i>Members of Parliament (ongoing)</i> Members with dependent children are better supported, and a discriminatory gap in eligibility to funded travel is addressed.	Medium	High
	<i>Society (ongoing)</i> Potential incentive for women and people with disabilities to participate in Parliament	Medium	Medium

Section 3: Delivering an option

How will the new arrangements be implemented?

37. The Parliament Bill would amend how the MoP Act defines the terms “family member” and “dependent child”.
38. The Remuneration Authority’s determination is the method by which the practical effect of the amended definitions will be implemented, and they typically issue a determination at the beginning of a parliamentary term. If the Parliament Bill is enacted in early 2023, we recommend that the provisions relating to this option take effect from the day after polling day at the next general election because that is when the next determination would come into force.

39. Implementation of the Act would include communicating about its effects to members and changes to administrative processes.

How will the new arrangements be monitored, evaluated, and reviewed?

40. Refer to *Regulatory Impact Statement 1: Parliament Bill – Overall Bill* for a description of how the policy proposals for the Bill will be evaluated.
41. The Parliamentary Service Commission is a mechanism by which services to members can be regularly monitored. The Commission typically meets every two months, and is an opportunity for members to advise the Speaker on services provided to them. The Commission also uses its meetings to discuss matters with the Remuneration Authority, and to present feedback from members on the effect of the Authority's determinations.

IN CONFIDENCE - NOT GOVERNMENT POLICY

PART 2 – RESPONSIBILITY FOR DETERMINATIONS

Section 1: Diagnosing the policy problem

What is the context of the policy problem and how is the status quo expected to develop?

Statutory requirements

42. The Members of Parliament (Remuneration and Services) Act 2013 (the MoP Act) establishes that the responsibilities for determining services and funding allocations to members, members' families, and Ministers are split three ways.

The arrangements are described in Table 1 below.

Table 1: Determinations under the Members of Parliament (Remuneration and Services) Act 2013

Remuneration Authority (via Determinations)	Speaker (via Speaker's Directions and Determinations)	Minister Responsible for Ministerial Services (via Determinations)
<ul style="list-style-type: none">Funding for accommodation for members, Ministers, and Qualifying Electoral Candidates¹⁸ (QECs)Travel services for family members of members, Ministers, and QECs	<ul style="list-style-type: none">Travel and communications services for members and QECsFunding for administrative and support services for members, parties, and QECsTravel services in relation to the political exchange programmeOfficial inter-parliamentary relations travel programme	<ul style="list-style-type: none">Ministers' travel services over and above those the Speaker sets for members

¹⁸ A QEC is defined in the Members of Parliament (Remuneration and Services) Act 2013, Schedule 1. It includes: a current MP who stands for re-election, either successfully or unsuccessfully; a person who is not a current MP, standing in an electorate seat, if preliminary results indicate that they are likely to win; and a person who is not a current MP, standing in the party list, if preliminary results indicate that they are likely to win.

43. The allocation of the responsibilities set out above originated in the Law Commission's Review of the Civil List Act 1979—Members of Parliament and Ministers report. The report informed the development of the policy for the MoP Act. The report recommended that funding and services be determined by an enhanced Remuneration Authority.
44. The MoP Act implemented some but not all of the report's recommendations. The Government Administration Committee's report on the bill expressed concern that having an external party making decisions on these matters would negatively affect members' ability to travel for parliamentary work. Accordingly, the committee's report recommended that the Speaker of the House of Representatives continue to determine travel services for members of Parliament and QECs. The committee did not recommend the same approach for members', Ministers', or QECs' accommodation services, which were left for the Remuneration Authority to determine.

What is the policy problem or opportunity?

45. The current split in responsibilities for determining members' services and funding allocations means that the House does not control its own affairs. As the Government Administration Committee recognised in its report on the Bill:¹⁹

Travel by members of Parliament is critical to the effective functioning of the House. We consider that this is of fundamental democratic importance, and should be protected from the risk that decisions might be made which undermine it.

46. While the above comment relates solely to travel, the same argument applies to accommodation, as the reality is that members who travel to Wellington to undertake their parliamentary work need to be accommodated while attending to their duties. Though it was the House that put the current arrangements in place (when passing the MoP Act), the arrangements don't allow the House to currently determine its own affairs. The House is constrained by decisions it made almost 10 years ago. The importance placed on the House having sole authority to control its own affairs means that it is free from outside interference or examination from other sources, and therefore the constitutional recognition of the separation of powers is upheld.
47. In addition, the current split can be confusing for members when they seek information or try to resolve issues about their funding and services. If there is an issue in relation to funding of a particular service, a member must identify the appropriate decision-maker for that service and how to resolve issues that arise in respect of that decision-maker's determinations.

¹⁹ See Report of the Government Administration Committee on the Members of Parliament (Remuneration and Services) Bill, June 2013.

48. The determination for travel services for family members sits in one place, whereas services (travel, accommodation, communication, and administrative support) for members are fragmented.
49. The current split also causes administrative challenges. The Remuneration Authority has commented that some coordination is needed when issuing Speaker's Directions and the Remuneration Authority's Determination to ensure a consistent approach to setting levels of funding and services.
50. In addition, the Parliamentary Service assists the Speaker in the development of the Directions. The Service utilises evidence from administering members' travel to ensure the adequacy and appropriateness of the Directions for the Speaker to consider. The Remuneration Authority does not have access to that same evidence. While the Parliamentary Service is able to provide the Authority with information on members' and family members' use of travel and accommodation services at a general level in order to inform their decision making, the Service is limited by the Parliamentary Information Protocol regarding the provision of information about specific members.²⁰ For example, the Service cannot release specific information about an individual members' use of accommodation services, which could otherwise inform comprehensive decision-making by the Authority.

The MoP Act Review (2020)

51. The 2020 review report into the MoP Act stated:

The review was unable to identify a compelling reason for having different decision-makers determine members' and QECs' accommodation and travel services entitlements. The current split can be confusing, and it increases the administrative burden for all concerned. It requires separate resolution of issues procedures, separate consultation processes, and those affected by the directions and determinations must navigate up to four different sets of secondary legislation.

52. The review also noted the view of the Speaker and the Clerk (who supported the views of previous Clerks) that splitting the responsibility for determining members' travel and accommodation services fails to recognise the House's traditional privilege of determining its own affairs. Members did not express a view on this matter during the 2020 review.
53. The review recommended that the responsibility for determining members' and QECs' accommodation services be transferred from the Authority to the Speaker,²¹ based on

²⁰ Protocol for the release of information from the parliamentary information, communication and security systems 17 August 2016

²¹ The review did not recommend transferring Ministers' accommodation services from the Remuneration Authority to the Speaker; nor did the MoP Act review discuss shifting the responsibilities for determining family travel. The only issue raised in the review in relation to responsibilities for determining members' services was for accommodation.

the fact that accommodation is a necessity for members travelling to Wellington to carry out their parliamentary duties.

What objectives are sought in relation to the policy problem?

54. The objectives under this policy are to:
- a. enhance consistency of secondary legislation under the MoP Act, and make the system easier to understand, especially for members; and
 - b. uphold Parliament's privilege of controlling its own operations, while also maintaining public trust and confidence in the integrity of Parliament.

IN CONFIDENCE - NOT GOVERNMENT POLICY

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

55. The following specific criteria have been developed to assess the options:

Criterion	What it means
Constitutional Propriety	<ul style="list-style-type: none"> Upholds principle that Parliament controls its own affairs
Administrative Excellence	<ul style="list-style-type: none"> Services are provided efficiently and effectively, which includes: <ul style="list-style-type: none"> consistency, responsiveness, and timeliness accessibility, flexibility, and adaptability administrative burden and cost reduced where possible
Clarity and Certainty	<ul style="list-style-type: none"> The rules are clear and easy to follow
Independence, discretion, and neutrality	<ul style="list-style-type: none"> Maintains public trust and confidence in Parliament's integrity Maintains the trust and confidence of the House

What scope will options be considered within?

56. In this Regulatory Impact Statement, we have only considered the options recommended by the 2020 statutory review of the MoP Act, all of which related to practical issues. That report noted that the “Speaker will work with the Leader of the House to progress amendments to the 2013 Act determined to be necessary and desirable.” There has been no indication from members, Ministers, or the public that a wider, in-depth, review of the MoP Act is needed. However, for this particular policy proposal, we have considered the views of the Remuneration Authority, which were presented in the MoP Act review and also in response to consultation on this proposal.
57. The split in responsibilities set out in the MoP Act originated in the 2010 Law Commission report about its Review of the Civil List Act 1979²². The 2010 report recommended that funding and services should be determined by the enhanced Remuneration Authority, as an independent body. The recommendations made by the 2010 review were not all adopted, but were taken into account during the development and passage of the MoP Act.
58. The purpose of the 2020 review of the MoP Act was to examine the operation of the Act. This included looking at the split in responsibilities for the determining of services and funding allocations for members, and the impact of that on those who administer or directly benefit from these determinations.

²² <https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20R119.pdf>

59. Policy options were considered within the scope of consultation undertaken as part of the 2020 review. This means that the scope of the problem definition has not benefited from an in-depth review of the policy underlying the current Act. Accordingly, shifting the responsibilities for determining family travel services or ministerial travel or accommodation services has not been considered.

What options are being considered?

60. The following options were considered:
- a. Option 1 – Status quo
 - b. Option 2 – Transfer responsibility for determining members' and QECs' accommodation services to the Speaker
 - c. Option 3 – Transfer responsibility for determining members' and QECs' travel services to the Remuneration Authority.

Option 1 – Status Quo

61. Under this option, responsibilities will remain split so that:
- a. the Speaker is responsible for determining members' and QECs' travel services (along with administrative and support services, communications services, and the political exchange programme); and
 - b. the Remuneration Authority is responsible for determining members' and QECs' accommodation services (along with Ministers' and the Prime Minister's accommodation services, and family travel services).
62. Parliament does not control its own affairs. In addition, confusion for members will remain, with uncertainty about who the responsible decision-maker is and how to resolve issues.

Option 2 – Transfer responsibility for determining members' and QECs' accommodation services to the Speaker

63. Under this option, responsibility for determining members' and QECs' accommodation services would be transferred from the Remuneration Authority to the Speaker.²³ This option supports the view of the Speaker and of current and former Clerks of the House that splitting the responsibilities for the determination of travel and accommodation services fails to recognise the House's traditional privilege to determine its own affairs.
64. This maintains the House's privilege, rather than giving an external body authority over a service that impacts on members' ability to attend the House.

²³ We do not propose changing the Remuneration Authority's role in determining Ministers' accommodation services, which are additional or alternative to the services available to them as members, and which will continue to be administered by the Department of Internal Affairs. The Remuneration Authority will also continue to determine eligible family members' travel services.

65. Under this option, members' travel and accommodation services will be more accessible by having one decision-maker who issues all directions relating to members' parliamentary functions (travel, accommodation, and communication services, official inter-parliamentary relations travel programme, along with funding allocations for administrative support) in one piece of secondary legislation – in one source. This will provide improved accessibility and greater clarity for members to resolve issues, should they arise.
66. Transferring responsibility will not affect the application of the MoP Act's "public interest" provisions.²⁴ The instrument governing all funding and services will continue to be publicly available. As currently provided for in the MoP Act, the Speaker will continue to take into account any relevant advice given by the Parliamentary Service Commission before issuing any directions.²⁵ In addition, the Speaker is supported in making a balanced decision by being required to consult the Remuneration Authority, the Minister Responsible for Ministerial Services, and the Commissioner of Inland Revenue prior to issuing directions.²⁶
67. The Speaker is not subject to the Official Information Act (while the Remuneration Authority is), so any related information on the setting of funding and services could not be requested under that Act. However, Parliament's "Protocol for the release of information from the parliamentary information, communication and security systems" sets out rules and guidance for dealing with requests for information held by parliamentary agencies and provides for such requests to be made.
68. Members' accommodation expenses will continue to be disclosed quarterly, and the funding sources will remain in their existing appropriations under the Vote.
69. The Remuneration Authority "does not support the proposed partial transfer of responsibility for determinations and favours a single decision-maker having responsibility for determining all travel and accommodation services. The Authority believes that the current split in responsibilities is confusing, increases the administrative burden for all concerned and requires separate procedures and processes. The partial transfer of responsibilities for determining members' accommodation services will further exacerbate the current split as it will require a high degree of organisation and coordination between the Speaker's Directions and the Authority's Determination. Given

²⁴ The Speaker and the Remuneration Authority must apply the principles in section 16 of the MoP Act (including fairness to taxpayers, transparency in allocation and use of public resources, and maintaining confidence in Parliament's integrity) when issuing directions and determinations. In addition, section 16 requires any actual or potential personal benefit arising from funding and services to be calculated, which must be taken into account when the Remuneration Authority determines members' and Ministers' salaries. The Speaker's Directions also contain complementary "public interest" protections governing members' funding and services, including a definition of "parliamentary purpose" that specifically excludes work undertaken for electioneering; the requirement to disclose and manage potential conflicts of interest; and principles governing the use of public resources, including accountability, appropriateness, openness, transparency, value for money, and cost-effectiveness.

²⁵ The Parliamentary Service Commission, made up of representatives from each of the parliamentary political parties, advises the Speaker about the services to be provided to the House of Representatives and to members of Parliament.

²⁶ See section 24 of the MoP Act.

that it is seen not to be appropriate for the Speaker to determine the accommodation services for members of the executive (Ministers and the Prime Minister), the Remuneration Authority should have the responsibility for determining all members' accommodation and travel services, as they have a full understanding of parliamentary business.

70. The Remuneration Authority's views have been considered and analysed as Option 3.

Option 3 – Transfer responsibility for determining members' and QECs' travel services to the Remuneration Authority

71. Under this option, responsibility for determining members' and QECs' travel services would be transferred from the Speaker to the Authority.²⁷ The Authority would continue to be required to consult with the Speaker (and others) before issuing any determinations, as currently provided for in the MoP Act.
72. This option reflects the view of the Remuneration Authority raised in both the 2020 report of the MoP Act review and in consultation for this Regulatory Impact Statement that there should be a single decision-maker for all travel and accommodation services.
73. Transferring the responsibility will not affect the application of the MoP Act's "public interest" provisions. The provisions for all funding and services will continue to be publicly available, so final decisions on funding and services will remain with the same level of transparency. The Authority is subject to the Official Information Act, so any related information on the setting of funding and services could be requested under that Act. Members' travel expenses will continue to be disclosed quarterly, and the funding sources will remain in their existing appropriations under the Vote.
74. Though all member's travel and accommodation services would be set by one decision-maker, confusion would remain for members because other services and funding (for communication services, official inter-parliamentary relations travel programme, and funding allocations for administrative support) would continue to be set by the Speaker.
75. There would be increased independence in the setting of travel and accommodation by a body external to Parliament, but this would also negatively impact on Parliament's privilege to determine its own affairs.
76. The administrative burden involved in coordinating the Speaker's Directions and the Authority's Determination relating to travel and accommodation would be eliminated but the Authority would need a lot of information from the Parliamentary Service about the use of travel and accommodation services to inform their decision-making, and under the Parliamentary Information Protocol, the Parliamentary Service is limited in providing

²⁷ No change is proposed to the Minister Responsible for Ministerial Service's role in determining Ministers' accommodation services, which are additional or alternative to the services available to them as members, and which will continue to be administered by the Department of Internal Affairs. The Remuneration Authority will also continue to determine eligible family members' travel services.

specific information about members' use of travel services to inform comprehensive decision-making.

IN CONFIDENCE - NOT GOVERNMENT POLICY

How do the options compare to the status quo/counterfactual?

Key for qualitative judgements:

- ++ much better than doing nothing/the status quo/counterfactual
- + better than doing nothing/the status quo/counterfactual
- 0 about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- much worse than doing nothing/the status quo/counterfactual

	Option 1 – Status Quo	Option 2 – Transfer responsibility for determining members’ and QECs’ accommodation services to the Speaker	Option 3 – Transfer responsibility for determining members’ and QECs’ travel services to the Remuneration Authority
Constitutional propriety	0 Parliament does not control its own affairs. However, consultation with the Speaker and the Minister Responsible for Ministerial Services is required under the MoP Act.	+	- Parliament does not control its own affairs. The Remuneration Authority determines services for members that are necessary for them to undertake their parliamentary activities (accommodation and travel services).
Administrative excellence	0 Requires a high degree of organisation and coordination between the Speaker’s Directions and the Remuneration Authority’s Determination	+	0 Reduced administrative burden on the agencies that support the decision-makers to coordinate the setting of determinations. However, the Remuneration Authority would have to seek evidence of member’s use of both accommodation <i>and</i> travel

	Option 1 – Status Quo	Option 2 – Transfer responsibility for determining members’ and QECs’ accommodation services to the Speaker	Option 3 – Transfer responsibility for determining members’ and QECs’ travel services to the Remuneration Authority
		associated increase internally) providing an overall benefit.	services from the Parliamentary Service, in order to be informed to set their determination.
Clarity and certainty	0 Confusion around who the responsible decision-maker is, when seeking clarity on rules.	++ Eliminates confusion around who the responsible decision-maker is for all members’ funding and services. The Remuneration Authority is responsible for family travel.	0 Confusion around who the responsible decision-maker is remains as responsibilities still split: the Speaker for members’ services, and the Authority for members’ and family members’ travel, and members’ accommodation
Independence, discretion, and neutrality	0 Current determination of members’ accommodation is independent and neutral	0 Risk of perceived decrease in independence and neutrality mitigated by transparency.	+ An increase in independence, as a result of the Remuneration Authority making decisions on more services.
Transparency	0 Current determination, and expenses that are incurred as a result, are transparent	0 The Speaker’s Directions, and expenses that are incurred as a result, are transparent	0 The Remuneration Authority’s determination, and expenses that are incurred as a result, are transparent
OVERALL ASSESSMENT	0	+ better than doing nothing/the status quo	-

	Option 1 – Status Quo	Option 2 – Transfer responsibility for determining members’ and QECs’ accommodation services to the Speaker	Option 3 – Transfer responsibility for determining members’ and QECs’ travel services to the Remuneration Authority
			worse than doing nothing/the status quo

IN CONFIDENCE - NOT GOVERNMENT

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

- 77. Our preferred option is **Option 2** (Transfer responsibility for determining members’ and QECs’ accommodation services to the Speaker)
- 78. Empowering the Speaker to determine eligibility for all members’ services upholds Parliament’s privilege to control its own operations. This option was also recommended in the Report of the Speaker of the House of Representatives and the Minister Responsible for Ministerial Services on the review of the Members of Parliament (Remuneration and Services) Act 2013, presented to the House of Representatives in July 2020.
- 79. Some administrative burden would remain because of the organisation and coordination required when issuing the Speaker’s Directions, which set members’ accommodation services, and the Authority’s Determination, which sets Ministers’ and the Prime Minister’s accommodation services. It would improve the status quo because the Remuneration Authority would not have to seek evidence of members’ use of accommodation services in order to set their determination, as they currently do.
- 80. Under this option, there is improved accessibility to the ‘rules’ in secondary legislation by having all members’ services detailed in one place. This also means that members would know who to contact to resolve any issues.

What are the marginal costs and benefits of the option?

Affected groups (identify)	Comment nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. compliance rates), risks.	Impact \$m present value, where appropriate, for monetised impacts; high, medium, or low for non-monetised impacts.	Evidence Certainty High, medium, or low, and explain reasoning in comment column.
Additional costs of the preferred option compared to taking no action			
Regulated groups	Nil	Nil	High
Regulators	Parliamentary Service and Remuneration Authority (one-off, implementation) Cost transfer from Remuneration Authority to the Speaker (fiscally neutral)	Negligible (existing resources and within baseline)	High
Others (e.g. wider govt, consumers, etc.)	Public (ongoing) Perceived lack of independence	Medium	Medium

Total monetised costs	<i>Parliamentary Service and Remuneration Authority (one-off, implementation)</i> Cost transfer from Remuneration Authority to the Speaker (fiscally neutral)	Negligible (existing resources and within baseline)	High
Non-monetised costs	<i>Public (ongoing)</i> Perceived lack of independence	Medium	Medium
Additional benefits of the preferred option compared to taking no action			
Regulated groups	<i>Speaker and Parliamentary Service (ongoing)</i> Reduced administrative burden	Minimal (unquantified)	High
	<i>Members of Parliament (ongoing)</i> Increased clarity by having all members' funding and services set by one decision-maker.	Medium	High
Regulators	Nil	Nil	High
Others (e.g. wider govt, consumers, etc.)	Nil	Nil	High
Total monetised benefits	<i>Speaker and Parliamentary Service (ongoing)</i> Reduced administrative burden	Minimal (unquantified)	High
Non-monetised benefits	<i>Members of Parliament (ongoing)</i> Increased control of the House over its own operations. Increased clarity and accessibility of members' funding and services by having them set by one decision-maker.	Medium	High

Section 3: Delivering an option

How will the new arrangements be implemented?

81. Amendments to secondary legislation (Speaker's Directions and the Remuneration Authority's Determination) will be required to implement this policy. The Speaker may choose to review services and funding for members as part of their new responsibility. Additional consultation with members would be required. We consider that the bill should include a transitional period so that the Speaker has time to consider what changes would be desirable, and undertake the consultation with members. The MoP Act processes would be retained so would also require the Speaker to consult the Minister Responsible for Ministerial Services, the Authority, and the Commissioner for Inland Revenue.²⁸ Consultation between the three main decision-makers under the MoP Act²⁹ would still be required to ensure consistency in secondary legislation, and that members and Ministers were properly supported with services and funding allocations to undertake their respective roles.
82. Each parliamentary term, the Authority and the Speaker must issue their respective pieces of secondary legislation (determinations and directions) under the MoP Act, which provides members with services and funding allocations. These instruments typically come into force on the day after polling day at a general election. If the Parliament Bill is enacted in early 2023, we recommend that the provisions relating to this option take effect on the day after the polling day of the next general election. This would allow time for consultation to take place, as required under the MoP Act, and for the new direction to be in place before the new Parliament (as a result of the general election) begins.
83. The MoP Act currently provides for the expenses to be incurred from an appropriation, with permanent legislative authority for services determined by the Remuneration Authority. The MoP Act does not provide this for the Speaker, so the Parliament Act will need to ensure that the permanent appropriations for accommodation services can continue with the change in responsibility to the Speaker.
84. A minor administrative change is that the appropriations are based on the financial (rather than parliamentary) year, so will have to be updated by the Parliamentary Service for the changes coming into effect at the beginning of the 54th Parliament.
85. Implementation would also involve telling members about the changes in responsibilities for decisions, and where they are then found. Administrative processes will also need updating.

²⁸ The Commissioner for Inland Revenue is consulted for any taxation consequences.

²⁹ The Minister Responsible for Ministerial Services, the Speaker, and the Remuneration Authority.

How will the new arrangements be monitored, evaluated, and reviewed?

86. Refer to the *Regulatory Impact Statement 1: Parliament Bill – Overall Bill* for a description of how the policy proposals under the Bill will be evaluated.
87. The Parliamentary Service Commission could also regularly monitor how the changes are going. The Commission, which has cross-party representation, typically meets every two months, and is the opportunity for members to discuss and advise the Speaker on the services provided to them, which are administered by the Parliamentary Service. It is the mechanism for members to advocate for change or highlight inadequacies in services.

IN CONFIDENCE - NOT GOVERNMENT POLICY

PART 3 – GUIDING PRINCIPLES FOR MEMBERS’ USE OF PUBLICLY FUNDED RESOURCES

Section 1: Diagnosing the policy problem

What is the context of the policy problem and how is the status quo expected to develop?

88. Section 3 of the Members of Parliament (Remuneration and Services) Act 2013 (the MoP Act) sets out the Act’s overall purposes and emphasises the need to maintain confidence in Parliament’s integrity. Section 16 of the Act sets out the following principles the Authority, the Speaker, and the Minister must apply when making decisions about members’ and others’ eligibility for funding for work expenses and services:³⁰
- the need for public understanding about the services members, Ministers, and parties need to carry out their roles and functions
 - efficient and effective delivery of support services
 - fairness to the taxpayer
 - transparency in the allocation of public money.
89. The recent review of the MoP Act recommended that the Act should be amended to also include guiding principles that apply to members’ and Ministers’ (and other recipients’) use of publicly funded resources.³¹ The MoP Act review’s report stated:
- The 2013 Act obliges decision-makers (the Speaker, the Minister, and the Authority) to consider the appropriate use of public funds when setting members’ and others’ entitlements. Applying a similar statutory obligation on recipients’ (the “how” and “by whom”) would increase consistency and transparency, and it would further support public trust and confidence in Parliament’s integrity.*
90. As the Speaker’s Directions, and the Authority’s and the Minister’s determinations (which are all secondary legislation), currently include principles relating to the use of funding and services (publicly funded resources), it means that the general legal convention that statutes should set out the policy and substance of the law and that regulations should be limited to technicalities and detail is not being followed.

What is the policy problem or opportunity?

91. It is odd that the MoP Act contains principles that the Authority, the Speaker, and the Minister must apply when making decisions about members’ and others’ eligibility for

³⁰ Including communication, travel, and administrative support services.

³¹ *Report of the Speaker of the House of Representatives and the Minister Responsible for Ministerial Services on the review of the operation of the Members of Parliament (Remuneration and Services) Act 2013*, Presented to the House of Representatives pursuant to section 67 of the Members of Parliament (Remuneration and Services) Act 2013, July 2020, p.13.

funding, but it does not contain principles that must be applied by people using that funding. Instead, those principles are applied by way of secondary legislation made under the Act. This approach is inconsistent with the general principle of legislative design that primary legislation should contain substantive matters and secondary legislation should contain the technical detail.

92. In addition, having separate guiding principles spread across different pieces of secondary legislation means that the principles that apply to particular uses of funding are unclear. It also means that the system is less transparent to assist in holding members accountable for their use of public resources.
93. The MoP Act review (2020) noted that:

There are currently some inconsistencies in the principles of the determinations and directions issued by each of the three decision makers. This inconsistency can create some confusion for members, and administrators. In addition, having the principles in primary legislation is an opportunity to increase transparency, which would further support public trust and confidence in Parliament's integrity.
94. Having the guiding principles in the Act (which currently exist in the three pieces of secondary legislation) would ensure consistency, and therefore reduce any confusion for members.
95. While a number of stakeholders (including members) were consulted as part of the 2020 review, the only stakeholder view recorded in respect of this proposal was from the Speaker, who supports the inclusion in the primary legislation of a common set of principles (appropriateness, openness, transparency, value for money and cost-effectiveness) relating to recipients' use of publicly funded resources.³²
96. The view of the Parliamentary Service is that the administration of funding, and support given to members, would benefit from having one set of principles for the use of public resources.
97. The public will have the opportunity for input in the select committee phase of the Bill.

What objectives are sought in relation to the policy problem?

98. The objectives of this policy are to:
 - a. Increase consistency with the convention that "statutes should set out the policy and substance of the law [and that] [c]onversely, regulations should be limited to technicalities and detail."³³
 - b. Implement consistent, accessible principles that govern members' and others' use of publicly funded resources.

³² Report of the Speaker of the House of Representatives and the Minister Responsible for Ministerial Services on the review of the operation of the Members of Parliament (Remuneration and Services) Act 2013, Presented to the House of Representatives pursuant to section 67 of the Members of Parliament (Remuneration and Services) Act 2013, July 2020, p.14, para 86

³³ Regulations Review Committee Digest, 6th ed. p. 76.

- c. Maintain public trust and confidence in Parliament’s integrity through appropriate accountability for members’ use of publicly funded resources.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

99. The following specific criteria have been developed in order to assess the options:

Criterion	What it means
Constitutional Propriety	<ul style="list-style-type: none"> • Primary legislation should contain the substance of the law
Clarity and Certainty	<ul style="list-style-type: none"> • The rules are clear and easy to follow
Transparency and Accountability	<ul style="list-style-type: none"> • The public has access to adequate information to hold participants to account

What scope will options be considered within?

100. Options have been limited to those agreed in the 2020 review, due to time constraints.

What options are being considered?

101. The following options were considered:

- a. Option 1 – Status quo
- b. Option 2 – Guiding principles to appear in primary legislation.

Option 1 – Status Quo

102. Under this option, the principles applying the use of funding or services would remain in both primary and secondary legislation. Members and administrators are likely to be confused about which principles apply in which circumstances in respect of members’ and Ministers’ use of funding.

103. This option means that the policy and substance of the law remains in secondary legislation, rather than adhering to the principle that they should be in statute.

Option 2 – Guiding principles in primary legislation

104. Under this model, the principles applying to members’ use of funding or services provided by the directions or a determination would be in the Parliament Bill. This approach is more consistent with the principle that primary legislation should contain the substance of the law.

105. We propose that the following principles be included in the legislation as the guiding principles for the use of parliamentary funding, based on the principles that currently

align with the Speaker's Directions and the Minister's and the Authority's determination (refer attached appendix):

Members must act in a manner consistent with the following principles when using services or funding provided for under the Act:

Accountability	<ul style="list-style-type: none">• Personal responsibility for the use of funding or services, even where expenses are incurred under delegated authority.
Appropriateness	<ul style="list-style-type: none">• The funding or services provided for under the Act are intended to support persons in performing their roles and functions.• Work-related expenses should not have to be personally met.
Openness	<ul style="list-style-type: none">• Persons must be open in the use of public resources and disclose any conflict of interest in utilising funding or services, whether that conflict is pecuniary, personal, familial, or as a result of any association.
Transparency	<ul style="list-style-type: none">• Persons should be transparent in their use of funding or services, particularly in relation to expenditure processes, and the reasons for, and circumstances surrounding, the use of funding or services.
Cost-Effectiveness	<ul style="list-style-type: none">• Wherever reasonably practicable, the most cost-effective alternative available should be used.

106. The existing principles in the Speaker's Directions and the Minister's and the Authority's determinations are sometimes specific to a role (refer to the attached **Appendix**). For example, members and Ministers may incur expenses for different purposes (one for parliamentary, and the other for ministerial purposes). The principle of accountability in the Speaker's Directions relating to members' and others' parliamentary roles and functions is not in the Minister's determination because ministerial accountability derives from the Cabinet Manual.³⁴ Despite this, basic principles of accountability can be established in statute for the use of public resources by eligible persons, including Ministers, without undermining the ministerial accountability that is provided for in the Cabinet Manual.

107. Any specific principles or considerations that do not apply to all three pieces of secondary legislation can be included in the appropriate legislation. Based on the analysis in the

³⁴ Report of the Speaker of the House of Representatives and the Minister Responsible for Ministerial Services on the review of the operation of the Members of Parliament (Remuneration and Services) Act 2013, presented to the House of Representatives pursuant to section 67 of the Members of Parliament (Remuneration and Services) Act 2013, July 2020, p.14.

Appendix, it is unlikely that there would be any. Allowing for additional principles in secondary legislation would provide flexibility in any future unforeseen, specific circumstances for the decision-maker.

108. Under this option, there are consistent, accessible principles that govern members' and others' use of publicly funded resources. Having the principles in primary legislation would increase transparency and contribute to public trust and confidence in Parliament's integrity due to appropriate accountability for members' use of publicly funded resources.

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How do the options compare to the status quo/counterfactual?

Key for qualitative judgements:

- ++ much better than doing nothing/the status quo/counterfactual
- + better than doing nothing/the status quo/counterfactual
- 0 about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- much worse than doing nothing/the status quo/counterfactual

	Option 1 – Status Quo	Option 2 – Guiding principles in primary legislation
Constitutional Propriety	<p>0</p> <p>Although the principles for decision-makers setting funding and services are in the Act, the principles for the use of funding and services are in secondary legislation</p>	<p>++</p> <p>The substance of the law is in primary legislation.</p>
Clarity and Certainty	<p>0</p> <p>The principles are in secondary legislation, but as there are inconsistencies between directions/determinations, there is a lack of clarity for members when using funding or services.</p>	<p>++</p> <p>Placing all guiding principles in primary legislation increases clarity and certainty to persons who are eligible for funding or services. It also increases clarity for the public and others in order to hold the people using public funding accountable</p>
Transparency and accountability	<p>0</p> <p>The principles are in secondary legislation and lacking in transparency. Accountability for use of public resources is difficult with inconsistent principles.</p>	<p>+</p> <p>Greater transparency with principles in primary legislation. Clearer accountability for user of public resources.</p>
OVERALL ASSESSMENT	<p>0</p>	<p>++</p> <p>Much better than doing nothing/the status quo.</p>

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What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

- 109. **Option 2 (Guiding principles to appear in primary legislation)** is our preferred option.
- 110. This option would ensure that guiding principles on the use of public funding, as matters of substance, are in the primary legislation. This would ensure consistency of the principles that apply to members’ use of funding and services, decrease confusion, and increase transparency of the use of publicly funded resources.

What are the marginal costs and benefits of the option?

Affected groups <i>(identify)</i>	Comment <i>nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. compliance rates), risks.</i>	Impact <i>\$m present value, where appropriate, for monetised impacts; high, medium, or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
Regulated groups	Nil	Nil	High
Regulators	<i>Remuneration Authority, Parliamentary Service and Ministerial Services (one-off, implementation)</i> Implementation cost is minor (the decision-makers would no longer include the principles in the determination and directions).	Negligible (using existing resources and within baseline)	High
Others (e.g. wider govt, consumers, etc.)	Nil	Nil	High
Total monetised costs	<i>Remuneration Authority, Parliamentary Service and Ministerial Services (one-off, implementation)</i> Implementation cost is minor (the decision-makers would no longer include the principles in the determination and directions).	Negligible (using existing resources and within baseline)	High
Non-monetised costs	Nil	Nil	High
Additional benefits of the preferred option compared to taking no action			

Regulated groups	<i>Members of Parliament and Ministers (ongoing)</i> Clarity and consistency of guiding principles	Medium	High
Regulators	<i>Remuneration Authority, Parliamentary Service and Ministerial Services</i> Clarity and consistency of guiding principles	Medium	High
Others (e.g. wider govt, consumers, etc.)	<i>Public</i> Clarity, consistency, and transparency of guiding principles	Medium	High
Total monetised benefits	Nil	Nil	High
Non-monetised benefits	<i>Members of Parliament and Ministers (ongoing)</i> Clarity and consistency	High	High
	<i>Remuneration Authority, Parliamentary Service and Ministerial Services</i> Clarity and consistency	High	High
	<i>Public</i> Clarity, consistency, and transparency of guiding principles	High	High

Section 3: Delivering an option

How will the new arrangements be implemented?

111. Implementation would include the following:

- a. The MoP Act requires that the Authority and the Speaker issue their respective determination and directions each term. These instruments typically come into force on the day after polling day at a general election. If the Parliament Bill is enacted in early 2023, we recommend that the provisions for this option take effect from the day after polling day at the next general election, which would allow the Speaker and the Authority to consult with interested parties, as required by the MoP Act. New determinations and directions issued for the next parliamentary term would reflect the changes made should the Bill be enacted by early 2023.
- b. Communicating the changes to the people and bodies who would be affected by them.

How will the new arrangements be monitored, evaluated, and reviewed?

112. Refer to *Regulatory Impact Statement 1: Parliament Bill – Overall Bill* for the description of how the policy proposals under the Bill will be evaluated.

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APPENDIX

Comparison of the principles applying to decision-makers under the Members of Parliament (Remuneration and Services) Act 2013

Principles ³⁵	Decision-maker—		
	The Speaker	Remuneration Authority	Minister Responsible for Ministerial Services
	<i>Principle applies to—</i>		
	Members and parties	Speaker, Deputy Speaker, Ministers, members, QECs	Ministers ³⁶
General		<ul style="list-style-type: none"> • The principles— <ul style="list-style-type: none"> a) underpin this determination; and b) indicate the spirit in which this determination should be interpreted and applied. • The Speaker, the Deputy Speaker, Ministers, and other members of Parliament should not personally have to meet work-related expenses. 	
Accountability	<ul style="list-style-type: none"> • Members are personally responsible for the way they and parties use the entitlements and services. • This personal responsibility cannot be avoided, even though delegations may exist for others to incur costs on a member's or party's behalf. 	<ul style="list-style-type: none"> • They are personally responsible for the use of services, even where expenses are incurred on their behalf under delegated authority. 	

³⁵ The principles under the Speaker's Directions and the ministerial determination are inclusive. For example, the principle of appropriateness in the ministerial determination *includes but is not limited to* expenditure being incurred in respect of ministerial purposes.

³⁶ Ministers are subject to the principles in the Speaker's Directions when incurring expenditure from their member support allocation.

	<ul style="list-style-type: none"> • Members are responsible for keeping records of their use of entitlements to facilitate scrutiny. • Assets purchased are the property of the Parliamentary Corporation on behalf of the Parliamentary Service. 		
Appropriateness	<ul style="list-style-type: none"> • Entitlements and services must only be used for parliamentary purposes. 	<ul style="list-style-type: none"> • The services set out in this determination in relation to the Speaker, the Deputy Speaker, Ministers, and other members of Parliament are intended to support them in performing their respective roles and functions. 	<ul style="list-style-type: none"> • Expenditure must only be incurred in respect of ministerial purposes.
Openness	<ul style="list-style-type: none"> • Members should be open and transparent in their use of entitlements, particularly in relation to expenditure processes, and the reasons for, and circumstances surrounding, the use of those entitlements. 	<ul style="list-style-type: none"> • They must be open and transparent in using the services under this determination and, to that end, should keep proper documentation to facilitate sound administration and to enable any scrutiny required. 	<ul style="list-style-type: none"> • Parties must be open in the use of public resources and disclose any conflict of interest in utilising entitlements, whether that conflict is pecuniary, personal, familial, or as a result of any association. • The reasons for, and the circumstances surrounding, the use of public resources by individual Ministers should be available. • The process by which funds are expended should be publicly known.
Transparency			
Value for money	<ul style="list-style-type: none"> • Members should seek the appropriate value for money when using entitlements 	<ul style="list-style-type: none"> • They must satisfy themselves that the expenses under this determination— <ul style="list-style-type: none"> ○ represent value for money; and ○ are incurred having regard to efficiency and effectiveness. 	<ul style="list-style-type: none"> • When using public resources entrusted to them to perform their official duties, Ministers must seek the appropriate value for money in the circumstances.

Cost-effectiveness	<ul style="list-style-type: none"> Wherever reasonably practicable, members should use the most cost-effective option available. 		<ul style="list-style-type: none"> Ministers should, wherever reasonably practicable, use the most cost-effective alternative available.
Personal benefit		<ul style="list-style-type: none"> Any personal benefits should be kept to a minimum. 	

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