



SPICe briefing: Evidence session nine

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Today's meeting

Today's meeting is part of a series of evidence sessions which have heard from SPCB Supported Bodies, Audit Scotland, MSPs proposing new SPCB supported bodies, and academics. In this session, the Committee will hear from:

- Dr David Wilson, Clerk of the House of Representatives, New Zealand Parliament

The purpose of today's session is to gain a better understanding of the New Zealand Commissioner model.

Information for this paper has been primarily drawn from two SPICe Briefings originally produced to support the Finance and Public Administration Committee's (FPAC) inquiry into Scotland's Commissioner landscape:

- [Scotland's Commissioner Landscape - A Strategic Approach](#)
- [Scotland's Commissioner Landscape – Background Information on the New Zealand Performance Measurement Framework and Wales Commissioners Accountable to Government Model.](#)

The Committee has previously heard from:

30 January: The Commissioner for Ethical Standards in Public Life in Scotland and the Standards Commission for Scotland

6 February: The Scottish Public Services Ombudsman.

20 February: The Scottish Information Commissioner and the Scottish Biometrics Commissioner

27 February: The Scottish Human Rights Commissioner and the Children and Young People's Commissioner Scotland

13 March: Audit Scotland and MSPs proposing new SPCB supported bodies

20 March: Dr Ruth Lamont, Dr Ian Elliott, Alison Payne, Dr Matthew Gill

Introduction

The SPCB Supported Bodies Landscape Review Committee (SSBLRC) has been established in response to a recommendation in the Finance and Public Administration Committee's report on [Scotland's Commissioner Landscape: A Strategic Approach](#). The Committee called for a review of the SPCB supported bodies, drawing on the evidence and conclusions set out in its report, and that the review should be carried out by a dedicated Parliamentary committee.

The report was debated on 31 October 2024, and the Parliament agreed:

- to the creation of a dedicated committee,
- that it should complete its work by June 2025, and
- “there should be a moratorium on creating any new SPCB supported bodies, or expanding the remit of existing bodies, while recognising that, for proposals within bills that have already been introduced, these are now for the Parliament to take a decision on, respecting the lead committees' roles in scrutinising legislation within their remits.”.

Additional background information can be found in the [SPICe briefing](#) from the meeting held on 30 January.

Background

The comparison of commissioner systems internationally is complex due to differing political and government systems and conflicting definitions. The term "commissioner" lacks a clear, universal definition, with different countries using varying terms and often failing to distinguish commissioners from other independent organisational types. Moreover, the use of "commissioner" and "commission" in different countries denotes a wide range of roles, from regulatory bodies to inquiries on public matters. While it's important to learn from these systems, it's crucial to recognise that their models may not be directly comparable or suitable for Scotland's commissioner model.

The purpose of this session is to consider the New Zealand Commissioner model in more detail, including the Officers of Parliament (OoP), and how a single committee structure works for governance and scrutiny.

To date, one of the themes the Committee has been exploring is the existing accountability and scrutiny arrangements of the current SPCB supported bodies.

Previous evidence gathered by the Committee included a number of suggestions for improvements to scrutiny of SPCB supported bodies, including the following:

- Committee scrutiny sessions should be held with the relevant officeholder annually as a minimum
- Committee scrutiny sessions should be scheduled in the period between November and March each year, after the relevant annual reports and accounts have been laid.
- The SPCB should hear from SPCB supported bodies twice annually
- One of those sessions should be exclusively on budgets and should be scheduled with the submission of the budget bid for the following year.
- There could be a separate committee to scrutinise how SPCB supported bodies are fulfilling their functions. This committee could undertake some of the functions of the SPCB and committees, reducing pressure on these bodies, while increasing or maintaining effective levels of scrutiny and governance for SPCB supported bodies.

Officers of Parliament and Statutory Crown entities

New Zealand has both Officers of Parliament and Independent Crown entities¹. Although they both include some bodies consistent with Commissioners in Scotland the two designations function differently.

Officers of Parliament

New Zealand has three Officers of Parliament who carry out non-political scrutiny of the Government on behalf of the House of Representatives. They are the Ombudsman, Controller, Auditor-General and Parliamentary Commissioner for the Environment.

There is not a single definition or criteria for the use of the term “Officer of Parliament” and certain roles were designated before the term had its current meaning.

Office	Created	Legislation	Role
<u>Ombudsman</u>	1975	<u>The Ombudsmen Act 1975</u> <u>The Official Information Act 1982</u> <u>The Local Government Official Information and Meetings Act 1987</u> <u>The Crimes of Torture Act 1989</u> <u>The Protected Disclosures Act 2000</u>	Investigates complaints about government actions at all levels in New Zealand and ensures public access to official information.
<u>Controller and Auditor-General</u>	2001	<u>Public Audit Act 2001</u>	Functions as the auditor for all public entities, ensuring adherence to Parliament-approved spending.
<u>Parliamentary Commissioner for the Environment</u>	1986	<u>Environment Act 1986</u>	Preserves and enhances NZ environment, investigates reports of negative impacts, and advises committees.

¹ Most NZ commissioners are classified as Independent Crown entities. They are part of a subset of statutory Crown entities defined under the Crown Entities Act 2004.

Governance, accountability, scrutiny, funding, and reporting

All Officers of Parliament belong to the legislative branch of the State, symbolically and operationally separate from the executive branch, their staff are not part of the public service and the government does not control their actions. They are appointed by the Governor General² and are accountable to the House. The House has also established the [Officers of Parliament Committee](#), chaired by the Speaker of the House,

The Officers of Parliament Committee is a permanent select committee. Its size and membership is decided by the Business Committee however unlike other select committees, its membership does not count towards the overall proportionality of membership for all committees.

The Committee is responsible for the following functions:

- Making recommendations for the appointment of Parliament officers in case of vacancies
- Approving and suggesting budgets for the officers
- Recommending the House's appointment of auditors for the officers
- Reviewing any proposals for creating new types of Parliament officers
- Developing or revising codes of practice for the officers.

Creation of Officers of Parliament

The Office of Parliament Committee has the power to consider proposals referred to it by a Minister for the creation of an Officer of Parliament. When Minister's develop legislative proposals to create Officers of Parliament, they are encouraged to consult with the Office of the Clerk at an early stage and to bring the proposal to the Officers of the Parliament Committee. They are expected to do this before the Cabinet approves drafting the legislation, but it is not a requirement.

Criteria for Officers of Parliament

The Finance and Expenditure Committee [set out a list of criteria in 1989](#) following their acknowledgement that the landscape had developed organically. The criteria as suggested during this enquiry and endorsed by Government are:

- "An Officer of Parliament must only be created to provide a check on the arbitrary use of power by the executive.
- An Officer of Parliament must only discharge functions that the House itself, if it so wished, might carry out.
- An Officer of Parliament should be created only rarely.

² The Governor-General is His Majesty's representative in New Zealand and is appointed on the recommendation of the Prime Minister of New Zealand.

- The House should, from time to time, review the appropriateness of each Officer of Parliament's status as an Officer of Parliament.
- Each Officer of Parliament should be created in separate legislation principally devoted to that position."

Notably, in 2000 the Social Services Committee reviewed the proposal for the creation of a Parliamentary Commissioner for Children. The Committee concluded that the Officer of Parliament model was not appropriate for officials with an advocacy role as it would conflict with their requirement to act impartially. Additionally, when reviewing the status of the Retirement Commissioner in 2004 it was decided that Officers of Parliament were an inappropriate model for roles that provide informational or education activities.

Costs and budget-setting arrangements

Funding for the Officers of the Parliament is provided by the [Public Finance Act 1989](#) and is determined by Parliament through the Officer of the Parliament Committee. The Officers of Parliament Committee receives submissions from each Officer, containing their proposed alterations to their current appropriations and draft budgets and out-years (outturn figures). The Committee reviews these submissions with the input from the Treasury and then presents them to the Parliament. The requests will then be included in the main Appropriation Bill for the coming financial year, or in the Appropriation Bill dealing with the Supplementary Estimates for the current financial year.

After the budget is delivered, the estimates for Offices of Parliament are given to subject select committees for consideration as well as their annual reviews. This is done to [separate the scrutiny of their spending and performance from the setting of the budgets](#).

Auditing

Each Officer of Parliament is individually audited, and the OoP Committee recommends auditors to the House to appoint. As the Auditor-General is the auditor for all public entities, this includes the Office of the Ombudsman and Parliamentary Commissioner for the Environment. A private sector auditing firm is appointed by the OoP to do an annual audit of the Auditor-General's financial and service performance.

Statutory Crown entities

In New Zealand, most commissioners are classified as **Independent Crown entities**. They are part of a subset of **statutory Crown entities** defined under the Crown Entities Act 2004.

[This subset, known as 'statutory entities' or 'statutory Crown entities', deliver government services](#). They can be divided into three categories based on their independence from ministers:

- **Crown agents:** must give effect to government policy when directed by the responsible minister

- **Autonomous Crown entities:** must have regard to government policy when directed by the responsible minister
- **Independent Crown entities:** independent from government policy

[Statutory Crown entities are required to deliver services and functions as outlined in their establishment legislation, funded through taxpayer money, fees, charges, levies, and other sources.](#) Most are governed by boards appointed by a responsible minister, while a few 'corporation sole' entities have a single member acting as both the board and chief executive. Their independence pertains to their statutorily defined functions, but they remain subject to the Crown's ownership interest and must adhere to various directions and policies depending on their level of independence from ministers.

These entities must respond to priorities set by their responsible minister and comply with broader government policies, standards, and expectations, including integrity and employment relations. These requirements and expectations can differ slightly based on the specific type of statutory Crown entity. The boards of statutory Crown entities are accountable to both their responsible ministers and Parliament for their performance and use of funds.

The responsible minister — appoints statutory Crown entity boards (or in the case of **independent Crown entities**, makes recommendations to the Governor-General to appoint). The responsible minister also sets expectations on delivery priorities and performance, holds the board to account, and is answerable to Parliament for the performance of the statutory Crown entity. Decisions on funding a statutory Crown entity, including the amount of taxpayer funding they receive and the level of any fees, charges, or levies, are generally set by Cabinet or (in some cases) by Parliament.

Crown entities are required by legislation to submit annual reports, Statements of Intent, and Statements of Performance as they are governed by the Crown Entities Act 2004.

A full list of Crown agents, autonomous Crown entities, and independent Crown entities can be found in Annexe A and more information on these entities can be found in the SPICe briefing: [Scotland's Commissioner Landscape - A Strategic Approach](#).

Governance, accountability, scrutiny, funding, and reporting

The Crown Entities Act 2004 provides a consistent framework for the establishment, governance, and operation of Crown entities. It also clarifies accountability relationships between Crown entities, their board members, their responsible Ministers on behalf of the Crown, and the House of Representatives, and, to that end, —

- (a) to provide for different categories of Crown entities and for each category to have its own framework for governance (including the degree to which the Crown entity is required to give effect to, or be independent of, government policy):

(b) to clarify the powers and duties of board members in respect of the governance and operation of Crown entities, including their duty to ensure the financial responsibility of the Crown entity:

(c) to set out reporting and accountability requirements.

Some Crown entities also have additional requirements in other legislation such as the [Public Finance Act 1989](#) and the [Public Service Act 2020](#). Each Crown entity is also subject to its own founding legislation, further shaping their governance and operational framework. These entities are accountable both to their responsible ministers and to Parliament for their performance and use of funds. The [Crown Entity Resource Centre \(CERC\)](#) supports statutory Crown entity performance, appointments, governance, and monitoring, providing guidance for ministers, Crown entity boards, and monitoring and appointing departments.

The Crown Entities Act 2004 establishes comprehensive guidelines for Crown entities in New Zealand regarding the preparation and submission of key documents, including statements of intent, performance expectations, and annual reports to their responsible Minister.

Costs and budget-setting arrangements

Crown entities produce statements of intent to outline their objectives and funding, which are then approved by the minister at the commencement of each fiscal year. Subsequently, these entities present their annual reports to Parliament, detailing their progress towards these objectives, with their financial statements subject to audit by the controller and auditor general. Moreover, parliamentary select committees annually review the statements of intent and annual reports of Crown entities. Under the Ombudsman Act 1975, the ombudsman holds the authority to address complaints concerning the administration of Crown entities, and under the Official Information Act 1982, complaints regarding these entities' decisions to withhold information can also be considered.

Performance reporting

Performance reporting by Crown entities is seen as being crucial for public accountability to Parliament. It is an integral part of the public finance system and the public sector management system. Crown entities are responsible for setting strategic objectives and reporting annually on their progress. This information is made available to Parliament through publications such as the Statement of Intent (SOI), Statement of Performance Expectations (SPE), and Annual Reports. Examples of these are listed in following sections. The purpose of performance reporting is to provide transparency about the planned and actual use of public money. It allows Parliament to scrutinise how Crown entities are fulfilling their mandate and ensures trust and confidence in the public sector.

Statement of Intent

The legal basis for the operations of independent Crown entities is outlined in the Crown Entities Act 2004. As set out in the SPICe Briefing [Scotland's Commissioner Landscape - A Strategic Approach | Scottish Parliament](#): "Section 138 of The Act mandates that a Crown entity must provide a statement of intent to promote the public accountability by:

- Enabling the Crown to participate in the process of setting the Crown entity's strategic intentions and medium-term undertakings,
- Setting out for the House of Representatives those intentions and undertakings,
- Providing a base against which the Crown entity's actual performance can later be assessed.

This statement of intent is required to cover the forthcoming financial year and at least the subsequent three financial years. It is also necessary for the Crown entity to provide a statement of intent at least once within every three-year period, unless exempted from this requirement by the Act or another legislation. Furthermore, the Act specifies the content that the statement of intent should encompass, including strategic objectives, the entity's functions and intended operations, management of functions and operations to meet strategic intentions, organisational health and capability management, performance assessment, and other relevant matters."

The SOI serves as a framework for understanding Crown entity performance and organisational health in the medium term. It provides context for accountability information provided in Statements of Performance Expectations, Estimates, and Annual Reports. The SOI demonstrates the differences and benefits that New Zealand will gain from the actions and use of resources by Crown entities.

The medium-term timeframe of the SOI is important because most Crown entities operate over many years, and their intended achievements are rarely completed within a year. Therefore, assessing performance requires considering the Crown entity's stated intentions over a longer period

Statement of Performance

Statement of Performance Expectations (SPEs) link a Crown entity's strategic goals, outlined functions, defined output categories, and budget allocations.

Section 153 of the Crown Entities Act requires Crown entities to produce a statement of performance which "must, in relation to a Crown entity and a financial year, —

- a. be prepared in accordance with generally accepted accounting practice; and
- b. describe each reportable class of outputs for the financial year; and
- c. include, for each reportable class of outputs identified in the entity's statement of performance expectations for the financial year,—
 - i) **the standards of delivery performance achieved by the entity, as compared with the forecast standards** included in the entity's statement of performance expectations for the financial year; and
 - ii) **the actual revenue earned and output expenses incurred, as compared with the expected revenues and proposed output expenses** included in the entity's statement of performance expectations for the financial year."

These requirements allow for standardised reporting from Crown entities as well as necessitating scrutiny of their own performance over the previous year, including against their forecasted outcomes. These statements require Crown entities to produce both strategic intentions and medium-term undertakings with measurable

outcomes, and report on their progress against these specific outcomes on a yearly basis.

Although SPEs should stand alone as comprehensive documents, they must also be consistent with the Crown entity's strategic direction as detailed in its Statement of Intent, as well as with the Estimates of Appropriations and accompanying information. SPEs represent one facet of an entity's performance reporting, which aids in accountability and oversight. They complement other reports that Crown Entities might submit to Ministers and monitoring departments, including programme updates, quarterly reviews, and annual reports. Overall, performance reporting plays a vital role in maintaining accountability, transparency, and trust in the public sector by allowing Parliament and the public to assess how Crown entities are fulfilling their mandate and utilising public money.

**Kelly Eagle, Senior Researcher, SPICe Research
March 2025**

Note: Committee briefing papers are provided by SPICe for the use of Scottish Parliament committees and clerking staff. They provide focused information or respond to specific questions or areas of interest to committees and are not intended to offer comprehensive coverage of a subject area.

The Scottish Parliament, Edinburgh, EH99 1SP www.parliament.scot

Annexe A: List of Statutory Crown Entities

Crown Agents

Accident Compensation Corporation
Callaghan Innovation
Civil Aviation Authority of New Zealand
Education New Zealand
Energy Efficiency and Conservation Authority
Environmental Protection Authority
Fire and Emergency New Zealand
Health New Zealand
Health Quality and Safety Commission
Health Research Council of New Zealand
Kāinga Ora–Homes and Communities
Maritime New Zealand
New Zealand Antarctic Institute
New Zealand Blood Service
New Zealand Qualifications Authority
New Zealand Tourism Board
New Zealand Trade and Enterprise
New Zealand Transport Agency
New Zealand Walking Access Commission
Pharmaceutical Management Agency
Real Estate Agents Authority
Social Workers Registration Board
Sport and Recreation New Zealand
Taumata Arowai–the Water Services Regulator
Tertiary Education Commission

Toka Tū Ake – Natural Hazards Commission

WorkSafe New Zealand

Autonomous Crown entities

Accreditation Council

Arts Council of New Zealand Toi Aotearoa

Broadcasting Commission

Government Superannuation Fund Authority

Guardians of New Zealand Superannuation

Heritage New Zealand Pouhere Taonga

Museum of New Zealand Te Papa Tongarewa Board

New Zealand Artificial Limb Service

New Zealand Film Commission

New Zealand Infrastructure Commission/Te Waihanga

New Zealand Lotteries Commission

New Zealand Symphony Orchestra

Public Trust

Retirement Commissioner

Te Reo Whakapuaki Irirangi (Māori Broadcasting Funding Agency)

Te Taura Whiri I Te Reo Māori (Māori Language Commission)

Independent Crown Entities

Broadcasting Standards Authority

Children and Young People's Commission

Climate Change Commission

Commerce Commission

Criminal Cases Review Commission

Drug Free Sport New Zealand

Electoral Commission

Electricity Authority

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External Reporting Board

Financial Markets Authority

Health and Disability Commissioner

Human Rights Commission

Independent Police Conduct Authority

Law Commission

Mental Health and Wellbeing Commission

Office of Film and Literature Classification

Privacy Commissioner

Takeovers Panel

Transport Accident Investigation Commission