



OFFICIAL REPORT
AITHISG OIFIGEIL

SPCB Supported Bodies Landscape Review Committee

Thursday 3 April 2025

Session 6



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SPCB SUPPORTED BODIES LANDSCAPE REVIEW COMMITTEE
9th Meeting 2025, Session 6

CONVENER

*Ben Macpherson (Edinburgh Northern and Leith) (SNP)

COMMITTEE MEMBERS

*Murdo Fraser (Mid Scotland and Fife) (Con)

*Richard Leonard (Central Scotland) (Lab)

Ash Regan (Edinburgh Eastern) (Alba)

*Lorna Slater (Lothian) (Green)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Dr David Wilson (New Zealand Parliament)

CLERK TO THE COMMITTEE

David Millett

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

SPCB Supported Bodies Landscape Review Committee

Thursday 3 April 2025

[The Convener opened the meeting at 08:00]

SPCB Supported Bodies Landscape Review

The Convener (Ben Macpherson): Good morning, and welcome to the ninth meeting in 2025 of the SPCB Supported Bodies Landscape Review Committee.

Ash Regan MSP has sent her apologies for the start of this meeting and hopes to join us later. I have received no other apologies. I am joined in the room by Richard Leonard MSP and Lorna Slater MSP. Our colleague Murdo Fraser MSP joins us remotely.

Today, the committee will take evidence on the New Zealand officers of Parliament. We are pleased to welcome Dr David Wilson, clerk of the House of Representatives of the New Zealand Parliament. Thank you for your time and for being with us this morning, Dr Wilson. We are looking forward to hearing your insights. Thank you for taking our questions and joining us for our evidence taking.

We will move directly to questions. My first question is quite generic. At the start of each previous evidence session, we have asked those in front of us what they think the purpose of an SPCB-supported body is. In the same way, for completeness, I would be grateful if you could outline what the purpose of a New Zealand officer of Parliament is and what you think their purpose is.

Dr David Wilson (New Zealand Parliament): Thank you. It is a pleasure to be in front of you. Good evening from New Zealand.

It is widely accepted here that the role of an officer of Parliament is to assist the House of Representatives to scrutinise the Executive and to provide a check on the Executive.

The committee will be aware that some criteria for the creation of officers of Parliament were developed in New Zealand in the late 1980s, which give some shape to that. On the requirements for being an officer of Parliament, they state:

“An Officer of Parliament must only be created to provide a check on the arbitrary use of power by the executive”

and

“must only discharge functions that the House itself, if it so wished, might carry out.”

Those are the bounds under which officers of Parliament are intended to operate and under which proposals for new ones would be assessed.

The Convener: How does an officer of Parliament work along with the rest of the legislature to scrutinise and hold the Executive to account?

Dr Wilson: Two of the agencies, the Office of the Auditor General and the Office of the Parliamentary Commissioner for the Environment, work with the legislature regularly. The Auditor General provides briefings to committees in relation to both budget setting and performance review by committees of the Executive. The Parliamentary Commissioner for the Environment is frequently asked to make submissions or give advice to the Environment Committee and to other committees on environmental issues.

Both those agencies have protocols that our Officers of Parliament Committee developed to set out the terms of engagement, how they might work, and what sorts of things they can be asked to do. I would be happy to provide those to the committee afterwards, if you are interested.

The Convener: Yes, please.

Dr Wilson: The Office of the Ombudsman is a fairly old office, which was introduced in the 1960s in New Zealand. It works with individual members fairly frequently, because one of its roles is that of Public Information Commissioner. When requests under our freedom of information legislation are not successful, there is an appeal to the Ombudsman, so he tends to work with individual members rather than the Parliament as a whole.

The Convener: The links to other committees are interesting, as is the subject expertise that the officers bring.

Does the Officers of Parliament Committee have the same functions as other committees, or is it different because of its unique role and structure? How often does it meet every year, for example? Can you say a bit more about its composition?

Dr Wilson: Yes, certainly. The Officers of Parliament Committee was first established in 1989. Our Finance and Expenditure Committee held a select committee inquiry into the role of the officers of Parliament, which it was felt had been established in an ad hoc way. There were no principles or guidelines for their role, which had simply developed over time.

The Convener: That is exactly where we in Scotland find ourselves now, quite some time later, and it is also why this committee has been established. That was really interesting. I am sorry to have interrupted you, Dr Wilson.

Dr Wilson: No, that is all right. Such a characteristic is fairly common in New Zealand, where we have no written codified constitution. Things just tend to evolve and develop as they are needed, which provides a flexible approach but perhaps one that is not very structured or principled.

The idea emerged that there should be some structure around the role of the officers of Parliament. One proposal was to create a parliamentary committee. At first that was done on an ad hoc basis, but a few years later it was made into a regular standing committee, which, under our standing orders, has to be established in each Parliament.

Unlike most of our parliamentary committees, the Officers of Parliament Committee does not meet every week, because it does not have enough business to warrant doing so. However, during some periods it is quite busy.

It might be useful if I were to mention the committee's functions, which would give your members an idea of the areas into which its work falls.

The Convener: Please do.

Dr Wilson: One of the committee's main roles is to set the budgets for the officers of Parliament. It does so to help to uphold their independence from the executive. In New Zealand, although Parliament passes an appropriations bill, ultimately it is for the Cabinet to decide how much money is allocated to each public sector agency. For the officers of Parliament, the role that would otherwise be performed by the Cabinet is undertaken by the Officers of Parliament Committee. It receives and assesses the officers' budget proposals. It then receives advice from the Treasury, but is able to make recommendations independently of it, and routinely does so. That is one of the committee's functions. I can say a bit more about budget setting if your members would be interested to hear about that.

The committee recommends appointments for four officers of Parliament: the Auditor General and Deputy Auditor General—they are both officers of Parliament; the Parliamentary Commissioner for the Environment; and the Ombudsman. In that regard, it does something quite different to our other committees, in that it acts like a recruitment selection panel. Parliamentary committees are not typically well suited to that process, because they have quite a lot of members. Also, our committees operate on

the basis that most of the information that they deal with will become public at some point. We have therefore had to make some adjustments to that aspect. Your members will understand that candidates would be reluctant to apply for a job if they knew that their application and CV would become publicly available afterwards, as committee proceedings tend to be published. A few aspects of the committee operate a little differently.

The committee also appoints auditors for the three offices of Parliament. In practice, it does so only for the Office of the Auditor General, who is the auditor of the other two agencies. However, it cannot audit itself, so the committee finds candidates and recommends their appointment as auditors of the Auditor General's office.

If there are proposals for new officers of Parliament, they are referred to the Officers of Parliament Committee to consider. There have been a number of such proposals over the years. I think that, mainly for reasons connected with the prestige of being such an officer, members or committees will sometimes say, "Here is an important new role. Let's make it an officer of Parliament, because that gives it quite a bit of gravitas."

The committee can develop codes of practice for the officers of Parliament, and has done so for the Parliamentary Commissioner for the Environment and the Auditor General. As I mentioned, such codes of practice cover how the agencies interact with Parliament.

The committee has a different role, which means that it tends to be quite busy around this time of year while it deals with budget proposals from the officers. Only every few years is there a need to appoint candidates to fill a vacancy. Recently, the committee met to recommend the appointment of a new Ombudsman, who has just been sworn in. The previous office holder had reached the role's compulsory retirement age of 72. The committee is also in the process of recruiting a new Auditor General. The holder of that position cannot be reappointed, and their term is coming to an end. Therefore, at the moment, the committee has quite a lot of work to cover. However, if there are no appointments to be made, it would normally meet solely to deal with budget proposals.

The Convener: That is fascinating. Thank you for sharing all that. I will hand over to my colleagues to pick up those points.

Lorna Slater (Lothian) (Green): Thank you for joining us, Dr Wilson. This is fascinating. I will dig into similar points that my colleague the convener asked about.

In Scotland, we have some parallels with your officers in that we also have an ombudsman and an Auditor General. We have a couple of other functions, which I am sure that you implement in New Zealand, but I am interested to hear how. Among our SPCB-supported bodies, we have the Scottish Human Rights Commission, which I think is a fairly common thing for western democracies to have. We also have a couple of different bodies that are responsible for standards in public life, which is about making sure that we, local councillors and so on play by the rules, meet our codes of conduct and that kind of thing. I am curious about how you cover those functions.

Dr Wilson: Yes, we also have a Human Rights Commissioner and a Human Rights Commission. A common type of body that is established in New Zealand is a Crown entity. There is a range of Crown entities with different levels of distance and independence from the Government. I can check this, but I am pretty sure that the Human Rights Commission is an independent Crown entity. That means that it is not subject to Government or ministerial direction, except in the broadest sense in relation to public finance and reporting to the Parliament, for example. A number of other proposals for officers of Parliament have ended up being independent Crown entities instead.

With regard to standards, we have a commissioner for parliamentary standards. That is a reasonably new position that arose from a review of workplace culture in the Parliament a few years ago that found, as many Parliaments have, that bullying and harassment were all too common. That commissioner is appointed by the Speaker of the House. I do not know that we could say that the position has a particular entity status; it just exists at Parliament as a role. It has some powers to report to the House, but it is not a Crown entity or an officer of Parliament. Broadly, we would say that the commissioner was an officer of the House.

Lorna Slater: I am jumping around a little bit, but I will go back to the convener's point about budgets. You have explained a bit about the process of the Officers of Parliament Committee working annually to set those budgets. How is the transparency and accountability of those allocations achieved? You said that you could add more detail on that.

Dr Wilson: With regard to the budget-setting process, the Speaker of the House for financial matters is considered to be akin to the minister for the officers of Parliament, with the provisos that the Speaker is not a minister at all and does not direct the agencies. However, someone in the Parliament has got to be answerable for them and, ultimately, responsible for the appropriations. Initially, the officers of Parliament meet with the

Speaker and present their proposals, which are then referred to the Treasury so that it can analyse them and prepare some advice. It will often want to dig into the officers of Parliament proposals, the justification for those and whether there are alternatives. It will present the information to the Officers of Parliament Committee as well as information about general trends, Government budget setting and movement in budget over the year. The Treasury will go as far as to recommend whether certain changes to the budget be adopted or not, and the committee sometimes takes that advice and sometimes chooses not to.

After that, the officers of Parliament appear before the committee in a closed session. That is unusual; people normally appear in front of a committee in a public session. It is a closed session because the Officers of Parliament Committee is performing a function that the Cabinet performs otherwise, and the Cabinet does not meet in public. It would be more difficult to make budget proposals, to talk about what is really needed and to be frank about it if it were a public session.

Once the committee has heard that evidence and considered the Treasury advice, it makes recommendations to the House in a report that sets out what, if any, increases or changes to appropriations it recommends.

08:15

That report is debated in the House, but because the committee has membership from across the House and works on the basis of consensus, there is not very much debate. It is more of a discussion than a debate, in that there are not opposing points of view. At that point, agreement has already been reached on budget setting.

Once the debate concludes, an address is sent to the Governor-General recommending that the changes be made to the appropriation, and then, by convention, the Government reflects those changes in its budget when it presents it to the House, which usually happens in May each year. That is why the committee is busy now, because in March and April it needs to get the work done so that the Government is informed of it and is able to include it in its budget.

There might have been a second part to your question that I have forgotten.

Lorna Slater: No, that is fine. The second part was about transparency and accountability, and I think that you covered that—unless you want to add more detail.

Dr Wilson: The only other thing that I will add is that, although the Officers of Parliament

Committee does its budget setting, it is not the committee that the officers of Parliament front up to for their annual performance reviews; those are done by some of our subject committees.

The Auditor General appears in front of the Finance and Expenditure Committee, the Ombudsman appears in front of the Governance and Administration Committee, which is responsible for parliamentary and Government services, and the Parliamentary Commissioner for the Environment appears in front of the Environment Committee. That is done so that there is some separation and the budget-setting body is not the same one that, ultimately, considers the performance of the entity. That function sits with the subject committee.

Lorna Slater: Understood. That is the direction that I was going to travel in on the scrutiny role.

I am also curious about independent Crown entities. One of the challenges that we face in Scotland is that we have a proliferation of SPCB-supported bodies, which are our equivalent of the officers of Parliament. That is the case in the public sector landscape in general, and we are trying to get our heads around it. Have you noticed the same phenomenon with your independent Crown entities? How do they fit into the system?

Dr Wilson: I do not think that there has been a recent proliferation of them. I am just checking when the legislation for them was passed. I think that it was 2014—no, it was 2004. The number has been reasonably settled during the past 20 years. There are quite a lot of them, and it tends to be the catch-all place to put things that are not for core government departments or officers of Parliament.

My office is another exception. It is in the department of the House of Representatives, which is another thing completely. There are a lot more Crown entities than there are departments, but I do not think that there is a growing number, at the moment.

In New Zealand, the Crown Entities Act 2004 sets out the different types of entity that there are. There are independent Crown entities, which means they are independent of the Government. Some of them have enforcement or investigative functions—such as the Commerce Commission—and there are autonomous ones, which operate somewhat independently, and then there are Crown Agents, who give effect to Government policy. There is a number of them, in different tiers.

Lorna Slater: For completeness, how are their budgets allocated and how is scrutiny of the Crown entities done?

Dr Wilson: They make budget proposals through the departments that monitor them. A Government department will have a monitoring relationship with each of them. The independent Crown entities do not have their activities monitored—only their finances. They make their budget proposals through their monitoring department, which then goes to cabinet and cabinet decides.

Lorna Slater: Where does scrutiny of their performance and functions go?

Dr Wilson: It goes to the different subject select committees. There are 12 of them. The Electoral Commission is an entity that appears in front of the Justice Committee, for example.

Lorna Slater: Is the scrutiny by the subject committees of both the officers of Parliament and the Crown entities on any sort of rigorous schedule? Does it happen annually, or is it up to the committees to decide? Is there a framework?

Dr Wilson: There is a framework, and it has recently been reviewed and strengthened. Our standing orders are reviewed every three years. There is an automatic three-yearly review near the end of the parliamentary session, and one of the recommendations in the last review—which took place in 2023—was to strengthen the scrutiny function. It was felt that it had become pro forma and was not particularly strong.

The result of that was a much more planned approach to scrutiny. Committees need to think at the start of the session of Parliament which agencies they want to scrutinise and when and for how long, in the expectation that they would spend a lot more time on it. That was inspired by the Australian House and Senate committees, which spend an enormous amount of time scrutinising their Government entities during the estimates process. We do not have as much scrutiny as they do, but it is a big increase from what it used to be. It is now quite structured. Each committee has to have a plan for its scrutiny.

The Finance and Expenditure Committee, which oversees the whole process, nominates certain agencies that must get detailed scrutiny, and they tend to be either very big agencies that spend a lot of taxpayers' money or ones that are controversial or important in some other way. That happens twice a year. The annual reviews happen in the last few months of a calendar year and the first few months of the next calendar year, and the estimates process, which looks at budget appropriations and proposals for expenditure, happens between May and August each year.

They are scheduled and routine, and are becoming more rigorous, and they are the same for everyone.

Lorna Slater: Understood. If, during scrutiny, an officer of Parliament or one of the Crown entities is found not to be performing effectively against their function, how would that issue be identified and resolved, and are there any examples where that has happened?

Dr Wilson: If the committee identified an issue, there might very well be different political opinions about that, and members in the Government party might be less inclined to think that Government agencies were not performing than Opposition parties might think, but the committee can report those findings to the House. It does not have an ability to force change except by airing the issue, drawing attention to it and bringing political pressure to bear.

There are certainly plenty of instances where committees have found agencies to be wanting with regard to some of their work, though usually not all of it. I do not think that they have ever said that a whole agency is completely hopeless, but they have said that they are not performing some of their functions as expected. They will keep a close eye on those things in future reviews, and all those review reports are debated in the House, which is another opportunity to put ministers under pressure to improve the performance of their departments or entities.

Lorna Slater: Brilliant—thank you very much.

The Convener: That was really interesting. We move from budget setting and scrutiny to questions about criteria and decision making for creating officers of Parliament. To probe those issues a little, I pass to our colleague Murdo Fraser, who joins us remotely.

Murdo Fraser (Mid Scotland and Fife) (Con): Good morning—or, rather, good evening, Dr Wilson. Morning for us; evening for you.

I will ask about the criteria for creating new officers, which is the issue that in effect led to this committee being established. There are a number of proposals to set up new commissioners, and we have been tasked with looking at how that is taken forward. What does the decision-making process for creating new officers of Parliament look like? What are the different avenues? Could you give us examples of where new officers have been proposed and who was consulted? How does that all come together?

Dr Wilson: Certainly. The Cabinet manual and our standing orders both talk about parts of the process for creating a new officer of Parliament. The Cabinet manual requires that if a minister is proposing to create one, they have to consult early on in that process with the clerk of the House, because we can apply the criteria and give some advice on how that proposal might work. That consultation would usually be in a draft Cabinet

paper, which we would then give comment on. It would not be up to me to say yes or no to the proposal; I would just say how it would fit with the criteria.

After that stage, if the proposal is going ahead, it has to be referred to the Officers of Parliament Committee, which will draw conclusions about whether it supports the proposal or not. It has done that in recent times. The most recent proposal that I can think of was for a parliamentary budget officer, which is not a position that we have at the moment, although it has been talked about for many years. The role would perform two jobs: one would be to support committees and their scrutiny work; and the other would be to cost political parties' policies.

The position has not been created yet, but there was a proposal to have one back in 2018, and the proposal was that the person would be an officer of Parliament. The Officers of Parliament Committee thought that the function was important, but it did not agree that the role should be an officer of Parliament. That is because costing the policy proposals of political parties is not a function that the Parliament would do, or that would be done on behalf of the Parliament; it is something that would be done for the parties. So, that proposal did not proceed.

Those are the gates, effectively. The real one is the Officers of Parliament Committee. It can only make recommendations and there is ultimately nothing to stop the Government pressing ahead if it has the numbers in the House to do so. However, that is just not the way that officers of Parliament have been created, nor the way that the committee works. The norms and political culture around that are fairly strong.

That process is not absolute, though. There are criteria about providing a check on the power of the executive and discharging functions that the House might perform. The Parliamentary Commissioner for the Environment does not fit those criteria particularly well, because, although it is an important position that has a strong advocacy role on environmental issues, it does not provide a check on the use of power like the Auditor General and the Ombudsman do, nor is it really discharging a function that the Parliament would perform. However, having received that status, it would be seen as a downgrading of the office were it to lose it. So, I think that that status will stay. There are also no concerns with its work; members generally think that it does a really good job.

Since the Parliamentary Commissioner for the Environment was created—in 1989, I think—no new officers of Parliament have been created. It has been a really long time without new officers, although there have been a lot of proposals. I

mentioned the Electoral Commission, which is a Crown entity, and there have been proposals in relation to a children's commissioner, the Retirement Commissioner and, as I said, a parliamentary budget officer. There was also a proposal for a commissioner for the Treaty of Waitangi, which was the founding agreement between indigenous Māori and the British Crown. That role does not exist, but there was a proposal that it should be an officer of Parliament.

The reason for those proposals is prestige. It is not to do with the criteria—I am not sure how well known the criteria are, although they do still exist—but because officers of Parliament are seen as independent and prestigious. However, none of the proposals has been successful since then.

That is not to say that there will never be a new officer of Parliament. If there were to be a proposal for a parliamentary budget officer that was focused on supporting committees with their scrutiny work, that could possibly happen. However, we are just not at that stage yet.

Murdo Fraser: That is really helpful. That is quite a long list of officers that have been proposed. Do those proposals come only from the Government, or do they come from elsewhere, such as from members of Parliament and so on?

Dr Wilson: They come from a mixture of places. There was a proposal to have a deputy commissioner for the environment, which was a Government idea—as was the parliamentary budget officer proposal. However, the proposals often come from members of Parliament who are not in government. That was the case for the proposals regarding the children's commissioner, the Retirement Commissioner, the treaty commissioner and the idea of an electoral commissioner. There already is an Election Commission, but the proposal was to change its status to that of an officer of Parliament. Those ideas all came from members who are not in government.

Murdo Fraser: That is a similar position to the one that we are in, as it is usually Opposition members of Parliament who propose a new commissioner. Were the proposals rejected on the basis that they did not meet the criteria?

Dr Wilson: Yes—I am just thinking through them. The electoral commissioner proposal was certainly rejected on that basis. The proposal was not tenable, given that the commission has to work closely with the Government to run elections. Having some statutory independence works well, but it could not be too distant. Further, it would not provide a check on the executive.

The other proposals—as many of them that I can remember the discussions for—were also rejected on the basis of those criteria and the

alternatives that might be available. The alternative, as I mentioned earlier, is almost always to have a Crown entity—or not to have a position at all.

Murdo Fraser: The criteria were created in 1989. Have they been reviewed or updated? Is there a review mechanism for them or are they quite settled?

Dr Wilson: They are quite settled and they have not been reviewed, but they could be. They are not engraved in stone; they are just some ideas that a committee had in 1989, which the Parliament has accepted and followed.

One of the criteria was that the House should, from time to time, review the appropriateness of each officer of Parliament status, and I do not think that it has ever done that. However, it has certainly stuck with the other principle, which is that

“An Officer of Parliament should be created only rarely.”

It seems to have shut the door on that in 1989.

Murdo Fraser: It does sound like that.

Dr Wilson: Yes, absolutely.

08:30

Murdo Fraser: I have a final question, given what you have just said about the principle that new officers of Parliament should be created only rarely, and that none has been created since 1989. If there is a compelling need to do so, how does the committee balance that with the requirement to create new officers only rarely? How does that issue get resolved?

Dr Wilson: I do not think that the committee members would think, “Well, it hasn't been long enough, so we can't make one.” It is just a caution that creating a new officer should not be the default position for all new bodies, and you can see that that has been taken to heart because it is not the default position.

There could be a compelling case for a new officer of Parliament in the future. If the other criteria were met—particularly those on the check on the executive and discharging functions of the House—I do not think that too much weight would be given to the fact that there has not been a new one for a long time.

Murdo Fraser: That is all that I have to ask. Do you want to add a comment on anything that we have yet to cover about the criteria for creating new officers?

Dr Wilson: I cannot think of anything else. We look to those criteria when we are giving advice on proposals, and it is fair to say that parties across the House over many years have taken the

process really seriously. They do not push for it unless they have a compelling case. Some of those cases have gone to other subject committees in draft legislation and been rejected. The case for having a deputy parliamentary commissioner of environment was rejected by a parliamentary committee—not the Officers of Parliament Committee, but a different one.

The Convener: Thank you very much. Again, that was really fascinating.

We move to further consideration of governance and funding.

Richard Leonard (Central Scotland) (Lab): Good evening, Dr Wilson. I will explore a little more some of the things that you touched on in the earlier part of the session this morning—or this evening for you. I am trying to understand how a new body is designated as either a Crown entity or an officer of Parliament. What criteria are applied to determine how a new body is categorised? Following on from that, what are the differences in the governance arrangements between those two distinct categories?

Dr Wilson: The legal distinction would be made in legislation. Officers of Parliament are required to have stand-alone statutes, and the three officers that we have each have such a statute. Crown entities may or may not be created by a separate statute. They will be created in statute, which would say that they are a Crown entity and what kind they are. A schedule to the Crown Entities Act 2004 would also be amended to reflect their existence.

To date, the criteria have been applied when considering the creation of an officer of Parliament—if there is a desire to create the role at all. In some cases, such as that for a commissioner for the Treaty of Waitangi, there is no widespread interest in having one, so not much thought has been given to it. However, in other cases, such as the children's commissioner and the Retirement Commissioner, where people agree that the role should exist, a lot of weight is given to the criteria once we bring them to the House's attention. Because the criteria are quite old, they are not necessarily at the front of people's minds. If it is accepted that the entity should not be an officer of Parliament, there is always a discussion about what else it should be. It is fair to say that Crown entities are the catch-all for everything that is not a Government department that is directly responsible to a minister or an officer of Parliament.

We have a few more business-oriented Government entities, which are called state-owned enterprises. They are state monopolies that operate to generate profit, and are regulated and owned by the Government. Our airline, Air New

Zealand, is one of them. However, they are not part of this picture because they are distant and have a different sort of purpose. Usually, the discussion is about what kind of Crown entity something should be if it is not going to be an officer of Parliament.

Richard Leonard: I would like to understand the distinction between a body that is an autonomous Crown entity and one that is an independent Crown entity. You mentioned the Retirement Commissioner and the Children and Young People's Commission. The Retirement Commissioner is classified as an autonomous Crown entity, whereas the Children and Young People's Commission is classified as an independent Crown entity. What is the difference between those two categorisations?

Dr Wilson: The difference lies in the degree of distance from the Crown and immunity to taking instruction from ministers. I think that the reason why the Children and Young People's Commission is an independent Crown entity is that it has a role in overseeing and critiquing the welfare agency that is responsible for children—the Government department that looks after children and young people. The role of the Retirement Commissioner is primarily to promote retirement saving and advocate that people think about and prepare for their retirement, so it does not have the same oversight role. It is closer to the Crown in being an autonomous Crown entity.

There are degrees of difference in how much instruction the offices have to take and what sort of interactions they have with ministers and departments. In the end, their budgets are all set in the same way by the Cabinet through monitoring agencies, but there are differences in how they perform their functions and what their functions are. An independent Crown entity's legislation might say that they must perform their functions independently of ministers or the Government.

Richard Leonard: Okay. You mentioned earlier that some of the bodies have powers of enforcement. Can you give us an example of one of the Crown entities that has enforcement powers?

Dr Wilson: The Commerce Commission has powers to investigate and to compel the production of information, and I think that it can also prosecute. I am not completely clear on the details of that, but it can certainly require the production of information as a statutory power, as can the officers of Parliament. I think that all three of them can do that, but the Ombudsman and the Auditor General certainly can.

Richard Leonard: We have had an instance in the UK where the Parliamentary and Health

Service Ombudsman made a recommendation around the treatment of women whose retirement age had been changed, having determined that there had been maladministration by a Government department, but it was just a recommendation to Parliament and the Government chose not to implement that recommendation. Does the Ombudsman in New Zealand have powers of enforcement or simply powers to recommend?

Dr Wilson: The Ombudsman has powers to recommend. The two areas where it has powers to compel are that it must be provided with information if it asks for it, and it has the right to enter premises. Our Ombudsman is also our independent monitor for crimes of torture in prisons. It tends to get loaded with a lot of those types of independent monitor role as well. It has statutory rights to enter prisons unannounced, interview prisoners and so on. In general, however, the Ombudsman does not have powers to require anyone to do anything. I think that its only power of that type is that it can require a minister to explain to the House why they have chosen not to comply with its recommendation. That is about bringing political pressure to bear, rather than having its own enforcement powers.

Richard Leonard: Okay. Another Crown entity that has been outlined to us is your Takeovers Panel. Our Takeover Panel has the power to block a merger or acquisition. Is it the same in the New Zealand model?

Dr Wilson: I do not know—I am sorry. I do not want to put you wrong, so I will not guess.

Richard Leonard: Okay. I turn to the review process that you have. One of the existing criteria in the officers of Parliament model is:

“The House should, from time to time, review the appropriateness of each Officer of Parliament’s status as an Officer of Parliament.”

How does that work in practice? Is there a review every five years, or as and when required? What are the rules around that, Dr Wilson?

Dr Wilson: It is perhaps as and when required, and it has not yet been required. As far as I am aware, no thought has ever been given to whether any of the three should continue to be officers of the Parliament. The question is legitimate, as, if you were to create a Parliamentary Commissioner for the Environment now, that model might not be followed. There is no thought of taking the status away, which would be a major downgrade of any of those three officers. I do not think that members or the House have ever given that question any attention since those officers were created.

Richard Leonard: What about the Crown entities? Is there any kind of sunset clause for

them or any quinquennial review of their roles? Are they subject to reviews from time to time?

Dr Wilson: Reviews take place as and when they are required—they actually happen, unlike with the officers of the Parliament. There are no on-going reviews, as far as I am aware. If the Government wanted to take on new functions or is not sure whether a function is still required, there would be a review at that stage. One of the reasons for that is that the Crown entities are monitored by a wide range of different Government departments, and there is no central agency that has oversight of all of them, so I do not think that there has been a co-ordinated review. Under the Crown Entities Act 2004, every existing agency was considered and thought was given to what sort of entity it should be and whether it should be a Crown entity. That work was done to support the new legislation, because the system had developed in an ad hoc way for a huge range of different bodies.

The Convener: Is there any discussion in the New Zealand Parliament about the number of Crown entities? We are being asked to look at specific bodies that our Parliament is responsible for. Of course, there is a plethora of Government bodies, as well as commissioners. What is the public discourse in New Zealand, and does the Parliament explore, take interest in and consider the issue regularly?

Dr Wilson: I do not think that it considers that regularly in a scheduled or routine way. The Government that was elected at the end of 2023 is interested in reducing the size of the public sector. It is a centre-right Government, so that is consistent with its general political approach. As far as I know, there has been no reduction in the number of entities, but their budgets and headcount have decreased. I am not aware of any reduction in the number of Crown entities or Government departments. I should note that, if any Government were thinking about making a change to the Crown entities, I probably would not know about it unless legislation was involved, because I do not work with the Government. However, I feel fairly confident in what I have said.

The Convener: It is interesting that, because of the criteria and processes that have been in place since 1989, New Zealand’s Parliament has kept the officers of Parliament very tight and structured, whereas, looking at the list of Crown entities, I see that they seem to have developed in a less streamlined and systematic way.

I want to go back to one of your earlier answers. It would be good to get a little more clarity on the process that is involved when there is a proposal for a new officer of Parliament. Would a proposal go to the Officers of Parliament Committee before it was legislated for, and would it be considered

again by the committee once legislation was introduced? During any scrutiny processes, would subject committees refer to the criteria as well? You spoke earlier about how some proposed officers of Parliament have been considered by the Environment Committee, for example. Would subject committees apply the criteria in the same way?

08:45

Dr Wilson: As part of the timeline for a proposal, I would be consulted on the draft Cabinet paper and give advice on the criteria. If it was going to proceed, the Officers of Parliament Committee would be consulted before legislation was introduced. A minister proposing to create a new officer of Parliament would write to the committee—that is what happened with the proposal for a parliamentary budget officer—and say, “We think that we should create a new officer of Parliament. This is what they would do. What do you think?”. The committee would then make a response.

If the creation of the new officer of Parliament was still going to be in the legislation as introduced, the legislation would be referred to a subject select committee for public submissions, because almost all legislation is. The subject committee could draw its own conclusions about the appropriateness of a new officer of Parliament. It might receive public submissions on it.

The Officers of Parliament Committee can write to other committees and give its opinion without being invited to. That is most likely to happen when, during the course of a committee's consideration of a bill, one or more members have the idea that there should be a new officer of Parliament. That would happen when the new officer role is not in the bill to start with but is something that members come up with during the committee's deliberations. They would then be expected to put that proposal to the Officers of Parliament Committee. If they did not, the Officers of Parliament Committee would write to the other committee to share its view anyway. The committee secretariat is the mechanism for ensuring that that happens if it does not occur to the member or members, which it might not, given that the criteria are from 1989 and have not been touched since. One way or another, input from the Officers of Parliament Committee would be received, even if that happened at a later stage.

There has not been an instance of an officer of Parliament proposal proceeding without widespread support across the House for it. Even when a Government has sufficient numbers in the House to create one, as it would have done with the budget officer, it just does not do that without widespread support. The same is true for budget

setting and recommending officer of Parliament appointments.

The Convener: Thank you. That is a really helpful clarification. I hand back to Lorna Slater to ask questions on support and resources for officers of Parliament.

Lorna Slater: Dr Wilson, I will now get into the more practical operational questions about things such as shared offices, information technology systems and human resources support. I am curious about the kind of resources that are supplied to the officers of Parliament and the independent Crown entities and about whether they are expected to use common office space, HR support and so on.

Dr Wilson: Each of them operates separately and is resourced separately. I am not aware of any resources that the three officers of Parliament share. They each have their own premises and their own staff, including corporate, HR and IT staff. There is some duplication, but that is because they have been created in an ad hoc way over many years. The Ombudsman was created in the 1960s, the Auditor General role has existed for as long as New Zealand has had a Parliament and the Parliamentary Commissioner for the Environment is newer. That is symptomatic of how things have been created in New Zealand; they have all been set up as stand-alone agencies to operate autonomously from one another.

In terms of size, the Auditor General's office is by far the largest, with hundreds of staff, including audit staff. The Ombudsman's office is the next largest, with about 200 members of staff and offices in two cities. The Parliamentary Commissioner for the Environment office is very small, with under 30 staff, and it just has an office in Wellington.

The one thing that they can all make use of is the research services that the parliamentary library provides. They can make requests for research to be done by the library, and they do so from time to time. Apart from that, they all operate separately from one another. The only exception that I can think of is when the Parliament accommodated the Parliamentary Commissioner for the Environment for a while when there was a shortage of buildings after some severe earthquakes, but that was a short-term measure. Apart from that, they all operate in their own premises and in their own way. The same is true of Crown entities; some of them are fairly small, some of them are very large and they all work in their own premises and in their own way.

Lorna Slater: So, for example, the rent for their premises would come out of their budgets. The premises are not provided directly by the

Parliament or through Government buildings. Is that correct?

Dr Wilson: That is correct. The rent would come out of their budgets.

Lorna Slater: One of the topics that we have been talking about is the constituent experience. If you have a problem—if something has gone wrong with a public service—where do you go? In Scotland, the question is whether you speak to the ombudsman or the Commissioner for Ethical Standards in Public Life in Scotland. How does that work in New Zealand? If something has gone wrong, how does a New Zealand citizen know where to go? Is there a front page, a dashboard or a one-stop shop from which they can be correctly directed to the Ombudsman or the Human Rights Commission, for example?

Dr Wilson: The Government maintains an online directory that tells you what all the agencies are, where they are and what sorts of things you might see them about. I do not know how well it is used or how many people look at it.

The Ombudsman and members of Parliament are probably the sources that people turn to the most. Sometimes, members and their staff will direct people to the Ombudsman because that might be the place to resolve their issue. The Ombudsman's core job of investigating failures in the public sector is fairly well known and has existed for a long time. It is used very often, to the extent that the Ombudsman is—almost—always coming to the Officers of Parliament Committee to ask for more funding in order to have more staff to do more work and deal with the backlog of complaints.

The Ombudsman would be the closest thing to a one-stop shop. MPs and the Parliament are probably the other examples. Obviously, there are more niche ones: if you have a criminal problem, there is obviously the police, and there are some business-oriented bodies as well. However, people would tend to think of the Ombudsman if they were to think of one body to go to.

Lorna Slater: I have a question that is more for my own interest, if the convener will allow it.

One of the conversations that we have been having in the committee is about proactive and reactive work that commissioners do. The Ombudsman deals with something that has gone wrong, but whose job is it to do the research and have the foresight to see something before it goes wrong?

To put that in context, the Scottish Public Services Ombudsman, for example, can react to complaints that she has heard of. However, if she receives complaints about two local authorities, she does not have the powers to start an

investigation into all local authorities. Even though she might have the idea that there is a more general problem, she does not have the power to examine it in a more investigative way with the intention of preventing future problems. Do you have any bodies that have that sort of proactive prevention role?

Dr Wilson: The Auditor General can conduct inquiries very broadly into matters on his own motion and does so all the time. He has an on-going programme of inquiries. The Auditor General consults the Parliament every year. He has a work programme and says, for example, that he is thinking of looking at local government or water storage. The inquiries go broadly beyond money and, although he consults the Parliament and takes what it says into account, the Auditor General decides what the programme will be. People can complain to him about misuse of public funds as well, but he can, in his own right, look at those things if he wants to.

The work programme of the Parliamentary Commissioner for the Environment is inquiries. They tend not to be matters on which an individual has raised a concern; they tend to be larger, systemic environmental issues.

The Ombudsman receives a lot of complaints. I need to check and tell the committee after the meeting whether he can conduct inquiries on his own motion. My feeling is that he can, but I do not want to mislead you if that is not the case, so I will check and let your committee clerks know.

Lorna Slater: Thank you.

The Convener: I have a few final questions, Dr Wilson. I appreciate that you are a busy person in a busy place, but I presume that, ahead of the meeting, you saw some of what we have been considering and what our set-up is in Scotland. Did anything come to mind when you looked at that? Did you find anything interesting, different or perplexing about our set-up?

Dr Wilson: I am not sure that I looked at it closely enough to be able to tell you anything about that, but what you are doing is a really good idea. We are an example of drifting on and thinking about things only when there is a pressing reason to do so; you might have reached the point in Scotland at which you think that there is a pressing reason to do it.

It is a good idea to try to get some discipline and systems around the situation. It is always tempting to create new agencies; that has happened in New Zealand, albeit not with officers of Parliament.

I do not think that there is anything that I could reflect on about your experience or any way in which I could tell you what to do. However, I note

that the process that you are now undertaking seems to be a good one.

The Convener: That is helpful. Finally, is there anything that you want to express or emphasise to us that you think might be helpful and that you have not had a chance to mention in relation to how things operate in New Zealand?

Dr Wilson: I would mention two things. I touched on one of them, which is that the Officers of Parliament Committee always operates on a basis of consensus. There have been times when, for example, the committee could not agree on a candidate for a role, so it started the process again rather than forcing the candidate through against the will of any of the parties. It does that because it wants the officers of Parliament to start in their roles with the confidence of the entire House.

That has reminded me of one other thing that I should mention if there is time to do so.

The Convener: Absolutely.

Dr Wilson: It is about the removal of officers of Parliament. It is very difficult to remove them. It must be done by an address in the House of Representatives to the Governor-General; that is, a motion is brought to the House and debated. The officers can be removed only on specific grounds such as incapacity, mental disability or bankruptcy—I think that there might be another ground. It is deliberately very difficult to remove them from their roles.

The Auditor General cannot be reappointed, which tends to reinforce their independence. The Auditor General's other role is as controller of public finances. There was a time when the Auditor General stopped payments by the Government because he did not think that they were properly authorised; that did not make him at all popular with the Government of the day, but there was nothing that could be done about it, and his career was not in jeopardy because he could not be reappointed anyway.

It is a useful exercise to think about the worst-case scenario. We had a situation in 2016 in which the entire House of Representatives lost confidence in the Auditor General. There is not a lot of public information about it because the Auditor General resigned rather than being removed from office. He had been the chief executive of a public agency in which one of his staff had committed quite significant fraud. It was believed that that had happened under his nose and that he should have responded to warnings that he had received. That information is publicly available—I am not telling you anything secret. It was felt that, for any position other than the Auditor General, that might have been okay; it might have been a bit of a stain on their career but would not have been fatal to it. However,

members across the House could not see how someone in that situation could be the Auditor General, because he had not responded to any of the warnings about fraud.

The removal provisions were tested on that occasion and found to be quite robust. It is pretty difficult to remove an officer, which is a good thing, because it reinforces the independence of those roles. The removal provisions are identical for all the roles. Although removal can happen, it is a very public process and one in which the Parliament will want to be sure of what it is doing.

The Ministry of Justice is supposed to be doing some work on the appointment and removal criteria for officers of Parliament, to check that they are robust and up to date and that they would withstand being used if it were necessary to do so. As far as I am aware, it has not done that work because of Government priorities for its time. However, it is important to ensure that officers of Parliament are independent and have a high degree of protection.

I have another, smaller point to make. We talked about the accountability to Parliament of the officers of Parliament. They go through the same processes as Government agencies do for that.

Occasionally, there are complaints about a substantive decision, usually of the Ombudsman but sometimes of the Auditor General. Those complaints are usually sent to the Speaker of the House of Representatives. It is quite difficult to know what to do with those complaints or to find a home for them because the statute for each of the officers of Parliament says that they perform their functions independently. That means that there is nowhere for people to go if they are not satisfied with the decision that an officer has made, which is not very satisfactory.

09:00

The situation is not common, and I am not proposing that another entity be created to deal with it. I am just aware of the fact that such complaints tend not to go anywhere. People complain either to the committees that do the scrutiny work or to the Speaker. Because the entities are independent, the committees or the Speaker might ask the Ombudsman or the Auditor General for some comment on the issue. However, the complaints tend not to proceed any further. Such complaints are fairly rare. There has not been any move to set up a formal mechanism for them, but that is a small gap in the system.

That is all that I wanted to add.

The Convener: That was really helpful additional information, Dr Wilson. I see that colleagues in the room have no further questions.

Thank you again for your time and insights. We are grateful to have heard from you this morning—it is morning where we are and it is evening where you are. You mentioned at one point that you might follow up with a bit more detail—if you could, we would be grateful for it.

That concludes the public part of our meeting.

Dr Wilson: Thank you, everyone, and good luck with your work.

09:01

Meeting continued in private until 09:16.

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