



FINANCE AND ADMINISTRATION COMMITTEE

Members present:

Mr SW Davies MP (Chair)
Mrs EA Cunningham MP
Dr B Flegg MP
Mr R Gulley MP
Mrs FK Ostapovitch MP
Mr CW Pitt MP
Mr MA Stewart MP

Staff present:

Ms D Jeffrey (Research Director)
Dr M Lilith (Principal Research Officer)
Ms L Whelan (Executive Assistant)

PUBLIC HEARING—INQUIRY INTO THE LEGISLATIVE ARRANGEMENTS ENSURING THE AUDITOR-GENERAL'S INDEPENDENCE

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 5 MARCH 2014

Brisbane

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Committee met at 9.16 am

**WILTSHIRE, Professor Kenneth, JD Story Professor of Public Administration,
University of Queensland Business School**

CHAIR: Good morning, ladies and gentlemen. I declare the public hearing of the Finance and Administration Committee inquiry into the legislative arrangements ensuring the Auditor-General's independence open. I am Steve Davies, the chair of the committee and the member for Capalaba. The other members of the committee are Mr Curtis Pitt MP, deputy chair and member for Mulgrave; Mrs Liz Cunningham MP, member for Gladstone; Mr Bruce Flegg MP, member for Moggill, who is not here at the moment but he will be coming; he has just had to pop out to make a phone call; Mr Reg Gulley MP, member for Murrumba; Mrs Freya Ostapovitch MP, member for Stretton; and Mr Mark Stewart MP, member for Sunnybank.

The purpose of this hearing is to receive further information from stakeholders in order to examine the practical implications of the issues raised in response to the committee's inquiry into the legislative arrangements ensuring the Auditor-General's independence. This hearing is a formal proceeding of parliament and is subject to the Legislative Assembly's standing rules and orders. The committee will not require evidence to be given under oath, but I remind you that intentionally misleading the committee is a serious offence. Thank you for your attendance here today and the committee appreciates your attendance, Professor Wiltshire. You would have previously been provided with a copy of instructions for witnesses, so we will take those as read. Hansard will be recording the proceedings and you will be provided with a transcript. The hearing will also be broadcast.

I remind all those in attendance at the hearing today that the proceedings are similar to parliament to the extent that the public cannot participate in the proceedings. In this regard, I remind all members of the public that under the standing orders the public may be admitted to or excluded from the hearing at the discretion of the committee. I also request that mobile phones be turned off or switched to silent mode and remind you that no calls are to be taken inside the hearing room. I now offer you an opportunity to address us today, Professor Wiltshire, and thank you again for coming in. We do appreciate your time.

Prof. Wiltshire: Thank you, Mr Chair and members, for the very kind invitation to come before you. Your committee is a very important one. It has a very important historical tradition in our system of government, so I welcome the chance to meet with you. I sent you a very brief submission. As a typical academic, I sent you a copy of an article that I had written and had published. My interest in this matter arises from a conceptual point of view. I have been researching for many, many years now the role of parliament and the role of the officers of parliament and the importance of the independence of parliament, so you will have noticed that my views about the Auditor-General are really part of a systemic approach to the role of parliament. I see the Auditor-General as part of the family of the parliamentary family which includes the Ombudsman, the Integrity Commissioner and so on. So my views are not only about the independence of the Auditor-General, but they are about the independence of the whole parliamentary family from government. That is the context in which I put that.

I was also the external member of the selection committee for a previous Auditor-General and I conducted the first ever strategic review of the Queensland Ombudsman, which meant of course looking at the whole question of that as a family. So my point of view is quite clear. The Auditor-General needs to have the maximum degree of independence from the government. This has been tradition since the mid-19th century I guess and it is all about accountability. The Auditor-General of course has historically had a very close relationship with the equivalent of your committee, the Public Accounts Committee. Australian Auditors-General are not quite, if you like, as aligned with your parliamentary committee as they would be in the British system and other systems where it is a closer partnership, but it is very important and of course to some extent you in a way are the main accountability mechanism for the Auditor-General. I do not have to tell you all of these things, but I think a lot of people have forgotten this important history. So in my view, to a maximum
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extent, the Auditor-General should be independent so the parliament should have the main say in the election of an Auditor-General, in the sacking of an Auditor-General, the staffing and the resourcing of the Auditor-General, the whole accountability reporting arrangements and so on.

Mr Chair, I read into your terms of reference that this is the kind of issue you are looking at—that is, the extent to which the independence of the Auditor-General can be strengthened and the role can be performed in that particular way. I know you have some particular detailed aspects of your terms of reference of the way the auditor operates, but these are my broad bases. The best systems in my view in the world in this respect are the Canadian system. The Ontario parliament is probably the best, but there are a number of other provinces in Canada where not only the Auditor-General but the parliament itself has achieved significant independence from the government of the day, and the same is true in Britain to some extent. The House of Commons now has a parliamentary commission which is responsible for parliament itself, including its budget and its resource allocations and so on. In my view basically the parliament should have its own independence and all the members of the parliamentary family should be covered under the umbrella of that parliamentary independence, if I could put it that way. I would encourage your committee to look at the whole of the parliamentary family and regard it as a family rather than purely just the Auditor-General. That is probably all I need to say by way of opening remarks. Thank you very much.

CHAIR: Thank you, Professor Wiltshire.

Mr PITT: Good morning, Professor. Thanks very much for your time and also for your submission. I had not read an academic paper like that in a while. In your letter you recommend that the best arrangements for parliamentary independence of the Auditor-General are in Ontario in Ottawa as well as the UK model. Do you view a Board of Internal Economy as exists in Ontario as a better model than the Auditor-General setting his own fees?

Prof. Wiltshire: Clearly there needs to be some kind of check on the Auditor-General's setting of fees. I think your committee has a very important role in this. You mean fees for conducting audits of agencies and so on?

Mr PITT: Yes.

Prof. Wiltshire: I will be perfectly honest with you: I have always had some concerns about Auditors-General charging fees for their services, but I am very old fashioned. With regard to the idea of parts of the public sector charging other parts of the public sector fees for providing a public service, I have never been comfortable with that. If we are going to move to a user-charging model of that sort, then there does need to be a second opinion or oversight. But I do not think you even need a Board of Internal Economy. I really think that if the Auditor-General is reporting to this committee every year on the fees that are being charged and if you want to do some benchmarking as a committee on the fees to see whether or not they are reasonable, that would be enough from my point of view.

Mr PITT: Thank you.

Mrs CUNNINGHAM: Professor Wiltshire, when the Auditor-General came before this committee, as does his written submission, he talked about the relationship between the Auditor-General's role and the parliament and how it could be strengthened. He had four probabilities or options, if you like: formally recognising the AG as an independent officer of the parliament, and you have just referred to that; enhancing parliament's role in the selection and appointment of the auditor; enhancing parliament's role in establishing the QAO's budget—that is, the parliament as opposed to the executive; and enhancing parliament's role in monitoring and assessing the performance of the AG and the QAO through external audits and five-yearly strategic reviews. Do you have a comment on those and any additional matters that you see in practical terms to give autonomy to the audit process?

Prof. Wiltshire: I would certainly support every one of those four initiatives. First of all, I refer to the parliament's role in selecting the Auditor-General. I was a member of the committee some time ago now, but I think I can speak from experience. I think the government has too strong a role in the choice of an Auditor-General. Maybe there needs to be one government representative on the selection committee, but I really think at the end of the day the parliament should have the major role in the choice, and of course there are procedures for the dismissal of an Auditor-General.

The budget is the key element and the staffing and the resourcing. I think it really is unacceptable that the government should decide the budget of an Auditor-General and also the staffing and resourcing. In my view the same is true of the parliament: the parliament should decide its own budget and it should decide its own resourcing arrangements. I think the parliament should be given a single line appropriation to spend and of course you would be accountable to the full Brisbane

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parliament in the way that the parliament's budget is spent. So you see my idea is that the Auditor-General's budget would be part of the parliamentary family budget and therefore the Auditor-General would also receive a single line appropriation as well and would have the independence to achieve that. This strikes right at the historic heart of course of the relationship of parliament and the government. It is not something in which Queensland has a very good record. We have a very bad record over the decades in terms of the government controlling the parliament, not just in finances and so on but also in terms of powers and so on.

My analogy—you may have noticed—is that in my view the Speaker of the parliament is the minister for parliament and the Clerk of the Parliament is the director-general of the parliament. That is the way I see it. That usually causes a lot of confusion. People cannot get the idea of that, but conceptually that is the way I see it. So the Auditor-General would be part of this and those four elements that have been mentioned I think do strike at the heart of the Auditor-General's arrangements and procedures. We just mentioned setting of fees. There may be a couple of other areas where the Auditor-General would be subject to some kind of direct accountability to your committee in those sorts of areas. But if you address those four issues I think you have got to the heart of the whole question of the parliament and the Auditor-General independence.

CHAIR: Do you have a follow-up question, Liz?

Mrs CUNNINGHAM: Just a practical one. At the moment everybody, whether it is the CMC or whether it is the Auditor-General, is subject to the budget that is allocated by the government of the day. Even casting your mind forward, say they got that budgetary independence, how would you establish the mechanism to ensure that the budget that they are seeking does fit in with the government of the day's overall budget structure and still maintain that auditor's independence? There has to be some way of fitting the independence of the auditor and the CMC and the Ombudsman in terms of giving them independence in their budget, but it still has to fit into a whole-of-government budget program.

Prof. Wiltshire: In my ideal model the Auditor-General would prepare a budget proposal, and so would the Ombudsman and so would the Integrity Commissioner. They would forward that to the parliament and then that would become part of the parliament's overall budget proposal and the parliament itself would then decide on its budget and that budget would be forwarded to the government to be included in the government's overall budgeting. I see it around the opposite way to the way you see it. You seem to see the government's budget whole of government and that somehow the parliament and its agencies have to fit in with the government's budgeting, but I think the parliamentary agencies should be totally independent and they should of course responsibly determine what their budget is. Those budgets should then be forwarded to the government and, sure, there can be some discussion, but at the end of the day the government and the Treasury should respect the parliament's autonomy and sovereignty and only as a last resort should it try to attempt to influence the budgetary proposals that are being put forward by the parliament. You asked me to be practical, Mrs Cunningham, and I would probably agree that that will never happen. But in an ideal world I think the parliament has to be responsible for its own budgeting. The government will say, 'We are responsible for the taxing and spending of this state,' and so on, but at the end of the day it is the government that is responsible to the parliament but the parliament is not responsible to the government.

CHAIR: But in saying that, Professor Wiltshire, obviously there are financial constraints on everything.

Prof. Wiltshire: Yes.

CHAIR: Where do we draw the line? For the government then to say every other department has to tighten its belt and yet parliament does not, parliament is dictating, as it were.

Prof. Wiltshire: You are not a department of the government; you are the parliament. What the government does with its own departments is something quite distinct from the parliament. At the end of the day, you are accountable to the people. If you come up with an irresponsible budget, if you are spending lavishly or if you are unreasonable in your budgeting arrangements, you will be judged by the people and certainly by the media. Your accountability is to the people directly; not to the government. I know that is a concept not well understood by the system of government, but on the other hand, that is really the way it should happen.

Mr PITT: I think a distinction needs to be drawn between the arms of the parliamentary family that you have referred to and operational budgetary matters within parliament, and those are the areas that certainly I think are well and truly in the purview of the sorts of scrutiny you are talking about. If you are going to ensure the independence of these bodies, then they need to have that independence and you could argue financially as well as in a decision-making capacity.

Prof. Wiltshire: The other avenue, Mr Chair, would be for you to establish a parliamentary budget office on the model of the new Canberra model, a lot of Canadian parliaments and the British. The American Congressional Budget Office, of course, is the absolute example but because of the separation of powers, it has far more powers than you would probably ever see in Australia. But from my analysis, the new Commonwealth Parliamentary Budget Office has been very successful. I think it has been independent, neutral and provided a very effective service during the last election. I can appreciate that, as members of parliament, you do need some of your own advice. Even in watching over your own parliamentary family you need to have some benchmarking capacity, and maybe it is time for Queensland to have a parliamentary budget office—probably your committee would be the ideal place for it to be reporting to and to be accountable—that would then give you the opportunity to say to the government, 'This is the parliament family's budget, and the parliamentary budget office has costed this and is satisfied that it represents reasonable limits.'

It is particularly important in Queensland with no upper house that the functions and roles of this single House should actually be larger. It should be recognised that you not only have the normal role of legislators, but you also have to serve as a House of review as well since there is no upper house. So to that extent too someone needs to recognise the full pressure, if you like, and demands upon a Queensland parliament committees like yours. It is not enough just to say it is another parliamentary process, so maybe that is the solution. I can see what you are getting at. If you are going to end up in some contretemps with the government about how much money you need and how many resources you need, you probably do need a source of independent expert advice to verify the budgetary proposals that you are actually putting forward.

Mr GULLEY: Professor Wiltshire, the last time we were here we had the privilege of a very robust conversation between the Under Treasurer, the Premier's representative and the Auditor-General. One of the themes was that tension between accountability and independence. If you can comment on those: are they exclusive; are they inclusive? Where does that fit?

Prof. Wiltshire: Well, there are two ways to talk about accountability. There are two models. In one system the way to achieve accountability is to have tight micromanagement, constant control over something; the other way to achieve accountability is to set something free so it can then be truly accountable. You have probably had this experience with your own children. There are two ways to make kids accountable: you can watch what they do every second of the day so you are controlling them; or you can give them a fair bit of freedom, set them free and then they are truly accountable for their actions. There are many models of micromanagement; constant control and watching over every element. At the end of the day, they do not really work. In most systems people respond to being given trust, to being given independence against criteria and benchmarks. If there is a choice between those two models, treasuries have traditionally favoured the first method of micromanagement and constant oversight because that is their task and that is their role and so on. But I believe it is better to give an auditor-general or any other body independence, set up criteria and benchmarks, and judge them against those benchmarks, rather than to be constantly interfering with the way they do things and the manner in which they actually do things. So it is the old delegate and let the managers manage concept. At the end of the day, it produces better results. You may end up with some crises, you may end up with some issues arising, but it is worth the price to achieve that independence.

Dr FLEGG: I think other than Liz, I am the longest serving one here. I think the more you hear, the more importance you place on the independence of the Auditor-General and their ability if something does not smell right to have the freedom to inquire into it, and of course they have moved from just counting the money to looking at performance audits and so forth, which is pretty important. I want to just take you back to something you said earlier in relation to fee for service, because I think that is a pretty important point. It is probably the one service that most of the customers would prefer not to purchase, and when it comes to government agencies, of course, it appears to me to be a duplication that the Auditor-General has got to establish and raise fees and invoices, and then they have got to have people at the other end to pay it. At the end of the day it all comes out of the government's coffers anyway and perhaps to some extent that is limiting his ability to go where he is most needed. The only argument I can see for having a fee for service is that it takes some of their budget away from the government, so it is a bit harder to choke them off for funds. But could you perhaps just comment a bit more on whether the model would be better if they had a one-line budget and determined how that is allocated, rather than operating on a fee for service basis.

Prof. Wiltshire: Yes, of course they do get some allocation, do they not, to perform certain audits and so on?

Dr FLEGG: Yes.

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Prof. Wiltshire: I suppose the advantage of fee for service is that you appreciate what you pay for. I suppose if a government agency has to pay a fee to be audited, it possibly might take the audit more seriously. But I guess that is probably why it is. Under my model, the Auditor-General would still have the right to charge a fee for service; I am just saying that the money that the government provides to the Auditor-General would be a single-line appropriation.

We have not talked about the staffing yet very much either. That is pretty crucial too, because the level of staffing for the Auditor-General is extremely important to the way in which they do their work. I do not particularly like the idea of the government controlling the staffing levels either. I think it is a matter for your committee to force the Auditor-General to justify the amount of staff and the budget that is taking place.

Sorry if I misled you, but a single-line appropriation of government funding to the Auditor-General does not stop them from charging fees for service, and a course a lot of it is contracted out. If I remember rightly, about 40 per cent or something of that order is contracted out to private auditors, and so it is an area that has been quite healthy, I think. It has built up a nice partnership, so there will be no reason why that could not continue either, that is all. I am just trying to remove any ways in which the government can control the effectiveness of the Auditor-General as an auditor by controlling the resourcing.

Let's be honest, there have been occasions in the past history of this state where governments have either threatened or appeared to be threatening the Auditor-General, and control of resourcing, of course, is sometimes a key way that governments can control so-called independent agencies. Even with the courts, there is even a bit of a debate at the moment too about the separation of powers in that area. I think the Auditor-General would still have the flexibility to engage in those practices.

Mr PITT: Professor, can you outline the pros the cons of the Auditor-General having follow-the-dollar powers as proposed in Victoria, where financial records of private sector entities could be scrutinised if they are engaged in delivering public sector projects?

Prof. Wiltshire: Can we go back a step as well to another area I am really concerned about, and that is the power of the Commonwealth Auditor-General to follow the dollar. No-one is talking about this, but I think it is quite serious. States are supposed to be sovereign, and yet I think we now have a method whereby the Commonwealth Auditor-General can intervene and they could technically override the state Auditor-General in following Commonwealth dollars in the system. It has not worked that way because I think the Auditor-Generals have formed a partnership where they do collaborate—that is another area your committee might look at at some stage—I think given the centralising trends in our federal system, and I have the same concerns about follow the dollar in other areas. I suppose parliament and governments have a duty to the taxpayers to make sure that government spending is properly accounted for, but the idea of a public parliamentary auditor auditing the books—you mean of not for profits or private bodies who are receiving government funding; is that more or less what you are saying?

Mr PITT: Yes, different government services.

Prof. Wiltshire: I suppose to some extent it depends on the manner in which it is done. If it is seen as a service to these organisations to help them with their efficiency and accountability, I suppose it could be of some benefit. But I am uncomfortable with the idea. I think if the Auditor-General cannot trust organisations to have their own auditors and their own procedures and accept the word of those auditors, I would still be uncomfortable about an Auditor-General operating intrusively on the grounds that they were just following the dollar.

Mr PITT: Given that there is obviously a very strong move by the current government looking at greater contestability and outsourcing and privatisation, I suppose it is within that context that I ask the question. But it is going to be much more prevalent potentially than what we see now.

Prof. Wiltshire: Absolutely, yes, that is right. So the benchmarking needs to be pretty clear on the following. But I will be honest with you: the weakness in this system is in the tendering. Governments in this country are not good at tendering. Public servants do not have very good skills in running tendering processes. I have seen it actually happen. I am not criticising them; I am just saying it is not a skill that comes naturally to a public servant, running a competitive tender in a benchmarking exercise.

In terms of contestability, from my knowledge of the Queensland Public Service it does not yet have the internal capacity to run a highly professional contestability regime. In fact, I think they will probably have to use external services to design contestability regimes. That will happen. Ultimately we will end up with better contestability arrangements.

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I think the cure to this is to look at the prevention. I think if you had better tendering processes and better ways of achieving proper contestability, you would get accountability. I do not see the need for the Auditor-General to necessarily be auditing it if the tendering process is sound and robust, if the methods of comparison are robust and so on. I mean, I do not understand why you would not trust the organisations to engage their own auditors and why would not you accept the word of those auditors? I suppose the Auditor-General could do a spot check from time to time, a random one-off check to make sure you are getting value for money. I would rather see the auditor act as an adviser in a quality assurance role rather than engaging in on-the-ground audits of everybody that is receiving public money.

CHAIR: Professor Wiltshire, we have to finish up shortly. I have a quick question, and I suppose it is a follow-up to the follow-the-dollar stuff with the Commonwealth Auditor-General having influence on the state. In a hypothetical way, what do you see as problematic in that?

Prof. Wiltshire: I suppose we go back to the whole argument about federalism, I suppose, and whether each level is actually sovereign, but you could have an area where the Commonwealth government sees its priorities in a different way from the way the state sees its priorities. So when the Commonwealth Auditor-General is auditing the money that is given to the state, that auditor might have an interpretation of what the policies and targets and goals and programs are that may not always totally correspond with the state government's. As you know, about 50 per cent of the money from the federal government to the state government is tied or has conditions attached to it in some way, so you would end up with two interpretations of what those conditions were. But my argument is mainly one about sovereignty. I think it strikes at the heart of the whole federal system if you have—

Mrs CUNNINGHAM: You have had a lot of time to present your proposals and your thoughts to establish independence to both forms of government, both Labor and coalition governments. How much regard has either had in relation to your proposals for the clear separation of the parliamentary bodies from the executive?

Prof. Wiltshire: Perhaps I should say yes and no. For example, in my report on the strategic review of the ombudsman I recommended a number of measures, and both sides of parliament pretty much accepted 90 per cent of those in terms of the independence and integrity in that sense. But I will be a bit cheeky, Ms Cunningham, and say quite often at the beginning of a term of government a lot of parties accept these principles, but it is very interesting that after a period in office sometimes the sovereignty of parliament gets forgotten and these sorts of issues of principle get overtaken by events. It only takes a major crisis where there is a misappropriation of government money or where there is some scandal of some sort, and governments often just rush into micromanagement control method. I think we have seen that in both systems of government. Academics are not often listened to, but we keep on thinking.

CHAIR: The time allocated for this public hearing has expired. If members require any further information we will contact you. Thank you for your attendance today, and we do really appreciate you giving us your time.

Prof. Wiltshire: Thank you. I wish you all the best in your work too.

CHAIR: The committee appreciates your assistance and we declare the hearing closed. It is the wish of the committee that the evidence given here before it be authorised for publication pursuant to section 50(2)(a) of the Parliament of Queensland Act 2001. If there are no objections, it is so authorised.

Committee adjourned at 9.47 am