

1 August 2019

Hon Ruth Forrest MLC  
Chair  
Legislative Council Select Committee - Production of Documents  
Parliament of Tasmania  
Hobart TAS 7000

**Issued by email only**

Dear Ruth

**Submission – Production of Documents**

Thank you for the opportunity to provide a submission to the Legislative Council Select Committee inquiry into:

The options for an agreed process to resolve disputes that arise regarding the production of papers, documents and records between the Government and the Legislative Council and its Committees including Joint Committees where Members of the Legislative Council have membership.

I have recently had reason to examine my powers under the *Audit Act 2008* (the Act) to obtain information, including the power to access accounts, information, money and property. Whilst my powers under the Act are different to the powers of the Legislative Council and its Committees regarding the production of papers, documents and records, in the course of my examination I identified information relevant to the scope of your inquiry which forms the basis of this submission.

My examination identified decisions of the High Court in *Egan v. Willis* (19 November 1998) and the New South Wales Court of Appeal in *Egan v. Chadwick* (10 June 1999) which may have implications for the relationship between Executive Government and the Parliament. Of interest are the court decisions of these cases, a summary of which is available from the Parliamentary Library of the Parliament of Australia, a link to which is provided below:

[https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp9900/2000RP12](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp9900/2000RP12)

...1 of 2

Among the issues considered in these cases, are the following:

- the relationship of Parliament's law-making function to its function in scrutinising the conduct of Executive government and the scope of that scrutiny
- the accountability of the Executive to the Parliament in a bicameral legislature, particularly in situations where the Executive lacks control of the upper legislative chamber
- the ability of the Executive to claim public interest immunity or legal professional privilege for documents which Parliament has requested
- the confidentiality of Cabinet documents
- the nature of the parliamentary power to punish for a contempt of Parliament.

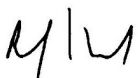
I wish to emphasise that my references to these cases should not be interpreted as legal advice. Legal advice may need to be sought if such information was to be relied upon in forming your conclusions.

Of interest to me is the matter of public interest immunity and its interaction with the convention of collective ministerial responsibility and the accepted view of the courts that public interest immunity can be claimed in respect of Cabinet documents.

Whilst peripheral to the terms of reference for your inquiry, I have noted my powers under the Act do not provide me with the ability to access Cabinet documents, although it is expressly provided in legislation for Auditors-General in some other jurisdictions. This is a matter that I believe warrants consideration when the Act is next reviewed.

Thank you again for allowing me the opportunity to comment.

Yours sincerely



Rod Whitehead  
**Auditor-General**

Copy for:  
Julie Thompson, Committee Secretary