The Conscientious Public Servant and the Curse of the Code of Conduct

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Abstract: With respect to holding an Executive Government to account, this article examines the tension between parliamentary privilege afforded to a public service witness giving evidence before a committee and the fettering of that individual's capacity to do so through statutory Code of Conduct provisions and directions from the relevant public service authorities. A comparison between the Australian Public Service and Tasmanian State Service highlights some similarities of approach between the systems. This article ends with a suggested improvement to the relevant Code of Conduct provisions to better protect the Tasmanian State Servant, noting the likelihood of adoption of the statutory protection in the current political climate is improbable.

INTRODUCTION

As the statutorily appointed Secretary for the Tasmanian Parliamentary Standing Committee of Public Accounts (the Committee),[45] I have first-hand experienced the challenges faced by an insider State Servant[46] wanting to bring to light evidence to support the Committee's inquiry into a certain subject matter, only to be hampered by their employment and/or Code of Conduct obligations under the relevant Act. It is this tension between the Committee's theoretical right to bring the Executive Government to account against the actualities of the restraint on free speech of public servants that I aim to briefly expose in this article. I have compared two Australian systems that I am familiar with: the Code of Conduct provisions under the federal *Public Service Act 1999* (Cth) and the Tasmanian equivalent under the *State Service Act 2000* (Tas).

In 1994, Geoffrey Lindell noted:

[45] See *Public Accounts Act 1970* (Tas), s 5.

[46] In Tasmania, public servants are provided under s 6 of the *State Service Act 2000* (Tas): the State Service consists of Heads of Agencies, holders of prescribed offices, senior executives and employees.

> *The extent, if any, to which executive [Crown] privilege operates as a legal restriction on the power of the Houses of Parliament to require official witnesses to answers questions or produce documents, remains an open question. Not surprisingly, … the matter has never been the subject of authoritative judicial resolution.*[47]

This being the case, it is contended that in such circumstances the Executive Government cannot truly and completely be held to account. This article examines the current statutory environment within Tasmania and the Commonwealth (of Australia).[48]

In passing, this article recognises that in some circumstances there are alternative avenues to which a public servant might be able to bring evidence to bear against the Executive Government via public interest disclosure or other 'whistle-blowing' legislation. In particular, disclosures of suspected wrong-doing within entities connected to the Australian Government may be brought about under the Commonwealth *Public Interest Disclosure Act 2013*[49] or 'about serious or significant improper conduct in the Tasmanian public sector' under the *Public Interest Disclosures Act 2002* (Tas).[50] It is argued however that a Parliamentary Committee may be seeking evidence on Executive Government policy implementation that is not considered 'improper conduct' per se but rather ill-conceived or have unintended consequences. Such evidence might actually be best brought about by public servants 'at the coal-face', rather than the more distant responsible Minister or the relevant Head of Agency.

This article ends with a suggested improvement to the relevant Code of Conduct provisions could be made to better protect the Tasmanian State Servant, noting the likelihood of adoption of the statutory protection in the current political climate is improbable.

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[47] Geoffrey Lindell, 'Parliamentary Inquiries and Government Witnesses'. *Melbourne University Law Review* 20 1995, p. 398.

[48] To avoid any confusion, the terms 'public service' and 'public servants' refer to employees under the *Public Service Act 1999* (Cth), 'State Services' and 'State Servants' refer to employees under the *State Service Act 2000* (Tas), and the 'Executive Government' means 'The arm of Government that decides government policy, puts these policies into practice, manages the work of Government departments, and introduces most Bills into Parliament'. Conventionally, in the Commonwealth the Executive consists of the Prime Minister and Cabinet and in Tasmania, the Executive consists of the Premier of Tasmania and Ministers of Cabinet'.

[49] See *Public Interest Disclosure Act 2013* (Cth).

[50] See *Public Disclosure Act 2002* (Tas).

HOLDING THE EXECUTIVE TO ACCOUNT

Whilst notably absent from both Sir John George Bourinot's KCMG[51] and Hon William Edward Hearn's QC MLC[52] respective collection of the five great principles of English parliamentary law, it is the sixth principle articulated by David Blunt that is of present interest to this article: the notion of holding the Executive Government to account.[53]

The High Court of Australia in *Egan v Wills*[54] noted (as summarised by Kinley):

> *A system of responsible government traditionally has been considered to encompass 'the means by which Parliament brings the Executive to account' so that 'the Executive's primary responsibility in its prosecution of government is owed to Parliament'.*[55]

The point was also made by Mill, writing in 1861, who spoke of the task of the legislature 'to watch and control the government: to throw the light of publicity on its acts'.[56] It has been said of the contemporary position in Australia that, whilst 'the primary role of Parliament is to pass laws, it also has important functions to question and criticise government on behalf of the people' and that 'to secure accountability of government activity is the very essence of responsible government'.[57] With this principle in mind, it is argued that when applied in the context of a Parliamentary Committee exercising its evidence gathering powers to invite a public servant witness to appear, it is not settled whether those powers have primacy over public service code of conducts.

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[51] Sir John George Bourinot, *Parliamentary Procedure and Practice in the Dominion of Canada with Historical Introduction and an Appendix*. Toronto: Canada Law Book Company, 1903.

[52] William Edward Hearn, *The Government of England: Its Structure and Its Development*. Melbourne: George Robertson and Co, Melbourne, 1887.

[53] David Blunt, 'Parliamentary traditions, innovation and 'the great principles of English law', in David Blunt and David Clune (eds), *Parliamentary Democracy at Work: Essays on the NSW Legislative Council*. Sydney: The Federation Press, 2025.

[54] *Egan v Willis* (1998) 195 CLR 424, 42.

[55] David Kinley, 'Governmental Accountability in Australia and the United Kingdom: A Conceptual Analysis of the Role of Non-Parliamentary Institutions and Devices'. *University of New South Wales Law Journal* 18 1995, p. 411.

[56] John Stuart Mill, *Considerations on Representative Government*. Cambridge: Cambridge University Press, 1861.

[57] Queensland Electoral and Administrative Review Commission, 'Report on Review of Parliamentary Committees (October 1992). Accessed at: https://documents.parliament.qld.gov.au/tableOffice/TabledPapers/1992/4792T367.pdf, p.15.

Parliamentary Committee Inquiries

As succinctly noted by the Australian Parliament, Parliamentary Committees 'investigate specific matters of policy or government administration or performance. Committees provide an opportunity for organisations and individuals to participate in policy making and to have their views placed on the public record and considered as part of the decision-making process'.[58]

In general, as part of an inquiry into the impact of a government policy, often the Parliamentary Committee will seek submissions from the agency, statutory authority, public utility, and/or the community to build a narrative in response to the relevant terms of reference. From direct experience in the Tasmanian parliamentary setting, on occasion a public (State) servant has expressed concern that whilst they would like to submit evidence to the Committee, they feel they can only do so anonymously (or not at all) due to the threat of sanction under the prevailing code of conduct.

It is foreseeable that a public servant compelled to answer questions in front of a committee,[59] could in fact be a breach of the Code of Conduct, and be liable to sanctions taken against them.[60] Whilst the public servant witness might have a strong argument, particularly in the face of a summons or order for production from the respective House (and therefore protected by parliamentary privilege),[61] this would be a matter for the subsequent civil court proceedings to determine.

[58] Parliament of Australia, 'Committees'. Accessed at: https://www.aph.gov.au/Parliamentary_Business/Committees#:~:text=Parliamentary%20committees%20investigate%20specific%20matters,of%20the%20decision%2Dmaking%20process.

[59] By way of example, section 3(b) (Houses empowered to punish summarily for certain contempts) of the *Parliamentary Privilege Act 1858* (Tas) provides 'Refusing to be examined before or to answer any lawful and relevant question put by, the House or any such committee' as an act of contempt punishable by imprisonment.

[60] See *State Service Act 2000* (Tas), s 10.

[61] For a useful synopsis with respect to parliamentary privilege in the context of Australian Parliament committee hearings, see Australian Government Solicitors, 'Interacting with parliamentary committees (Legal Briefing 109)', 23 August 2017. Accessed at: https://www.ags.gov.au/sites/default/files/br109.pdf.

PUBLIC SERVICE CODE OF CONDUCTS

Australian Public Service

The Australian Public Service (APS) Code of Conduct is a relatively recent invention that came out of the 1994 McLeod Report (Public Service Act Review Group).[62] This Report had recommended:

> *that a new Act should incorporate a statutory Code of Conduct—an approach also endorsed in the framework developed following election of the Coalition Government in March 1996*[63]

In November 1996, Peter Reith issued a discussion paper, 'Towards a best practice Australian Public Service' that, among other things, recommended key elements which might need to be incorporated into a new streamlined and principles-based *Public Service Act*, including a public service code of conduct.[64] Passed in 1999 by the Howard Government, the *Public Service Act 1999* regulates the Federal public service.

Section 13 of the *Public Service Act 1999* included the APS Code of Conduct, and section 14 of the Act requires agency heads to establish and promulgate to their staff procedures for determining whether breaches of the code had occurred and such procedures having to comply with requirements specified in the Public Service Commissioner's Directions. Public servants who breach the Code of Conduct can be demoted, fined, reprimanded or have their employment terminated.

Tasmanian State Service

The *State Service Act 2000* (Tas) was enacted in November 2000 following a review of the Tasmanian *State Service Act 1984*. Like its Federal counterpart, the State Service Principles (subsection 7(1)) and a Code of Conduct have been incorporated into that Act. The Principles provide a statement as to both the way that employment is to be managed in the State Service, and the standards expected of those who work within it. The Code of Conduct reinforces and upholds the Principles by establishing standards of behaviour and conduct that apply to all

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[62] RN McLeod, *Public Service Act Review Group 1994 Report*. Canberra: AGPS, par 5.9.

[63] Australian Public Service Commission, *Occasional Paper 3 – A History in Three Acts (Evolution of the Public Service Act 1999)*. Canberra: APSC, 2004.

[64] Australian Public Service Commission, 'Occasional Paper 3 – A History in Three Acts (Evolution of the *Public Service Act 1999*)', p. 125.

employees, including Officers and Heads of Agencies.[65] Similar to the Commonwealth provisions, a State Servant who breaches the Tasmanian Code of Conduct may face one or more sanctions against their employment: counselling, a reprimand, deductions from salary by way of fine, reduction in salary, reassignment of duties, reduction in classification and/or termination of employment.[66]

WHY SHOULD WE CARE?

Regrettably regularly, despite all good intentions, the operationalising of government policy can have unintended and long-lasting damaging consequences to the community impacted. In Australia, the unlawful 2016 Robodebt Scheme[67] and mismanaged 2009 Home Insulation Program[68] detrimentally affected hundreds of thousands of people, and in the latter, led to the death of four persons.

Similarly, the recent 2024 British Post Scandal, with a final cost of compensation expected to exceed £1 billion, was argued by former Prime Minister Sunak as one of the greatest miscarriages of justice in British history.[69] The 2021 Dutch childcare benefits scandal, after a parliamentary inquiry into the affair concluded that the Tax and Customs Administration violated fundamental principles of the rule of law, saw 26,000 parents wrongly accused of making fraudulent benefit claims.[70]

[65] See Tasmanian Government Department of Premier and Cabinet, 'State Service Legislation Overview', Tasmanian Government, Department of Premier and Cabinet. Accessed at: https://www.dpac.tas.gov.au/divisions/ssmo/legislation/state_service_legislation_overview#:~:text=The%20State%20Service%20Act%202000%20(the%20Act),of%20the%20Tasmanian%20State%20Service%20Act%201984.&text=The%20State%20Service%20Code%20of%20Conduct%2C%20which,employees%2C%20including%20officers%20and%20Heads%20of%20Agency.

[66] See *State Service Act 2000* (Tas), s 10.

[67] For a background of Robodebt and an analysis of what happens when accountability is lacking and the rule of law is threatened see Michelle Nemec, 'Robodebt Illegality and How Expediting Automated Decision-Making Failed to take the Bull by the Horns'. *UNSW Law Journal* Student Series 6 2023.

[68] See Michael Kortt and Brian Dollery, 'The Home Insulation Program: An example of Australian Government failure'. *Australian Journal of Public Administration* 71 2012, pp. 65-75.

[69] See Paul Marshall, 'Scandal at the Post Office: The Intersection of law, ethics and politics'. *Digital Evidence and Electronic Signature Law Review* 2022, pp.12-28.

[70] See Menno Fenger and Robin Simonse, 'The implosion of the Dutch surveillance welfare state'. *Social Policy & Administration* 58(2) 2024, pp. 264–276.

All are clear examples of where full and proper parliamentary scrutiny of the Executive Government is essential. Even for nothing else other than bringing to light 'lessons to be learnt' in the hope that such ill-conceived policies are not repeated.[71]

CAN A PUBLIC SERVANT PROVIDE EVIDENCE AT A COMMITTEE HEARING WITHOUT FEAR OF REPRISAL?

It is argued that there is a tension between free speech and protection of public servant witnesses facilitating effective committee hearings and the political appetite to use compellable powers against public servants.[72] Morris and Sorrial[73] note there is a longstanding institutional tradition that requires public servants to refrain from participating in public debate, in the interests of preserving the impartiality of the APS. At the same time, there is recognition in APS guidelines that public servants are also citizens, who to some extent should be able to participate in public debate (the notion of 'freedom of political communication').[74] These competing tensions have largely remained unresolved in litigation and the recent judgement in the *Comcare v Banerji*[75] case in all probability did not go far enough to clarify the same.

Tasmania

A dichotomy exists between the theoretical and the actual: like most Australian jurisdictions, Tasmania provides under its *Parliamentary Privilege Act 1858* (Tas) the power to order attendance of persons and papers, nominally by summons.[76] Section 2A(1) (Examination of Witness) of that Act provides:

[71] From past personal experience as an Ombudsman investigator, it is not the somewhat bland and at time distant Ministerial response crafted by the senior bureaucracy behind the scenes that count, but rather the 'at the coalface' unfettered and authentic evidence from a lower-level public servant that shines the most light on policy implementation failure.

[72] See Jessica Strout, 'What's at Stake When Parliamentary Committee Inquiries Rely on Voluntary Executive Cooperation'. *Australasian Parliamentary Review* 40(1) 2025.

[73] See Dr Shireen Morris and Professor Sarah Sorial, 'Balancing Public Servants' Responsibilities with the Implied Freedom of Political Communication: What Can We Learn from Banerji?'. *Monash University Law Review* 48(1) 2022.

[74] See *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520.

[75] See *Comcare v Banerji* (2019) 267 CLR 373.

[76] See *Parliamentary Privilege Act 1858* (Tas), s 1 and 2.

> *A select committee of either House or a joint committee of both Houses with power to send for persons may examine any witness in relation to any matter referred to it.*[77]

Joint committees are also afforded with 'all the powers of a committee of either House duly authorised by the House and persons are required to obey its orders accordingly' and contempt of a joint committee is covered under sections 2 and 3 of the *Parliamentary Privilege Act 1957* (Tas).[78]

At face value it would appear, a summonsed State Servant to make available evidence at a committee hearing has sufficient protections under law, without fear of reprisal. This is not the case for a State Servant who wishes to provide a submission to a committee inquiry and by doing so may be invited to appear before it.

With respect to State Servants called upon to appear before a parliamentary (including a committee) inquiry, 'in their capacity as an employee of the Tasmanian Government', current Tasmanian Government policy mandates that they must advise their Head of Agency before attending the inquiry. The policy also requires (emphasis added):

> *… A State servant must also seek approval from their Head of Agency where they are approached or wish to appear in person at an inquiry. This will enable any agency and whole-of-government implications to be considered.*[79]

In addition, section 9(7) of the *State Service Act 2000* (Tas)[80] stipulates 'an employee must maintain appropriate confidentiality about dealings of, and information acquired by, the employee in the course of that employee's State Service employment'.

With this pairing of requirements, it is conceivable why some State servants are reluctant to provide evidence in the first instance. This is amplified in circumstances where evidence of

[77] Of interest, this includes prisoners as covered under the *Parliamentary Privilege Act 1885* (Tas) s 2.

[78] See *Parliamentary Privilege Act 1957* (Tas) s 2 and 3.

[79] See Tasmanian Government Department of Premier and Cabinet, *Tasmanian Government Submissions to Inquiries and Reviews Policy (Document P2021–01)*. Accessed at: https://www.dpac.tas.gov.au/__data/assets/pdf_file/0032/168476/Submissions_to_Inquiries_and_Reviews_Process_-_December_2021.PDF, p. 2.

[80] See *State Service Act 2000* (Tas), s 9(1).

sub-optimal policy operationalisation paints the relevant Head of Agency and/or the Executive in less than glowing terms.

Commonwealth

Unlike Tasmania, the Commonwealth has a more explicit protection for public servant witnesses-to-be under sections 12(1) and (2) of the *Parliamentary Privileges Act 1987* (Cth). This includes any improper influence on the witness to give (or not to give) evidence (i.e., fraud, intimidation, force or threat, by the offer or promise of any inducement or benefit), before a committee including 'the inflict[ion] of any penalty or injury upon, or depriv[ation] of any benefit'.[81]

The contempt identified above reflects the 'interference of a witness' which is a recognised prohibited act within Westminster systems of government. Notwithstanding, the ability to deal with such a contempt does not lie with the affected committee and arguably is discretionary in nature. The Australian Parliament notes the following:

> *'…one of the most important effects of the power to punish contempts is that the House may protect its committees and their witnesses … committees do not have the power to take action against any person or organisation who is obstructing or hindering them'*.[82]

Rather, if the committee is of a belief that it has been misled or obstructed, or if its witnesses are punished or intimidated, it may bring the matter to the attention of the House which ultimately may punish for contempt. Notwithstanding, the Australian House of Representatives Committee of Privileges noted the importance of witnesses being able to give evidence to parliamentary committees freely:

> *'… if the Parliament fails to provide the protection to which . . . witnesses and prospective witnesses are entitled, the effectiveness of the Committees, and through them, the Parliament and the nation, will suffer'.* [83] [84]

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[81] See *Parliamentary Privileges Act 1987* (Cth), s 12(1) and (2).

[82] Parliament of Australia, 'House of Representatives, Infosheet 5 - Parliamentary privilege'. Accessed at: https://www.aph.gov.au/about_parliament/house_of_representatives/powers_practice_and_procedure/00_-_infosheets/infosheet_5_-_parliamentary_privilege.

[83] House of Representatives Committee of Privileges, Report concerning the alleged threats or intimidation against a witness before the Defence Sub-committee of the Joint Committee of Foreign Affairs, Defence and Trade, May 2001

[84] See Alex Somlyay, 'The Use and Abuse of Parliamentary Privilege'. *Australasian Parliamentary Review* 17(2) 2002, p. 241-46.

The current practice whereby public servants attending a committee inquiry with a Minister are not there to answer a question on matters of policy, is not in contention. It is fit and proper a Minister should at the first instance answer a question on matters of policy (the 'why'), with public servant giving the committee an explanation of the existing policy (the 'what').[85] What is in contention are the circumstances when an individual public servant wishes to provide evidence at the table (without the Minister) in their 'own' capacity: for example, as part of providing a submission to an inquiry and being invited by the committee to give more details on that submission The combination of the advice given by the Australian Public Service Commission (APSC) and through the Executive Government (via the Department of Prime Minister and Cabinet (DPMC)) appears to fetter the ability of a public servant to provide evidence at the table in their 'own' capacity.

APSC Directions to Public Servant Witnesses

In the 'APS Values and the Code of Conduct in practice',[86] the APSC outlines three important yet somewhat conflicting directions that can be applied to public servant witnesses.

Firstly, the APSC narrowly defines the term 'impartiality' in such that it does not mean 'equal treatment to all sides of politics' and APS public servants should have limited contact with the Opposition and other non-government parties. However, the directions allow for appropriate engagement with the Parliament:

> *At the same time, it is a routine and proper role for employees to provide information to the Parliament about the implementation of the Government's policies, including when appearing before parliamentary committees.*[87]

Secondly, the directions note 'Within the laws established by Parliament, it is ministers who decide what is in the public interest and how it should be brought about'. The role of the APS is to serve the government of the day and to assist in developing and delivering its policy agenda and priorities.[88]

[85] Australian Public Service Commission, *APS Values and Code of Conduct in practice*, 13 September 2021. Accessed at: https://www.apsc.gov.au/sites/default/files/2023-11/APS-Values-and-Code-of-Conduct-In-Practice-2023.docx.

[86] Australian Public Service Commission, *APS Values and Code of Conduct in practice*.

[87] Australian Public Service Commission, *APS Values and Code of Conduct in practice*, p. 8.

[88] Australian Public Service Commission, *APS Values and Code of Conduct in practice*, p. 9.

Finally, with respect to assisting the Parliament with its questions and inquiry function, the APSC notes:

> *'…it is a responsibility of the Parliament to scrutinise the activities of Government and to examine the expenditure of public money. Employees may be required to provide information directly to the Parliament, in particular to its committees'*.[89]

This may include providing Parliament (through the Minister) with full and accurate information about the factual and technical background to policies and their administration and may include reasons for the policy.[90] However, it does not extend to providing personal comment on the policy. This containment is supported by a Senate Resolution.[91]

DPMC Guidelines to Public Servants as 'Official Witnesses'

Concurrently, the Department of Prime Minister and Cabinet (DPMC) has established guidelines for official witnesses before Parliamentary Committees[92] and notes whilst there is no intention to restrict APS employees from appearing before parliamentary committees in their 'personal' capacity:

- the employee must observe the APSC directions relating to public comment
- if appearing before a Parliamentary Committee, an employee must make it clear to that committee that they are not appearing in an official capacity, and
- senior employees and heads of agencies must take particular account as to whether it is realistically possible to appear in a 'personal' rather than an 'official' capacity, particularly if they are likely to be asked to comment on matters which fall within or impinge on their area of responsibility.

Taking this into account, it is difficult to see how an APS employee could in fact provide useful evidence to a committee in a personal capacity.

And like Tasmania, the APS Code of Conduct provides an APS employee 'must not improperly use inside information or the employee's duties, status, power or authority to cause, or seek

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[89] Australian Public Service Commission, *APS Values and Code of Conduct in practice*, p.12.

[90] Australian Public Service Commission, *APS Values and Code of Conduct in practice*, p.12.

[91] See Parliament of Australia, 'Parliamentary privilege resolutions agreed to by the Senate on 25 February 1988' in *Odgers' Australian Senate Practice*, Appendix 2.

[92] Australian Government Department of Prime Minister and Cabinet, *Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters - February 2015*, p.20. Accessed at: https://www.pmc.gov.au/sites/default/files/resource/download/Gov_Guidelines_for_Official_WIitnesses_Feb_2015.pdf

to cause, detriment to the employee's Agency, the Commonwealth or any other person' and 'must at all times behave in a way that upholds the integrity and good reputation of the employee's Agency and the APS'.[93] Sanctions that can be posed under section 15 (Breaches of the Code of Conduct) *Public Service Act 1999* (Cth) are similar to those found under the Tasmanian equivalent.[94]

Whilst in practice it would be open to a committee to be briefed in camera by a public servant,[95] the committee is effectively barred from using that evidence in a report in case it unintentionally identifies the individual concerned. This becomes particularly relevant when such evidence can only come to the attention of the Committee from limited sources within government. This in turn makes it much easier for the Executive Government to sanction the public servant.

WHERE TO FROM HERE?

As noted by Lindell, there is little authoritative judicial guidance as to whether a public servant would be immune to sanctions under the relevant Code of Conduct if they provided evidence to a parliamentary committee presumably protected by parliamentary privilege.

Notwithstanding, a statutory intervention akin to the protections afforded under the *Parliamentary Privileges Act 1987* (Cth) would have merit in the Tasmanian jurisdiction. Even if for nothing else than to deliver a strong message to the relevant Ministers and Heads of Agency that parliamentary privilege is utmost, and holding the Executive Government to account is both legitimate and necessary under a modern Westminster system.

The harder bridge to cross is the ascendency of the doctrine of public interest immunity (Crown privilege) over public servants. Whilst the majority rule government establishes a clear mechanism for making decisions on policy, it is not (and should not) be unconstrained: repeating *Egan v Wills*, the act of '… secur[ing] accountability of government activity is the very essence of responsible government'.[96]

Whilst not in the scope of this article, academics such as Prasser and Triggs amongst others have noted that the Executive has grown considerably across the Commonwealth, State and

[93] See *Public Service Act 1999* (Cth), s 13(10)(b) and 13(11)(b).

[94] See *State Service Act 2000* (Tas), s 9(1).

[95] See *Public Accounts Act 1970* (Tas), s7.

[96] See *Egan v Willis* (1998) 195 CLR 424, 42.

Territory Governments over the past thirty years.[97] Arguably, the associated increase in the dominance of the Executive over Parliament should not go unchecked. As noted by Lord Hailsham of the UK Parliament in 1976:

> *'Until recently the powers of government within Parliament were largely controlled either by the Opposition or by its own backbenchers. It is now largely in the hands of the government machine, so that the government controls the Parliament, and not Parliament the government. Until recently, debate and argument dominated the parliamentary scene. Now it is the whips and party caucus. More and more, debate is becoming a ritual dance, sometimes interspersed with catcalls ... we live under an elective dictatorship, absolute in theory, if hitherto tolerable in practice'.*[98]

Whilst potentially politically unpalatable, it would be open for the Tasmanian Government to tweak the appropriate State Service Code of Conduct provision to allow for better evidence gathering of a Parliamentary Committee (emphasis added):

> *An employee must maintain appropriate confidentiality about dealings of, and information acquired by, the employee in the course of that employee's State Service employment. <u>This does not prevent a State Service employee with providing evidence to either House or a Parliamentary Committee making inquiries on matters pertaining to that employee's State Service employment</u>.*[99]

With such a provision, a brighter light could be shone behind government policy implementation failures, with the view of better Parliamentary oversight and hopefully through this revelation, lessons learnt without resorting to costly Royal Commissions and the like.

In conclusion, whilst I am of the view that at a local level the Government of the day could and should amend the Tasmanian State Service code of conduct provisions to allow for greater

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[97] See Scott Prasser, 'The Virtues of Upper Houses', *Upholding the Australian Constitution* 21, Proceedings of the Twenty-first Conference of The Samuel Griffith Society 2009. Accessed at: https://static1.squarespace.com/static/596ef6aec534a5c54429ed9e/t/5c9d799db208fc61cd353c1a/1553824179875/vol21.pdf, pp. 44-53; Scott Prasser, 'Executive growth and takeover of Australian parliament'. *Australasian Parliamentary Review* 27(1) Autumn 2012; Gillian Triggs 'Overreach of Executive and Ministerial Discretion: A Threat to Australian Democracy'. *Victoria University Law and Justice Journal* 8, 2017

[98] Lord Hailsham, 'Elective Dictatorship'. *The Listener*, 21 October 1976, p. 496.

[99] See *State Service Act 2000* (Tas) s 9(1).

unfettered participation in Committee inquiries, in reality, current political actualities will continue to hinder this much needed improvement to Executive transparency and accountability. However, with a second minority Tasmanian government having just been reestablished, the crossbenchers and independents could hold the incumbent Government to task.