Auditor General's opinions on ministerial notifications in Western Australia – supporting executive accountability or merely a 'fig leaf'?

Parliament's ability to hold the executive to account depends fundamentally on its access to relevant information. Mechanisms designed to mediate tensions over the provision of that information play a crucial role in determining the practical extent of parliamentary oversight.

This paper examines the Auditor General's unique statutory role in reviewing ministerial decisions to not provide information to Parliament and its effectiveness in supporting executive accountability to the Parliament. It discusses the key structural features of this mechanism and compares them to those of the independent legal arbiter mechanism adopted by the New South Wales Legislative Council. It also considers the extent to which political considerations can frustrate the mechanism's practical operation, particularly in the recent context of the unprecedented and significant majorities enjoyed by the government since 2017.

Provision of information to Parliament

While Parliament's core role is to ensure the accountability of executive government to the public, it can only achieve this where it has access to information about the decisions and actions of the executive.[1] Access to executive government information is central to Australia's 'constitutionally prescribed system of representative and responsible government', and a cornerstone of the system of separation of powers.[2] Its importance to democratic practice is reflected in one of Parliament's most significant constitutional and statutory powers: the power to require the production of information.[3] Parliament also has a variety of other sources and mechanisms allowing it access to government information. In addition to requesting information directly through questions and committees, the Parliament also receives information from its independent officers, such as the Auditor General, to assist it in its functions.

There is an explicitly recognised and constant tension between the executive government and Parliament over the provision and control of information.[4] Parliament's constitutional and statutory right to obtain information is 'exercised in a context in which conventions and political practices are as important as rules of law.'[5] For example, it is generally recognised that some information held by government ought not to be disclosed on the grounds that it would be prejudicial to the public interest.[6] Ministers faced with a request

1 *Commission on Government Western Australia, Report No. 1*, Perth, August 1995, p. 248.
2 The Centre for Public Integrity, *Still Shrouded in Secrecy*, July 2025, p. 1.
3 See, for example, the Australian Constitution, s. 49 and *Parliamentary Privileges Act 1987* (Cth), s. 5; *Parliamentary Privileges Act 1891* (WA), ss. 1; 4-6.
4 Gabrielle Appleby, Alexander Reilly and Laura Grenfell, *Australian Public Law* 3rd edition, Oxford University Press, Melbourne, 2019, p. 236; Standing Committee on Estimates and Financial Operations, *Provision of Information to the Parliament*, May 2016, p. 17.
5 *Egan v Willis and Cahill* (1996) 40 NSWLR 650, per Gleeson CJ.
6 David Elder (ed.), *House of Representatives Practice* 7th edition, Department of the House of Representatives, Canberra, 2018, p. 625; Rosemary Laing (ed.), *Odgers' Australian Senate Practice* 14th edition, Department of the Senate, Canberra, 2016, p. 644.

for information may claim immunity from providing it on this basis. This is because traditional doctrines of responsible parliamentary government rest on the prerogative of those holding executive power to exercise their responsibilities as they see fit, including the discretion to withhold information from parliament on grounds of public interest immunity or other grounds of privilege.[7] Executive governments may even seek to invoke parliamentary privilege to limit Parliament's access to information.[8] This is at best, ironic, and at worst, perverse, given that the purpose of parliamentary privilege is to support the principle of responsible government and protect Parliament's ability to debate matters and hold the executive to account.[9]

Given this tension, it is unsurprising that immunity claims are treated with suspicion and their validity frequently disputed. There is real and significant potential for a government to abuse an immunity claim 'to cover up wrongdoing, maladministration, or embarrassing and election-sensitive information under the guise of the 'public interest.''[10] Ultimately, disputes over the validity of immunity claims are political and are most appropriately resolved by parliaments themselves as they weigh the executive's claim for confidentiality against the Parliament's right to obtain information.[11] Courts have agreed that this balancing exercise is not an appropriate constitutional function of the judiciary and have been reluctant to undertake it.[12] Nevertheless, the approach taken by courts in relation to claims of public interest immunity has influenced the way that parliaments consider similar claims.[13] It is worth noting, however, that the balancing exercises are not entirely the same, as courts and parliaments are required to weigh any public interest in withholding information against different aspects of the public interest which are relevant to their functions. These are, respectively, the administration of justice and the proper functioning of Parliament.[14]

The High Court's decision in *Sankey v Whitlam* established that claims of public interest immunity have no automatic operation and 'it is in all cases the duty of the court, and not the privilege of the executive government, to decide whether a document will be produced or may be withheld.'[15] Gibbs ACJ acknowledged that while some degree of secrecy is necessary for the proper working of government, such protection was 'not to

---

7 John Uhr, *Deliberative Democracy in Australia*, Cambridge University Press, Melbourne, 1998, p. 202.

8 Anne Twomey, *Can Parliamentary Privilege be Used to Shut Down Parliamentary Accountability?*, 22 January 2020, <https://www.auspublaw.org/>.

9 *ibid*.

10 The Centre for Public Integrity, *Still Shrouded in Secrecy*, July 2025, p. 2.

11 *Odgers' Australian Senate Practice* 14th edition, Department of the Senate, Canberra, 2016, p. 645.

12 *Egan v Chadwick* (1999) 46 NSWLR 563 at 574 per Spigelman CJ; Anne Twomey, 'Executive Accountability to the Senate and the NSW Legislative Council', *Australasian Parliamentary Review*, vol. 23, no. 1, Autumn 2008, p. 259.

13 *Odgers' Australian Senate Practice* 14th edition, Department of the Senate, Canberra, 2016, p. 645.

14 David Elder (ed.), *House of Representatives Practice* 7th edition, Department of the House of Representatives, Canberra, 2018, p. 629.

15 *Sankey v Whitlam* (1978) 142 CLR 1 at 48-9 per Gibbs ACJ.

protect Ministers and other servants of the Crown from criticism, however intemperate or unfairly based.'[16]

Parliamentary mechanisms for scrutinising the validity of immunity claims

Parliaments have since considered or adopted different mechanisms for resolving disputes over the validity of claims to immunity, including adjudication by a third party on either an *ad hoc* or standing basis. The independent legal arbiter mechanism adopted by the New South Wales Legislative Council in its standing orders[17] is generally regarded as an effective regime for navigating claims that would otherwise be potentially irreconcilable.[18] The ability of parliaments to adopt their own procedures to regulate their conduct and proceedings is constitutionally enabled.[19] This reflects the capacity of parliamentary procedure to support the doctrine of responsible government by operating as a 'constraining hand' on executive power.[20]

In Western Australia, unique legislative provisions require the Auditor General to provide an opinion to Parliament as to whether a minister's decision to not provide certain information is 'reasonable and appropriate'.[21] This regime was intended to give full effect to the findings and recommendations of the 1991 WA Inc Royal Commission[22] and the subsequent Commission on Government, which recognised that confidentiality provisions can be misused and sought to 'subject secrecy claims to scrutiny by someone other than the Executive.'[23] The process first requires the minister to notify each House of Parliament and the Auditor General of their decision to withhold information, and provide reasons, within 14 days of that decision ('s82 notice').[24] Although originally intended to apply to ministers withholding commercial-in-confidence information from annual reports, the final remit of the legislative provisions is very broad, capturing any circumstances in which a minister decides not to provide information.[25]

---

16 Ibid., at 40.

17 See Standing Order 52, incorporated in 2004 following the series of *Egan* cases: *Egan v Willis and Cahill* (1996) 40 NSWLR 650; *Egan v Willis* (1998) 195 CLR 424; *Egan v Chadwick & Ors* (1999) 46 NSWLR 563.

18 Anne Twomey, 'Executive Accountability to the Senate and the NSW Legislative Council', *Australasian Parliamentary Review*, vol. 23, no. 1, Autumn 2008, pp. 269, 273; Senate Legal and Constitutional Affairs References Committee, *A Claim of Public Interest Immunity Raised over Documents*, March 2014, Chapter 3.

19 See, for example, the Australian Constitution, s. 50; *Constitution Act 1902* (NSW), s. 15; *Constitution Act 1889* (WA), s. 34.

20 Leslie Gonye, *Parliamentary Procedure and Responsible Government – Responsible Government and the Australian Constitution book forum*, 27 June 2024, <https://www.auspublaw.org/>.

21 *Auditor General Act 2006* (WA), s. 24.

22 Western Australia, *Report of the Royal Commission into Commercial Activities of Government and Other Matters,* Perth, 1992.

23 *Commission on Government Western Australia, Report No. 1*, Perth, August 1995, p. 182; Public Accounts Committee, *Review of the Financial Management Bill 2005 and the Auditor General Bill 2005*, April 2006, pp. 27, 28, 54.

24 *Financial Management Act 2006* (WA), s. 82.

25 Standing Committee on Estimates and Financial Operations, *Financial Management Bill 2006, Financial Legislation Amendment and Repeal Bill 2006 and Auditor General Bill 2006*, November 2006, p. 22.

Some of the common features of the two mechanisms clearly support executive accountability to Parliament. As with the judiciary, both the arbiter and the Auditor General are independent and free from direction by the executive.[26] However, unlike the judiciary, their conclusions are merely advisory, not binding or determinative. The ultimate outcome of any dispute over the validity of the executive's claim remains political, to be determined by Parliament. Harry Evans noted, in most cases:

> … governments have usually produced the required information or some compromise has been reached. Where a significant disagreement has arisen, it has usually been regarded as a matter to be settled politically, which means in practice that the majority of the house concerned seeks to inflict maximum political damage on a recalcitrant government.[27]

The discussion in this paper focuses on other differing features of the two mechanisms and examines whether they support executive accountability to Parliament, both in form and practice. As will be seen, even in the case of Western Australia's legislatively enshrined mechanism, political considerations will still prevail in determining adherence to statutory obligations.

Initiating mechanism and provision of information for scrutiny

In New South Wales, the independent legal arbiter mechanism is triggered where a member of the Legislative Council disputes, in writing to the Clerk, the validity of the government's claim that a document produced pursuant to order is privileged.[28] There is no risk that the information required for the arbiter to provide their advice will be withheld, as the Clerk is authorised to release the disputed document to them.[29] This is consistent with the principle in *Sankey v Whitlam* that executive government does not retain the ultimate privilege of deciding whether a document will be produced or may be withheld.

By contrast, the Western Australian mechanism is only triggered where the Minister, having made a decision to not provide certain information, submits to the process by tabling a s82 notice.[30] As discussed in the case study below, even if the Minister tables a s82 notice, the mechanism can be further frustrated if they decline to provide relevant information to allow the Auditor General to form an opinion.

That the mechanism is effectively self-initiated poses a clear difficulty for executive accountability. This is reflected by a marked decrease in the average number of s82

---

26 *Auditor General Act 2006* (WA), s. 7; *R v Kirby; Ex parte Boilermakers' Society of Australia* (1956) 94 CLR 254.

27 Harry Evans, *Reasonably Necessary Powers: Parliamentary Inquiries and Egan v Willis and Cahill*, February 1999, <https://www.aph.gov.au/>.

28 New South Wales Legislative Council Standing Order 52(8).

29 New South Wales Legislative Council Standing Order 52(9).

30 Although there is evidence to support the position that the Auditor General is at liberty to review instances of non-provision of information even where a s82 notice is not tabled, this would be practically difficult in most cases. See Standing Committee on Estimates and Financial Operations, *Provision of Information to the Parliament*, May 2016, p. 76.

notices tabled since the government gained bicameral control in 2021. From the introduction of the mechanism in 2006 until 2020, there was an average of 13 ministerial notifications each year; since 2020, the average has been less than four.[31] The Legislative Council Estimates and Financial Operations Committee (EFOC), which has oversight of the Auditor General, also recently expressed concern that 'occasions of non-provision of information have not resulted in notices to Parliament.'[32]

Further, the Western Australian legislative provisions are silent on the actions to be taken and consequences if the Minister fails to table a s82 notice. EFOC considered the impact of this statutory construction in its 2016 Inquiry into the Provision of Information to Parliament and highlighted that being unable to compel or penalise reduced the effectiveness of the statutory provisions as an accountability mechanism.[33] At that time, legal advice from Bret Walker SC opined that it was 'well arguable' that the legislative requirement for a Minister for table a s82 notice with reasons for their decision to withhold information imposed a justiciable obligation.[34] However, the recent decision of the High Court in *Attorney-General (Tas) v Casimaty*[35] casts doubt on this position, given the Court's conclusion that where the intention of the Act was to strengthen political accountability, the consequence of non-compliance 'is best seen to lie exclusively within the province of that mechanism of political accountability.'[36]

In its 2016 inquiry, EFOC found that there was a 'significant gap' in ministerial knowledge and education on both making a decision to withhold information and the statutory obligations around s82 notices, and it made various recommendations to elevate the profile of s82 notices in the Legislative Council.[37] Despite the government's support for these recommendations at the time, the Western Australian political landscape since then has provided little incentive for ministers to submit themselves to the s82 notice mechanism.

Role in assessing public interest

In New South Wales, the President appoints an independent legal arbiter for evaluation and report as to the validity of the government's claim of privilege. The arbiter must be a King's Counsel, Senior Counsel or retired Supreme Court judge.[38] However, commentators have disagreed over the role and approach to be taken by the arbiter in assessing the public interest. Anne Twomey has suggested that the arbiter's role should be restricted to

31 See, for example, Office of the Auditor General for Western Australia, *Annual Report 2024-25*, 25 September 2025, p. 101.
32 Standing Committee on Estimates and Financial Operations, *Consideration of the 2023-24 Budget Estimates*, November 2023, p. 23.
33 Standing Committee on Estimates and Financial Operations, *Provision of Information to the Parliament*, May 2016, p. 77.
34 Bret Walker SC, Legal opinion on the construction and interpretation of the *Financial Management Act 2006* s82 and the *Auditor General Act 2006* s24(2)(c), 21 January 2015, p. 4.
35 [2024] HCA 31.
36 *Attorney-General (Tas) v Casimaty* [2024] HCA 31 at [40].
37 Standing Committee on Estimates and Financial Operations, *Provision of Information to the Parliament*, May 2016, p. 69.
38 New South Wales Legislative Council Standing Order 52(10).

a legal assessment of the claim based upon the rules of privilege developed by the common law and statute. Referring to *Egan v Chadwick,* she has been critical of arbiters undertaking the task of balancing the public harm from disclosure of documents against the significance of the information for parliamentary functions – firstly because this task is most appropriately undertaken by Parliament itself and secondly because the arbiter, like a judge, does not have the relevant experience to do so.[39] However, the response of the former Clerk of the Legislative Council was that independent legal arbiters are eminently qualified to perform the balancing task similarly to how a trial judge is required to determine where the public interest best lies.[40]

In Western Australia, some of this ambiguity about the role and task to be undertaken is avoided by the wording of the statutory provisions, which appoint the Auditor General to provide an opinion on whether a Minister's decision to not provide information to Parliament was 'reasonable and appropriate.'[41] The assessment is not restricted to legality. Bret Walker SC noted that the key words of these provisions, 'in the governmental and hence political context which they are used, are loaded with contestable values, debatable emphases and balances, and directed to matters upon which people may rationally differ in good faith.'[42] He also noted that the contrast in the 'political and constitutional personage' of ministers and the Auditor General means there is a real prospect that their assessments of what is 'reasonable and appropriate' may differ.[43] The Auditor General's Audit Practice Statement, which outlines the methodology and approach taken in the absence of statutory guidance, reflects their view that forming an opinion includes, but is not restricted to, applying legal principles.[44]

Further, as an independent officer of Parliament, the Auditor General's functions and experience are well suited to assessing where the public interest lies. Auditors General are the oldest institution in the 'integrity branch' of government and have a long history of responsibly reporting their findings in the public interest, including where sensitive information is involved.[45] The role of such integrity institutions goes beyond ensuring just the legality of public administration but also to ensuring fidelity to purposes and public values.[46] The functions, powers and independence of the Auditor General all tend to

---

39 Anne Twomey, 'Executive Accountability to the Senate and the NSW Legislative Council', *Australasian Parliamentary Review*, vol. 23, no. 1, Autumn 2008, pp. 261, 265.

40 Lynn Lovelock 'The Power of the New South Wales Legislative Council to Order the Production of State Papers: Revisiting the *Egan* Decisions Ten Years On', *Australasian Parliamentary Review*, vol. 24, no. 2, Spring 2009, pp. 216-217. See also Jenelle Moore, 'The Challenge of Change: A possible new approach for the independent legal arbiter in assessing orders for papers?', paper presented at the 2015 ANZACATT conference, pp. 3-4.

41 *Auditor General Act 2006*, (WA), s. 24.

42 Bret Walker SC, Legal opinion on the construction and interpretation of the *Financial Management Act 2006* s82 and the *Auditor General Act 2006* s24(2)(c), 21 January 2015, p. 8.

43 *ibid*, pp. 8-9.

44 Office of the Auditor General for Western Australia, *Audit Practice Statement*, October 2025, p. 24.

45 Australasian Council of Auditors General, *Access to and Disclosure of Information by Australian and New Zealand Auditors-General*, June 2024.

46 The Hon James Spigelman AC, 'The Integrity Branch of Government', *Australian Law Journal*, Vol. 78, No. 11, p. 724, 2004; AIAL National Lecture Series on Administrative Law, No. 2, p. 1,

support the nature of the s82 mechanism as the opinion of 'an impartial professional dedicated to the lawful and efficient husbanding of the State's property and operations.'[47]

Despite this, there is some concern that the requirement to provide an opinion on a Minister's decision not to provide information to Parliament is, at best, a distraction from the Auditor General's core functions and, at worst, an inappropriate function. Inserting the Auditor General in the middle of the recognised tension between the executive and Parliament risks politicising the office.[48] This is compounded by both longstanding concerns about the Auditor General's impeded access to information required for its audit program, and more recent concerns over legislative amendments, passed in 2022 but still not yet proclaimed, that diminish the Auditor General's discretion to report in the public interest.[49]

Reporting the conclusion

In New South Wales, the independent legal arbiter's report is lodged with the Clerk and made available only to Legislative Council members. It is only to be published by order of the House.[50]

In Western Australia, the Auditor General's report is tabled in both Houses after a draft has been provided to the minister for procedural fairness.[51] Even where the Auditor General's opinion is that the Minister's decision was not reasonable and therefore not appropriate, the requested information is generally not disclosed in the report.[52] However, once the report has been tabled, members may refer to it in debate and the Auditor General is at liberty to discuss their opinion publicly. As demonstrated in the case study below, this supports executive accountability to Parliament as unfavourable reports may still be discussed without the need for a resolution in Parliament.

Case study – legal services related to Griffin Coal

In 2024, the Attorney General tabled three s82 notices regarding his decisions not to provide information in response to questions without notice asked in the Legislative Council about arrangements for and costs of legal services provided by the law firm

---

2004; The Hon Wayne Martin AC, 'Forewarned and Four-Armed – Administrative Law Values and the Fourth Arm of Government', Council of Australasian Tribunals Whitmore Lecture, 1 August 2013, p. 22.

47 Bret Walker SC, Legal opinion on the construction and interpretation of the *Financial Management Act 2006* s82 and the *Auditor General Act 2006* s24(2)(c), 21 January 2015, p. 9.

48 Andrew Young, Amy Nethery, Ainsley McDonald et al., *Independence of the Australasian Auditors General Report 2025*, Australasian Council of Auditors General, November 2025, p. 82.

49 Office of the Auditor General for Western Australia, *Annual Report 2022-23*, 27 September 2023, p. 110. Referring to the *Auditor General Amendment Act 2022* (WA), assented to on 29 November 2022.

50 New South Wales Legislative Council Standing Order 52(12).

51 Office of the Auditor General for Western Australia, *Audit Practice Statement,* October 2025, p. 25.

52 *Auditor General Act 2006* (WA), s. 24; *ibid.*

Ashurst to the State Solicitor's Office (SSO).[53] The legal services related to the insolvency of Griffin Coal and the government's commitment to provide financial support to ensure coal supply. The Auditor General subsequently tabled a report with her opinion on the Attorney General's decisions.[54]

In relation to the decisions not to provide information regarding the terms and conditions of the arrangements and the issues Ashurst had worked on, the Auditor General issued two disclaimers of opinion as she had been unable to obtain sufficient and appropriate evidence to form an opinion on whether these decisions were reasonable and appropriate.[55] Although the Attorney General's Office advised that it had sought and followed advice from the SSO before declining to provide the requested information to Parliament, it then refused to provide the Auditor General with any relevant documentation regarding the advice and the decision as it asserted that this was subject to legal professional privilege (LPP).[56] The Auditor General's report noted that while case law indicates that a retainer is not generally protected by LPP, privilege can only be determined by examining the document to see whether the nature of the advice could be inferred from it.[57] In this case, the retainer was not provided and therefore the Auditor General could not assess whether the information could be disclosed without revealing the specific nature of the advice provided.[58] The Auditor General noted that '[t]he inability of an auditor to access the information they need to meet their obligation is a serious matter for the auditor and for those who rely on their opinion.'[59]

Regarding the decisions to withhold information about the costs of Ashurst's services, the Auditor General's opinion was that these were not reasonable and therefore not appropriate.[60] Having been provided with limited information about why the information was claimed to be commercially sensitive, the Auditor General concluded that the Attorney General could have disclosed the information to Parliament without disclosing the nature of the advice provided or damaging the State's commercial position.[61]

The Auditor General took the self-described 'unusual' step of discussing her report in a media interview on 14 August 2024.[62] Information on the costs and numbers of

---

53 Legislative Assembly of Western Australia, Tabled Paper Nos 2725-2727 tabled on 16 April 2024; Legislative Council of Western Australia, Tabled Paper No. 3063 tabled on 16 April 2024.
54 Office of the Auditor General for Western Australia, *Opinion on Ministerial Notification: Legal Services Provided to the State Solicitor's Office*, 27 June 2024.
55 *ibid*, p. 7.
56 *ibid*, p. 8.
57 Referring to *Kirby v Centro Properties Limited (No 2)* [2012] FCA 70.
58 Office of the Auditor General for Western Australia, *Legal Services Provided to the State Solicitor's Office*, 27 June 2024, p. 8.
59 *ibid*, p. 7.
60 *ibid*, p. 9.
61 *ibid*, p. 9.
62 Nadia Mitsopoulos and Andrew Williams, 'WA government admits to $500k spend on legal fees as part of Griffin Coal's insolvency', *ABC News*, 15 August 2024. Accessed at: https://www.abc.net.au/news/2024-08-15/government-refuses-to-reveal-cost-griffin-coal-legal-advice-wa/104223370

Ashurst staff working on matters related to Griffin Coal was subsequently provided to Parliament the following day.[63]

Discussion

This case study is remarkable in that, having submitted to the independent opinion process, the Attorney General then denied the Auditor General access to relevant documentation which she needed to fulfil her statutory obligation. The impact of this was noted by the Auditor General in her subsequent Annual Report:

> '…openness during the assurance process allows us to do our job for the Parliament and together uphold the principles of trust and accountability of government. I thought it important to clarify in this report that access to sensitive government documents by my auditors in fulfilling their duties does not equal public disclosure; we use the information we access to provide assurance to the Parliament. To best serve the Parliament, community and public interest, I continue to encourage all ministers to choose openness and disclosure as their default position and only restrict information for public and parliamentary disclosure where there is a genuine matter of public interest to do so.'[64]

The importance of unfettered access to information to ensure auditors can discharge their functions is reflected in national and international audit standards.[65] It is also worth noting that the Auditor General issued five disclaimers of opinion in that same year – the highest number ever issued.[66] This coincided with a peak in instances of non-provision of information during the Legislative Council's Budget Estimates examination.[67] These combined demonstrate a tendency to non-disclosure during the final full financial year when the government enjoyed a majority in both Houses.

More strangely, this case study occurred in the aftermath of legislative amendments that sought to clarify that providing information to the Auditor General for their statutory functions or to Parliament does not amount to a waiver of privilege.[68] Although this reflected the Parliament's apparent desire to enhance access to information and executive accountability, this desire is not yet realised because, as referred to above, the amendments remain unproclaimed.

---

63 Hon Matthew Swinbourn MLC, Parliamentary Secretary representing the Attorney General, Legislative Council (WA), *Hansard*, 14 August 2024, p. 3731.

64 Office of the Auditor General for Western Australia, *Annual Report 2023-24*, p. 11.

65 Australasian Council of Auditors General, *Access to and Disclosure of Information by Australian and New Zealand Auditors-General*, June 2024.

66 Office of the Auditor General for Western Australia, *Annual Report 2023-24*, p. 88.

67 Standing Committee on Estimates and Financial Operations, *Consideration of the 2023-24 Budget Estimates*, November 2023, p. 22.

68 *Auditor General Amendment Act 2022,* new s. 37A. See also Office of the Auditor General for Western Australia, *Annual Report 2022-23*, p. 110.

Delivering substantive transparency requires more than mechanisms

In its 2016 Inquiry into the Provision of Information to Parliament, EFOC ultimately found that the statutory provisions of the Western Australian mechanism were 'adequate for purpose' but required some enhancement to increase awareness and contribute to the robustness of the mechanism.[69] This paper contends that this conclusion should be revisited as, by reference to the New South Wales mechanism, there is clear scope to make structural changes to improve executive accountability to the Parliament. While the Western Australian mechanism provides a clear avenue to challenge and potentially expose unjustified secrecy, it remains vulnerable to procedural frustration, particularly through its dependence on ministerial initiation.

However, the Griffin Coal case study demonstrates that structural safeguards alone cannot ensure genuine accountability. Despite being legislatively enshrined, the effectiveness of the Western Australian mechanism ultimately depends on political willingness to engage with the process in good faith. Without sustained cultural and political commitment to transparency, it risks becoming symbolic rather than substantive.

The Centre for Public Integrity has noted cultural deficiencies in other Australian jurisdictions where executive governments thwart mechanisms designed to promote access to information.[70] Although the Victorian Legislative Council has adopted an independent legal arbiter mechanism, it has never been used because no government has ever complied with the contingent requirement to deliver the disputed documents to the Clerk.[71] In the Australian Senate, government compliance with orders to produce documents is noted to be in 'terminal decline', registering at 92 per cent in 1993-96 to approximately 33 per cent in the current Parliament.[72] Public interest immunity claims have increased to the point of overuse, signalling potential abuse, and are made unilaterally, at odds with the principle established in *Sankey v Whitlam*.[73] These examples demonstrate that the challenges identified in Western Australia are not unique.

Effective systems of responsible government rely on balancing the tension between the executive's prerogative to control information and Parliament's accountability functions. It is ultimately within the power of parliaments themselves to both regulate and promote this balance, which is more important now than ever in the face of declining public confidence in democratic institutions.

69 Standing Committee on Estimates and Financial Operations, *Provision of Information to the Parliament*, May 2016, p. 84.
70 The Centre for Public Integrity, *Still Shrouded in Secrecy*, July 2025.
71 *ibid*, p. 5. The requirement is contained in Victorian Legislative Council Standing Order 10.03(2).
72 *ibid*, p. 3.
73 *ibid*.