

Chapter 11

Egan v Willis and *Egan v Chadwick*: The Triumph of Responsible Government

*Gerard Carney**

Introduction

The constitutional significance of *Egan v Willis*,¹ a decision of the High Court in 1998, and of *Egan v Chadwick*,² a decision of the New South Wales Court of Appeal in 1999, is profound – both within the State of New South Wales and nationally. These cases judicially confirm the fundamental role of each House of Parliament, including the Legislative Council, to scrutinise the activities of the Executive branch. Together, they establish the power of each House to call for the production of “state papers”³ despite their privileged status. The fact that the Government does not have to maintain the confidence of the Legislative Council does not mean that it is not accountable to that House. By recognising the different way each House of Parliament may hold the Executive Government accountable for its administration of the State, these cases have reinforced and reinvigorated, if not redefined, the principle of responsible government in Australia.

The High Court in *Egan v Willis* confirmed the inherent power of the Legislative Council to order the production of State papers, and appears

* Grateful acknowledgement is given for the research assistance provided by Dr Philip Jamieson.

1 (1998) 195 CLR 424; affirming in part the decision of the New South Wales Court of Appeal: *Egan v Willis and Cahill* (1996) 40 NSWLR 650.

2 (1999) 46 NSWLR 563.

3 In *Egan v Willis and Cahill* (1996) 40 NSWLR 650 at 654, Gleeson CJ defined “State papers” as those papers “created or acquired by Ministers, office-holders, and public servants by virtue of the office they hold under, or their service to, the Crown in right of the State of New South Wales: cf Brazier, ‘Who Owns State Papers?’ [1966] CLJ 65”.

This is a preview. Not all pages are shown.