

PUBLIC LAW REVIEW

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The inherent executive power of the Commonwealth – *Leslie Zines*

This article examines various aspects of the non-statutory power of the Commonwealth derived from s 61 of the *Constitution*. It is argued that that provision does not support inherent power beyond that possessed by the Crown at common law. An examination is also made of the non-prerogative executive powers and the capacity of the government to use these for purposes of regulation and to impinge on the liberty of the individual. In relation to prerogative powers, special reference is made to issues of keeping the peace, national security and border protection. The Federal Court decision in the *Tampa Case* is discussed and criticised.....279

Intergovernmental agreements and the executive power – *Cheryl Saunders*

Executive agreements between governments affect most areas of governmental activity in Australia, with implications for the transparency and accountability of government that have long since been understood. Relatively little attention has been paid, however, to the question that is the subject of this article: the scope of constitutional power to make such agreements. The question is significant in its own right, but is given greater practical importance still by the head of power in s 51(xxxix) of the *Constitution*, which is triggered by an exercise of executive power. The possibility that this is a source of authority for the exercise of State functions by Commonwealth officers was raised but not resolved by the High Court in *R v Hughes* (2002) 202 CLR 535. While the matter certainly is not free from doubt, this article concludes that the power to enter into agreements is limited by the text and structure of the *Constitution*, but that s 51(xxxix) authorises legislation to implement Commonwealth commitments pursuant to an agreement that falls within Commonwealth executive power.294

Parliamentary accountability for non-statutory executive power: Impossible dream or realistic aspiration? – Patrick Weller

The rhetoric of Parliament demands greater accountability of the executive to Parliament. The reality is that the executive flourishes because it controls the Parliament and can limit accountability. This article explores the reasons for executive control and the restrictions it creates for the parliamentary oversight, particularly when the government controls the Senate. Collective responsibility too has always been designed to assist executive government and is interpreted and applied by the Prime Minister to the executive's benefit. Accountability may be applied – if with limit impact – through the regular party meetings whose members choose, and can remove, the leader. In the contest between accountability to Parliament or to party, the latter always takes precedence.314

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Editorial inquiries:

Tel: (02) 8587 7000

HEAD OFFICE

100 Harris Street PYRMONT NSW 2009

Tel: (02) 8587 7000 Fax: (02) 8587 7100



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