# Scandalous? – multiple Ministerial appointments

Contents

[Scandalous? – multiple Ministerial appointments 1](#_Toc123473916)

[1. Introduction 2](#_Toc123473917)

[2. The Inquiry and report 2](#_Toc123473918)

[3. Comments 3](#_Toc123473919)

[3.1 Overview 3](#_Toc123473920)

[3.2 Secrecy 4](#_Toc123473921)

[3.3 Responsible government (a) – Parliament 4](#_Toc123473922)

[3.4 Responsible Government (b) – breach? 5](#_Toc123473923)

[3.5 Responsible government (c) - Constitution 6](#_Toc123473924)

[3.6 Responsible government (d) – whole of government 6](#_Toc123473925)

[4. Conclusion 8](#_Toc123473926)

[4.1 The Inquiry etc. 8](#_Toc123473927)

[4.2 Scandalous? 9](#_Toc123473928)

## 1. Introduction

This article concerns the report from an Inquiry by the Hon. Virginia Bell AC into secret appointments of Mr Morrison to administer various Departments when he was Prime Minister and leader of the Liberal party. It follows a previous article on the issue.[[1]](#footnote-1)

As ever, comments and corrections are welcome.

## 2. The Inquiry and report

The Inquiry was commissioned by Prime Minister Albanese after the Solicitor General provided an opinion the appointments were Constitutionally valid yet undermined responsible government.

Terms of reference for the Inquiry were to establish factual circumstances of the situation and to provide recommendations. The Inquiry sought information from relevant Ministers, officials and the public. The author provided a submission.[[2]](#footnote-2)

The Inquiry forwarded its report to the Prime Minister on 25 November 2022.[[3]](#footnote-3)

The report took the Solicitor General’s opinion as given. It provided a chronology of events - from the early days of the Covid pandemic in 2020 to mid-2022. It claimed initial motivations related to the pandemic.

In 2015, Parliament had passed legislation conferring enormous powers – ‘god-like powers’ - on the Health Minister for responses to bio-security emergencies. The start of the pandemic in 2020 was such an emergency. The report suggested Mr Morrison and Attorney General Mr Porter took a view that some wider Government oversight of those powers would be desirable. There was another concern - if the Health Minister became incapacitated through infection a junior Minister might have responsibility for the powers.[[4]](#footnote-4)

On the morning of 9 March 2020, an official from the Prime Minister’s Department suggested to the Attorney General’s Secretary that appointment to the Health Department would be the easiest way for the Prime Minister to exercise the emergency health powers if the Health Minister was incapacitated. Despite doubts of Attorney General’s officials, that afternoon the Prime Minister’s Department was asked to draft a relevant instrument - which was executed on 14 March.

From then and through 2020-21, the Prime Minister, his office and Department became increasingly enthusiastic about his being appointed to other portfolios.

Reasons were no longer confined to the pandemic. The Inquiry report could not find sense in the reasons offered except for the appointment to the Industry etc. Department. That appointment would seem to allow the Prime Minister to overrule the Minister on whether to refuse/grant a permit for gas exploration off the NSW central coast.[[5]](#footnote-5)

The report acknowledged the legality of a Minister being appointed to several Departments at one time. It also acknowledged the legality of a Department being administered by several Ministers. It said the appointments were unnecessary but, except for the permit for gas exploration, had no practical effect.[[6]](#footnote-6)

According to the report, the main problem with the appointments was their secrecy. It considered secrecy self-evidently prevented Parliament from holding the Prime Minister to account. As responsible government requires Parliament to hold Ministers to account, secrecy about the appointments undermined responsible government. Despite this, like the Solicitor General, it said the appointments were valid.[[7]](#footnote-7)

The report made six recommendations, including legislation, to avoid such secrecy in the future.

Following publication of the report, in late November the Labor Government moved to censure Mr Morrison in the House of Representatives. After Mr Morrison defended his actions as a product of the pandemic, the motion was passed largely along party lines.[[8]](#footnote-8)

## 3. Comments

### 3.1 Overview

The report identified the contribution to the fiasco of the Prime Minister’s Department. Apart from that it revealed few new facts.

The report’s recommendations were sensible but unduly limited. They did not address some major problems exposed by the affair.

The report did not address the main issues raised in my submission. Hence, until corrected, my prior comments about the situation stand as conclusions and:

i. the Solicitor General’s opinion was wrong, and the report was wrong to adopt it;

ii. the secret Ministries situation was not the main threat to responsible government arising from uncertainty about Ministerial etc. powers during Mr Morrison’s administration.[[9]](#footnote-9)

In my view, the Inquiry failed to take a critical opportunity to ask Parliament and the Government to come to grips with threats to responsible government that greatly expanded while Mr Morrison was Prime Minister. In part this was due to weak analysis.

### 3.2 Secrecy

The report’s analysis of the effect of secret Ministerial appointments was weak.

Adverse effects of official secrecy – uncertainty about democratic authority - arise if those who do not know the true state of affairs do what they otherwise would not. That occurs if those in a position of public trust *exceed* – rather than underutilise *-* their authority.

The secret that is a direct threat to responsible government – and democracy - is the one in which those in a position of public trust disguise the limits of their legal powers. Or pretend there are few if any limits. And issue orders or make determinations they know are beyond their legal authority, with an expectation of not being challenged – i.e., bluff. Professor Twomey called this ‘*democratic decay*’ using the example of Commonwealth Government spending not authorised by the Constitution.[[10]](#footnote-10)

That was not the type of secret held by Mr Morrison in this affair. Hence, the secret appointments had no practical – direct, immediate and visible - effect.[[11]](#footnote-11)

The report, however, ascribed the lack of practical effect to Mr Morrison (largely) not exercising any secret power. That observation was trite – if he exercised a power, it would no longer be secret. Yet it was significant as misleading away from the important point: the adverse effects of this affair are indirect - not immediate or visible.[[12]](#footnote-12)

Those adverse effects are the adding to an environment of uncertainty about who holds legitimate power. It creates new possibilities for others to exaggerate the extent of their powers.

Some such exaggerations were made in responses to the pandemic, especially at State level, for which there has been no accounting. That is among the reasons a Royal Commission into pandemic responses is needed. In the absence of such an inquiry, suspicions about abuse of power will fester – in some individuals well beyond what is justified into paranoid anti-authority sentiment.[[13]](#footnote-13)

### 3.3 Responsible government (a) – Parliament

The report’s analysis of the effect of secrecy on responsible government was also weak.

It said responsible government was undermined because Parliament was unable to hold Mr Morrison to account – by questioning etc. - about secret responsibilities. That inability was seen to be ‘self-evident’ as Parliament did not know the extent of his responsibilities.

That conclusion was wrong and distracted from the important point.[[14]](#footnote-14)

It was wrong because at all times Parliament knew the identity of a Minister responsible for the administration of each Department. There was never a diminution of the Government’s accountability to Parliament – via the legislature’s ability to watch the Government.

Further, Mr Morrison *was questioned and challenged in Parliament* about matters outside the Prime Minister’s portfolio. Including about pandemic responses on multiple occasions, ‘without notice’ by the Opposition including its leader Mr Albanese. So much for the ‘self-evident’ inability of them to do so.[[15]](#footnote-15)

Some Parliamentarians engaged in such questioning etc. publicly portrayed Mr Morrison as responsible for every aspect of Government. The portrayal extended to matters outside Commonwealth powers. It was part of a campaign of public attacks on Mr Morrison stimulated by his claim to lack powers to deal with some matters – such as bushfire suppression.[[16]](#footnote-16)

The campaign to assign political accountability to Mr Morrison for almost every issue – Commonwealth and State – likely motivated his wish for the appointments in question. It also led to Parliament handing him uncontrolled powers to deal with national emergencies.[[17]](#footnote-17)

A better analysis of the appointments situation would have led to observations about the paradox that emerged: some Parliamentarians were so keen to have Mr Morrison seen to be ‘accountable’ via their questioning of everything, they failed their main duty: to control the Government – outlined in section 3.6 below.

The Inquiry report distracted from the important point: responsible government and accountability is based on Parliamentary *control* of the Government. This is despite the report citing with approval:

*‘The point was 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”.’*[[18]](#footnote-18)

### 3.4 Responsible Government (b) – breach?

That is not to deny the secret appointments fiasco undermined responsible government or to say the above explanation is any excuse for Mr Morrison’s behaviour.

He did things he should not have done even if goaded into doing them. He did not properly administer his Department which failed to ensure the public was aware of his – and most other Ministers’, including those of prior Governments - powers.

Responsible government was undermined by this affair because revelation of secrecy of the appointments added to a growing volume of behaviour that reduces public confidence in: Parliament controlling the Government; members of the Government acting within their powers.

### 3.5 Responsible government (c) - Constitution

The Inquiry report repeated the Solicitor General’s assertion that the secret appointments did not breach the Constitution even though they undermined responsible government. That assertion is internally inconsistent.

The contradiction: a central purpose of the Constitution is responsible government; (in)actions that undermine responsible government can be Constitutionally valid.

On several occasions in recent years, the High Court held legislation invalid to the extent it undermined key aspects of responsible government. Neither the decisions nor reasoning were referred to in the report.[[19]](#footnote-19)

If Parliament cannot Constitutionally undermine responsible government, why is it assumed the Executive - which is controllable by Parliament and which has the responsibility for upholding the Constitution - can?[[20]](#footnote-20)

The report said: ‘*The public did not know something that it was entitled to know, namely the identity of persons appointed to administer departments of State.’* That comment is inconsistent with claiming the appointments were valid i.e., it asserts the Executive can disregard rights of the public.*[[21]](#footnote-21)*

The report did not attempt to explain the contradiction. As such, it should be assumed this assertion of the Solicitor General and the report was wrong. The mistake is unfortunate because it lessens the value of upholding – the consequences for undermining - responsible government.

### 3.6 Responsible government (d) – whole of government

A consequence of that error is a need for further examination of (in)actions of Mr Morrison while the appointments were secret and of his explanations that relate to Parliamentary control – as distinct from mere questioning – of the Government.

Professor Twomey alluded to the issue of this affair being one example of a deeper problem of Government attitudes:

*‘Such a lack of transparency is indicative of a lack of respect for the institutions of government and for the general public who have a right to know how power is allocated’.[[22]](#footnote-22)*

Such attitudes are revealed by a deeper analysis of part of Mr Morrison’s explanation: the appointments allowed for a ‘whole-of-government’ or ’national interest’ perspective to be brought to some Ministerial decision making – notably public health directions and financial payments.

‘Whole-of-government’ - like ‘cooperation between levels of government’ - is invariably put and seen as a desirable way for Governments to conduct themselves. It is the rationale for Cabinet.[[23]](#footnote-23)

In moving the November 2022 motion to censure Mr Morrison, Leader of the House Mr Burke claimed Cabinet was undermined because it was not informed of the appointments. Commentators had interpreted the appointments as signalling Mr Morrison lacked trust in Cabinet and Ministers – and presented this as a power grab.

However, Mr Morrison - speaking to the censure motion - refuted such claims in saying some appointments were to deal with significant powers *‘that were beyond the oversight of Cabinet’.* [[24]](#footnote-24)

That refutation carried an implication: the intention of the appointments was to ensure a whole-of-government perspective in decision making.

Mr Morrison’s argument about matters being beyond Cabinet arises when legislation gives powers to a particular Minister for narrow purposes. An example is the Biosecurity Act delegation to the Minister for Health - to deal with human biosecurity emergencies. That delegation is to be exercised by the Minister personally.[[25]](#footnote-25)

Yet that shows a problem with the argument. The legislation limits factors that may be taken into account in decisions to deal with human biosecurity emergencies. Parliament had taken Cabinet’s whole-of-government considerations out of play. Introduction of Cabinet views into such decision-making would be contrary to Parliament’s intent of how such emergencies should be addressed, i.e., by the Health Minister for public health purposes.

A wish to take a broader perspective is not advanced by making the Prime Minister (another) Health Minister. The Prime Minister would be as unable as the Health Minister or Cabinet to take wider perspectives in relevant decision-making. This raises a concern with Mr Morrison’s explanation: it appears to suggest the Government’s wish for broad perspectives (in determining emergency responses under the Biosecurity Act) should invalidate Parliament’s wish for a narrow perspective.

Only Parliament, by (changing the) legislation, can allow introduction of what the Government considers to be national interest or whole-of-government considerations into decision making under the emergency provisions of the Act. Otherwise, Parliament would be unable to control the Government.

However, by the Biosecurity Act precluding disallowance, Parliament had – in 2015 - signalled a lack of interest in it controlling a Minister’s ‘god-like powers’. It also signalled it did not want Cabinet Government to supervise that individual’s use of those powers.

Such lack of interest in controlling a single Minister’s views about how to deal with emergencies was reinforced by identical treatment of similar god-like powers available to the Prime Minister under the National Emergency Declaration Act which was passed in 2020. A further reinforcing factor was the extraordinary circumstances under which that legislation was hastily passed without substantive discussion - just in time for Christmas holidays in 2020.[[26]](#footnote-26)

Hence, Mr Morrison’s argument sheds light on two important factors overlooked by the report.

First, the critical factor of responsible government is Parliament’s supremacy over the Government. That supremacy is based on an ability to control, rather than merely question, Government members. ‘Accountability by questioning’ arises from that control.

Second, to be effective, responsible government must operate as a two-way street with Parliamentarians taking some interest in controlling the Government – not merely questioning or running campaigns against the Prime Minister or other particular political ‘targets’. The attitudes of politicians to Government and Parliament are a foundation of responsible government.

Criticism of Mr Morrison undermining Cabinet is facile and trivial – he effectively appointed members to, and determined what would be decided by, Cabinet. His attitude to Cabinet is irrelevant and calling the affair a ‘power grab’ introduces a red herring. It diverts attention from a real problem: Parliament being undermined by losing control of the Government – encouraged by Parliamentarians abrogating their responsibilities - enabling a real power grab by someone less well intentioned than recent Prime Ministers.

## 4. Conclusion

### 4.1 The Inquiry etc.

The secret appointments affair was straightforward. It should have been dealt with quickly.

Contrary to much early commentary and the title of the Inquiry, there is no concern with a Prime Minister being appointed to other portfolios.

There is a concern with the secrecy of the appointments – as there would be with any secrecy about which Minister or official holds which powers. That should be resolved by a requirement to publish a list of Ministers and officials and the powers they hold.

However, Prime Minister Albanese sought to prolong public exposure of the matter. That exposed deeper issues which, unfortunately, the Solicitor General and the Inquiry overlooked.

One such issue is the problem arising from secrecy: uncertainty about whether those in positions of authority are acting *within* their powers. While Mr Morrison acted within the powers of the appointments in this affair, the secrecy facilitates exaggerations by others of their powers.

Another issue arises from Mr Morrison’s explanation of a need for the Prime Minister to have powers to make decisions for which Cabinet oversight is precluded.

That argument – ‘whole of government’ considerations - leads away from responsible government, of the Government being controlled by Parliament.

It was not merely secrecy or Mr Morrison which undermined responsible government.

Parliament was complicit by rejecting the key mechanism for controlling Government decisions – disallowance – for declarations of, and actions to address, human biosecurity emergencies (2015) and national emergencies (2020). Such rejection likely signalled to Mr Morrison Parliament’s lack of interest in enforcing real accountability. As outlined in section 4.2 below, that type of signal has recently been reinforced.

A further issue is the contradiction inherent in the Solicitor General’s opinion: that the secret appointments did not breach the Constitution even though they undermined a central purpose of the Constitution – responsible government. The Inquiry accepted the opinion without recognising the contradiction.

In my view, analyses by the Solicitor General and in the report were weak. The report’s recommendations were reasonable but unduly limited as it did not adequately explore issues arising from the secret appointments.

One result is the applecart of growing Government dominance over Parliament has not been slowed, let alone upset. The opinion and report facilitated discussion of the affair being channelled into just the ‘evils’ of Mr Morrison – transient failures of a person or a group, and internal party ructions - rather than another example of Governments’ increasing disregard of Parliament and the law.

Given the result, and their failure to caution Governments and Parliaments – including the current ones – about such disregard, it would have been better to not have the Solicitor General’s opinion or Inquiry.

### 4.2 Scandalous?

This article indicated the author’s submission to the Inquiry was not published and the Inquiry said it did not publish some submissions for reasons including they were scandalous.

This episode – unnecessary and prolonged inquiries into matters expected/intended to reflect poorly on leaders of a political adversary – is not alone in raising reminisces of a former Government.[[27]](#footnote-27)

The trigger for the affair – the real problem exposed by the secret ministries fiasco - was Parliament granting uncontrolled ‘god-like’ powers to an individual Minister without allowing a possibility of Cabinet oversight.

That was started, sans explanation, via the Abbott administration introducing the Biosecurity Act. Later, when he was Prime Minister, Mr Morrison saw the problem. Yet rather than fix it by proposing legislative changes, he held on to - grasped - the Biosecurity powers grabbed by the Abbott Government. And grabbed some more under the guise of national emergencies.[[28]](#footnote-28)

Amendments to the Act initiated by the Albanese administration in late 2022 could – should - have addressed the problem but made it worse. That is despite the changes supposedly being based on ‘*important lessons’* from the pandemic.[[29]](#footnote-29)

Such lessons were drawn by a Government: within four months of taking office; that had been in Opposition during the challenging parts of the pandemic; excluded from discussions about the key Commonwealth and State responses to the pandemic; which so far has failed to start any lessons-from-the-pandemic Inquiry of the type it promised during the election campaign.[[30]](#footnote-30)

The amendments also make the situation worse despite the problem being shown by the Inquiry report *prior to* the relevant, if brief, Parliamentary debates. Had the House of Representatives been less hasty and waited a single day to hear Mr Morrison’s response to the censure motion, it would have heard – yet again – about the problem which the amendments exacerbate.[[31]](#footnote-31)

That the changes to the Biosecurity Act strengthen the arm of Ministers and weaken Parliament’s control - just like the Abbot era legislation - speaks volumes. As does the Government’s ignoring scathing criticisms by Senators of that practice – most of whom then voted in favour of it, repeating the Senate’s performance re the National Emergency Declaration Bill.[[32]](#footnote-32)

Reminisces go beyond this affair. A previous article observed eerie similarities between the Abbott and Albanese Governments approaches to infrastructure – from offering billions of dollars of public monies for meritless proposals timed to influence a Victorian election, to blatant pork-barrelling on the NSW Central Coast. All that and more supposedly excusable as implementation of election promises.[[33]](#footnote-33)

As was the case for the Abbott Government in 2013-14, it is difficult to avoid concluding the present Government is driven by ideology and symbolism. It has dealt with criticisms by diversions and pretences that major proposals lack consequences. Meanwhile, it seems reluctant to complete the transition from an Opposition dedicated to whipping-up personal resentment of a now former Prime Minister.[[34]](#footnote-34)

Like the Abbott administration, the Albanese Government is getting early applause from ‘the base’ and positive results in opinion polls.[[35]](#footnote-35)

It would be scandalous to not wish for better in the new year, lest the remainder of the Abbott Government’s trajectory is repeated – after the first real Budget is set out.[[36]](#footnote-36)

J Austen

31 December 2022

1. <https://www.thejadebeagle.com/mma.html>. [↑](#footnote-ref-1)
2. Submission at <https://www.thejadebeagle.com/mma.html>. It was not identified by the report or published. The report said 62 submissions were received. Of these, 47 were published. The report claimed it would be inappropriate to publish some submissions for reasons of requests by authors or, for example, because they were scandalous or defamatory. [↑](#footnote-ref-2)
3. <https://www.ministriesinquiry.gov.au/> [↑](#footnote-ref-3)
4. God-like powers: <https://www.theaustralian.com.au/commentary/emergency-powers-secret-ministries-avoid-scrutiny-of-parliament/news-story/5c8580593ff6319994d9625a3b0f8a99>

On 5 March, at an Attorney General’s meeting to discuss the powers (Report para 98): ‘*Senior General Counsel with the AGS, suggested that for the purposes of the exercise of the human biosecurity emergency powers under the Biosecurity Act, the “Health Minister” may be not only Mr Hunt but also the two junior ministers who had been appointed to administer the Department of Health’……* In early March: *‘Mr Porter was surprised that the Biosecurity Act had been passed by the Parliament in the form in which it did. He considered that the human biosecurity emergency powers were extraordinary and he was critical of the omission of appropriate legislative checks and balances governing their exercise.’*

*V*alidity of the extent of these powers has not been tested. See for example: <https://www.unswlawjournal.unsw.edu.au/wp-content/uploads/2020/03/04-Carter.pdf> [↑](#footnote-ref-4)
5. Provided such over-ruling was consistent with the relevant legislation – see section 3.6 below. [↑](#footnote-ref-5)
6. It noted the potential in such a case for Ministers to issue conflicting instructions. That potential already existed in relation to the emergency health powers - see note 4. [↑](#footnote-ref-6)
7. Report paras 19-20. [↑](#footnote-ref-7)
8. <https://www.aph.gov.au/Parliamentary_Business/Hansard/Hansard_Display?bid=chamber/hansardr/26233/&sid=0015> [↑](#footnote-ref-8)
9. Comments in my submission were summarised as: ‘*The inquiry should have regard to:*

	1. *the paradox in the Solicitor General’s opinion – adherence to the Constitution’s express terms could undermine its purpose of representative and responsible government;*
	2. *appointments of a (Prime) Minister to administer multiple Departments does not undermine responsible government;*
	3. *of itself, non-disclosure of the appointments of Mr Morrison did not directly undermine responsible government;*
	4. *nonetheless, uncertainty about Ministerial powers – which non-disclosure of appointments contributes to – creates conditions in which serious threats to the system of government can emerge;*
	5. *other aspects of such uncertainty, which pre-existed the appointments in question, continue today and should be rigorously addressed by Parliament and the Government.’* [↑](#footnote-ref-9)
10. Twomey: <https://www.cjccl.ca/wp-content/uploads/2021/05/10-Twomey.pdf> [↑](#footnote-ref-10)
11. See for example: [https://www.law.uwa.edu.au/\_\_data/assets/pdf\_file/0006/3096744/03-Robert-French,-Executive-Power-in-Australia-COMPLETED-PDF.pdf](https://www.law.uwa.edu.au/__data/assets/pdf_file/0006/3096744/03-Robert-French%2C-Executive-Power-in-Australia-COMPLETED-PDF.pdf) [↑](#footnote-ref-11)
12. ‘May’ since there may be doubts about the validity of a decision which does not take account of affected parties or their right to be heard. For example: <https://www.alrc.gov.au/publication/traditional-rights-and-freedoms-encroachments-by-commonwealth-laws-alrc-report-129/14-procedural-fairness-2/procedural-fairness-the-duty-and-its-content/> [↑](#footnote-ref-12)
13. Royal commission: <https://www.thejadebeagle.com/tip-fire-a.html>.

Paranoia etc – reports had ASIO Director General warning in November 2022 ‘*some “angry and alienated Australians” could turn to violence after becoming trapped in an echo chamber of misinformation and conspiratorial thinking during their pandemic isolation’.* <https://www.smh.com.au/politics/federal/wieambilla-killings-a-chilling-reminder-of-far-right-threat-in-australia-20221214-p5c6ac.html> [↑](#footnote-ref-13)
14. Report: ‘*274. There are a number of accountability mechanisms available to parliamentarians which depend on knowledge of the identity of the relevant Minister. In particular, “[t]he accountability of the Government is demonstrated most clearly and publicly at Question Time when, for a period (usually well over an hour) on each sitting day, questions without notice are put to Ministers”. A parliamentarian may wish to move a motion with the aim of having a minister provide the House with an explanation for the exercise or the non-exercise of their powers within their portfolio. The identity of the persons appointed to administer a department may also be relevant to the framing of calls for documents, or of questions, by members including during debates in the relevant House or committee proceedings. Self-evidently the mechanisms that allow parliamentarians to “question and criticise government on behalf of the people” depend on knowing who is responsible for the administration of the departments of State.’*

 [↑](#footnote-ref-14)
15. See, for example: <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=CHAMBER;id=chamber%2Fhansardr%2F008878e2-702c-4017-beac-97696e5ca1d0%2F0284;query=Id%3A%22chamber%2Fhansardr%2F008878e2-702c-4017-beac-97696e5ca1d0%2F0355%22> [↑](#footnote-ref-15)
16. <https://thenewdaily.com.au/news/politics/2022/05/09/scott-morrison-labor-ad-spending/> [↑](#footnote-ref-16)
17. <https://www.thejadebeagle.com/emergency-achieved.html> [↑](#footnote-ref-17)
18. Report para 270. [↑](#footnote-ref-18)
19. Examples, which relate to the implied freedom of political communication, are in the previous article - see note 1.

 [↑](#footnote-ref-19)
20. Constitution s.61. [↑](#footnote-ref-20)
21. Report para 287. [↑](#footnote-ref-21)
22. Report para 281. [↑](#footnote-ref-22)
23. Explanation: see note 2. Cabinet rationale: <https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/Practice7/HTML/Chapter2/Cabinet> [↑](#footnote-ref-23)
24. In August 2022, the ABC reported *‘he feared "some threat to the national interest as a result of unilateral action by an individual". In those circumstances, he felt the prime minister should have "the ability to take responsibility and to take action".’* <https://www.abc.net.au/news/2022-08-18/scott-morrison-secret-ministerial-roles-lack-trust-extraordinary/101343202>

In Mr Morrison’s response to the censure motion of late November, he put it: ‘*significant powers were activated by the government, including under the Biosecurity Act and in financial delegations to the Minister for Finance, that were beyond the oversight of cabinet. I elected to put in place a redundancy to those powers and an oversight on those powers in the departments of Health and Finance. I do not resile from these decisions and believe them entirely necessary, mirroring many arrangements similarly being implemented in the private sector at the time’*: see note 8. [↑](#footnote-ref-24)
25. The objects of the Biosecurity Act (2015) are management of biosecurity risks and emergencies and giving effect to Australia’s international obligations including under international health regulations – s.4. After declaration of an emergency by the Governor General, relevant powers can only be exercised by the Health Minister personally - s.274. The powers enable the Minister to do anything they think needed to prevent or control human disease subject to being effective, appropriate and no more restrictive or intrusive than required – s. 477. Neither the declaration nor powers are subject to disallowance by Parliament, yet they are legislative instruments and must be published on a register – s.475(2), 477(2). <https://www.legislation.gov.au/Details/C2020C00127>, <https://www.legislation.gov.au/Details/C2020C00127>. [↑](#footnote-ref-25)
26. <https://www.thejadebeagle.com/emergency-achieved.html> [↑](#footnote-ref-26)
27. Royal Commission into the Home Insulation Program 2013-14 (6 months) <https://apo.org.au/node/41087>; Royal Commission into Trade

Union Governance and Corruption 2014-15 (21 months) <https://www.royalcommission.gov.au/trade-union> [↑](#footnote-ref-27)
28. Started without explanation: [https://parlinfo.aph.gov.au/parlInfo/search/display 20fordisplay.w3p;query=Id%3A%22chamber%2Fhansards%2Ffe616c1c-5dd1-448f-888c-8165d8ccf7de%2F0171%22](https://parlinfo.aph.gov.au/parlInfo/search/display%2020fordisplay.w3p;query=Id%3A%22chamber%2Fhansards%2Ffe616c1c-5dd1-448f-888c-8165d8ccf7de%2F0171%22); <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansardr%2F07c1718f-8e51-4958-9cc9-f8492bfb5c93%2F0019%22> [↑](#footnote-ref-28)
29. Biosecurity Amendment (Strengthening Biosecurity) Bill 2022: *‘to: enable the minister to determine certain biosecurity measures and requirements for individuals or classes of individuals who are entering Australian territory for the purposes of preventing a disease or pest that is considered to pose an unacceptable biosecurity threat, and establish civil penalty provisions…’* <https://parlwork.aph.gov.au/bills/s1350#:~:text=to%3A%20enable%20the%20minister%20to,establish%20civil%20penalty%20provisions%20for> *‘Important lessons from the pandemic’:* <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansards%2F26174%2F0176%22> [↑](#footnote-ref-29)
30. Four months: the Bill was tabled end September 2022. Challenging parts of the pandemic: from around March 2020 to February 2022. Excluded: the then Opposition was excluded from participation in the key national forum for discussions about responses – ‘National Cabinet’. Promised inquiry: <https://www.thejadebeagle.com/tip-fire-a.html>

 [↑](#footnote-ref-30)
31. Dates: Inquiry report published 25 November. Biosecurity Bill amendment debates: Senate 25 November, House of Representatives 29 November. Mr Morrison’s response to censure motion 30 November. [↑](#footnote-ref-31)
32. Scathing criticisms: Senate Committee for Scrutiny of Bills, Digest 23 November 2022 at p.48-54 [file:///C:/Users/jadeb/Downloads/d07\_22.pdf](file:///C%3A/Users/jadeb/Downloads/d07_22.pdf); and e.g. Senators Roberts, Pocock, Scarr, Whish Wilson at: <https://parlwork.aph.gov.au/bills/secondreadings/s1350#%7B%22Page%22%3A3%2C%22Take%22%3A10%2C%22Sort%22%3A0%2C%22Keyword%22%3Anull%2C%22QuestionNumber%22%3Anull%2C%22IsTitleSearch%22%3Atrue%2C%22DateRangeFrom%22%3Anull%2C%22DateRangeTo%22%3Anull%7D>. Senator Roberts did not vote in favour of the Bill.

Repeat performance: <https://www.thejadebeagle.com/emergency-achieved.html> [↑](#footnote-ref-32)
33. <https://www.thejadebeagle.com/tipfire-d---infrastructure.html> [↑](#footnote-ref-33)
34. <https://theconversation.com/two-years-in-even-supporters-despair-of-abbotts-feeble-government-46797> [↑](#footnote-ref-34)
35. Polls: <https://www.theguardian.com/world/2013/oct/29/tony-abbotts-popularity-on-post-election-high-says-poll>

 <https://www.theguardian.com/australia-news/2022/dec/13/essential-poll-three-quarters-of-voters-believe-cost-of-living-crisis-will-worsen-but-majority-give-albanese-thumbs-up> [↑](#footnote-ref-35)
36. <https://theconversation.com/abbott-takes-poll-hit-over-budget-as-shorten-surges-as-preferred-pm-26856> [↑](#footnote-ref-36)