

# Bungling Crown Privilege: Australia's Cabinet Security Breach

By [Dr. Binoy Kampmark](#)

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*Journalists would have seen it as a scoop, and insisted that no laws had been broken. Politicians might have considered it a calamity. Whatever one terms Australia (parliamentary democracy; constitutional monarchy) secrecy remains the state's watchword. When it comes to bureaucratic provisions that supposedly safeguard the state against the prying eyes of the public, all justified in their name, Australia does rather well.*

This is particularly so on the subject of Cabinet files, insulated from public view by that curious legal creature known as [public interest immunity](#). In its older variant, the term "Crown privilege" was used. Over history, the courts of Britain and Australia have shown a marked trust in the word of a minister.

As the House of Lords decision of *Duncan v Cammell Laird & Co.* (1942) asserted, the minister's certification that the documents should not be produced as contrary to the public interest was essentially unimpeachable. The public, effectively, had to be protected from the government's own conduct.

Cabinet minutes, discussions and associated documents were deemed particularly sensitive, though [Australian courts](#) have, at stages, taken it upon themselves to determine whether their contents ought to be made known to the public.

In the words of High Court Justice Harry Gibbs in [Sankey v Whitlam](#) (1978),

"It is however clear that the court should prevent the disclosure of a document whose production would be contrary to the public interest even if no claim is made by the Minister or other high official that its production should be withheld."

How paternalistically grateful we must all be for that.

Cabinet is an enclave, where, supposedly, frontbenchers of government can hammer out in frankness and candour policy viewpoints in a pre-pasteurised way. In such a state, the goo, the fat and the flavour remain, at least before it reaches the party room or parliamentary chamber. By that point, sanitisation might have taken place and scandal avoided.

That this approach, and dare one say it, mentality, has not been challenged with more rigour by Australian electors and, in some cases, the elected, is a sure sign about how healthy the actual state of democracy is in the country. Nanny and nurse, in other words, retain their aura, a vestigial power over the political fabric.

All's the more interesting, then, when this wall of secrecy finds itself breached. This week, government faces turned crimson with what may well be one of the [largest breaches of cabinet security](#) in the country's history.

It all happened because documents were found in [two locked filing cabinets](#) as part of an auction of ex-government furniture in Canberra. The files in question duly wound their way to the national broadcaster, precipitating discussion between the ABC and the Department of Prime Minister and Cabinet.

On late Thursday evening, officers from the domestic intelligence agency, ASIO, could be seen retrieving the papers in question in Brisbane, Melbourne and Canberra from the premises of the ABC.

The return of the documents was discussed in a [statement](#) released by the ABC.

"The ABC and the Department of Prime Minister and Cabinet have agreed on the securing of and the return of the documents which were the subject of the ABC's Cabinet Files reporting to the Commonwealth."

The statement continues, not without some cheekiness, that,

"This has been achieved without compromising the ABC's priority of protecting the integrity of its source and its reporting, while acknowledging the Commonwealth's national security interests."

The documents - numbering thousands marked "top secret" and "AUSTEO" (for Australian Eyes Only) are illuminating on a several levels. For one, they enable Australians - and others, for that matter - to get a flavour of what exactly is busying those keen members of Cabinet

A series of reactionary nuggets come to the fore. Former immigration minister, **Scott Morrison**, for one, is particularly charming. When advised by the Department of Immigration and Border Protection that up to 700 asylum seekers had to be granted permanent protection under existing legislation, he demurred. He duly sought "[mitigation strategies](#)" to prevent such a grant, including delaying ASIO's security-checks. Deadlines would duly pass, as would the problem

Another juicy instalment can be found in a proposal considered by the Abbott government ahead of the 2014 budget to [ban anyone under 30](#) from accessing income support. The expenditure review committee, comprising the dark Trinitarian force of former **Prime Minister Abbott**, former treasurer **Joe Hockey** and Finance Minister **Matthias Cormann**, requested then social services minister Kevin Andrews to consider methods of prohibiting "job snobs" from receiving welfare payments.

The response from parliamentarians to this breach do not centre on scolding government officials or members of cabinet for inappropriate views or policies. Attitudes and opinions are less important than the management of information. The breach, in other words, rather than the substance of it, is what matters.

[Chris Bowen](#) of the opposition Labor Party, for instance, fears for his country, which is

another way of saying he fears what others might think of it.

“This is embarrassing for the country, it is embarrassing to our allies who share intelligence with us and assume that we will be able to keep it.”

The Department of Prime Minister and Cabinet have come to a solution on how best to cope with the breach: investigate itself. The prospects of this generating into a Canberra farce, a bureaucratic comic interlude, are high.

One person not laughing (he rarely does in any case) is former intelligence analyst and current independent member of the Australian federal parliament, [Andrew Wilkie](#).

“We need an independent investigation to look at this systematically.”

This is exactly what the government will do its best to avoid.

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***Dr. Binoy Kampmark** was a Commonwealth Scholar at Selwyn College, Cambridge. He lectures at RMIT University, Melbourne. Email: [bkampmark@gmail.com](mailto:bkampmark@gmail.com)*

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