

Time for change - the Attorney General and the AAT

Pearls and Irritations. By Greg Barns, 25 May 2022

Just before erstwhile Prime Minister Scott Morrison called Saturday's election Senator Cash shamelessly appointed a number of Liberal and government members and staffers to the AAT where they will earn between around \$190,000 to \$380,000 a year. There was no attempt to hide this stacking of this quasi judicial body.

The office of Attorney-General is one that has been tarnished by the Morrison government. Both Christian Porter and Michaela Cash, the immediate predecessors to current AG Kay Gallagher, one of the five ministers sworn in yesterday, (and likely AG when the full Cabinet is announced Mark Dreyfus), used the office to destroy the independence of the Administrative Appeals Tribunal (AAT) by turning it into a branch of the Liberal Party, and to approve the disgraceful prosecution of Bernard Collaery, the man who blew the whistle on the Howard government's espionage against East Timor in the early 2000s. And, as has been the case since 9/11, both were in the thrall of the authoritarian security state bosses in ASIO, ASIS and the like and passed into law whatever odious attack on liberty was served up to them by those agencies.

What Senator Gallagher immediately could do, and should do, is ensure that the Attorney-General is no longer used to undermine the rule of law by ending the prosecution of Canberra lawyer Bernard Collaery. She, and Mr Dreyfus should also promise to abolish the AAT.

The AAT has become so stacked with Liberal Party members, former MPs and staffers that it must be killed off. This mechanism was established in 1977 by the Fraser government to ensure ordinary citizens could challenge decisions about tax, pensions, migration visas and the like cheaply and quickly. For many years the AAT performed this role admirably. While there have always been a handful of appointments to it which could be said to be political, from the time Tony Abbott became Prime Minister the numbers appointed who could be labelled in that way is obscene.

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Just how rotten this practice of stacking has become is starkly illustrated by a recent Australia Institute report. It has calculated that while in "the Howard and Rudd/Gillard/Rudd administrations, political appointees accounted for 6 and 5 per cent of all appointees respectively," "during the Abbott/Turnbull/Morrison administration, political appointees accounted for 32 per cent of all new appointments." In the case of the Morrison 4 in every 10 appointments was a government supporter or sympathiser.

Mr Dreyfus should pass urgent legislation abolishing the AAT and creating a new body where all appointments are freshly made. The appointments process should be conducted by an independent panel which makes recommendations to the Attorney-General.

But wouldn't such a drastic step be viewed as an attack on judicial independence? No. What Mr Dreyfus would be doing is restoring the independence of decision making where the government is always a party.

On Mr Collaery if Labor is serious about protecting citizens who blow the whistle on corruption and misdeeds by security agencies like ASIS then Mr Dreyfus should withdraw Senator Cash's consent for the prosecution of the former ACT Attorney-General. The pursuit by the Commonwealth DPP of Mr Collaery in the ACT Supreme Court has gone on for nearly five years. It is a case where the Kafkaesque laws allowing secret evidence are being used, and where the legal bill being paid by taxpayers is into the millions of dollars. And for what? For the Commonwealth to send out a message that if you have a conscience and refuse to stay schtum about actions such as ASIS bugging the cabinet room of the poorest country in the world at the time you will be hunted down and sent to jail.

There is no public interest in this case continuing. The offences laid against Mr Collaery had to have the tick from the Attorney-General and Senator Gallagher can say enough is enough. Mr Dreyfus too has flagged he is thinking along these lines, according to The Guardian.

What else could the new AG do immediately to remove the odour which has attached to the office since the Abbott government days when the pompous George Brandis held the portfolio?

It is over 20 years since the first batch of post 9/11 war on terror laws were passed. Since then over 80 bills have become law and they have, without exception, eroded fundamental rights such as the right to silence, the right to independent legal advice, freedom of association, freedom of speech, and freedom of movement. What is required is a review of these laws and the drafting of a serious charter of rights which at least provides protection against an overweening executive government in this area of policy.

What the Albanese government will find is that the new Independent MPs and the Greens support each of these initiatives. Another reason for it to strike now.