

More than halting the unjust Collaery trial awaits Mark Dreyfus

The new attorney-general should halt the wretched prosecution — but the tumour of corruption Collaery and Witness K exposed must be excised.

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Among freshly sworn-in Attorney-General Mark Dreyfus' first priorities will be asking his department to justify the approval of the prosecution of Bernard Collaery.

Doubtless there's a note on the issue near the front of his incoming minister's brief.

Dreyfus' position on the public interest in prosecuting Collaery and Witness K — whose trial ended with a guilty plea and a near-token sentence — has hardened over time as Collaery's trial was deliberately dragged out by vexatious interference by his predecessors Christian Porter and Michaelia Cash.

Far more time in the trial has been wasted by Porter and Cash's representatives constantly interfering in proceedings than either the defence or the Commonwealth Director of Public Prosecutions' barristers, who have mostly been paid to sit in court and watch the AG's barrister make ever more absurd secrecy demands.

Dreyfus made his views clear during the election campaign, calling the conduct of the Commonwealth an "affront to the rule of law". And he signalled his scepticism about the public interest in the prosecution:

" Despite repeated questions in multiple hearings of Senate estimates, I have yet to hear a cogent explanation of how the public interest is served by the ongoing attempts to prosecute Mr Collaery, a former attorney-general of the ACT who is now well over 70, in relation to an allegation of disclosure of events alleged to have occurred almost 20 years ago.

Perhaps that cogent explanation lurks within his briefing package. Perhaps there is something that we don't know about Collaery, something those of us who have known him and supported him for years through this wretched ordeal are unaware of that justifies the despicable treatment he's been subjected to.

But that's unlikely, to say the least.

Even so, to no-bill a prosecution is a major and rare step — as a general principle, it's best politicians keep out of prosecutorial decisions. But the shabby history of this prosecution marks it as a particularly unusual case, especially given the long delay before a second attorney-general to consider the matter eventually approved it. This disgraceful prosecution should never have proceeded in the first place, nor \$4 million wasted on it.

It's been floated in the media that Dreyfus may not withdraw approval for the prosecution, but abandon the Morrison government's relentless attempts to cover up the conduct of the trial by imposing a veil of secrecy over much of the material it is using against Collaery. The secrecy was so absurd, Collaery and the defence were not permitted to see the material being used against him.

That was rejected by the ACT Court of Appeal. The Commonwealth also fought — and won the first round — to prevent Collaery from subpoenaing Commonwealth and former Commonwealth officials and material about the potentially illegal actions of ASIS in bugging the Timor-Leste cabinet.

In the absence of Porter's and Cash's constant attempts to cover up the scandal and the prosecution in the confected name of "national security", those culpable — at least those who remain alive, such as John Howard and Alexander Downer — would be subjected to much greater scrutiny about their role in the whole sordid affair.

But the [foolish decision of ACT Justice David Mossop](#) to hold that, in effect, intelligence agencies were above judicial scrutiny, will be unfinished business regardless of what Dreyfus does. This decision creates a rotten precedent that must be addressed so that intelligence services can't break the law or go beyond their powers without judicial accountability. Whether that's by a superior court again overturning Mossop's pro-secrecy decisions, or by legislation, remains to be decided.

Beyond that is a larger issue. The bugging of the Timor-Leste cabinet, the motives of the Howard government in its tactics towards the fledgling state, the subsequent decisions of the then foreign minister and then DFAT secretary to take jobs with the biggest beneficiary, the abuse of intelligence agencies for corporate espionage, the attempts to cover up the truth of the bugging and the vexatious attempts to punish those who exposed that truth, amount to the greatest scandal of recent decades.

There is a profound depth of corruption in this scandal that incorporates not just one government and one intelligence agency but the whole toxic relationship between powerful resource companies and Australian governments.

The only effective means to begin purging this toxin is a royal commission into the entire scandal, beginning with Australia's intervention in Timor-Leste through to the deliberately vexatious approach of Porter and Cash and their barristers.

This is a tumour deep in our body politic. Stopping a prosecution and moving on won't remove it, or prevent it from recurring.