

Coalition launches new - and false - attack on Bernard Collaery

Bernard Keane – *Crikey* – 24 November 2022

The Coalition is obsessed with Bernard Collaery and is now using Parliament to make false allegations against him.

Shadow attorney-general Julian Leeser yesterday used parliamentary privilege to make an extraordinary and false attack on Attorney-General Mark Dreyfus' decision to end the prosecution of Bernard Collaery, alleging it may have been because "Collaery was an attorney-general in the ACT Labor government".

Leeser's claim is blatantly wrong: Collaery was attorney-general in an ACT *Liberal* government under Trevor Kaine from 1989 to 1991, after helping bring down a minority Labor government in December 1989. Leeser — who was 13 at the time — clearly has little grasp of the history of the Canberra Liberals.

Asked by *Crikey* what evidence he had about a link between Collaery and Labor, Leeser declined to respond.

His misrepresentation of Collaery was part of a broader attack on Dreyfus over his decision to end the vexatious prosecution of Bernard Collaery by the Coalition, which was intended as punishment for Collaery's role in the exposure by Witness K of the potentially illegal bugging of the Timor-Leste cabinet by the Howard government.

Leeser used an obscure [consideration in detail](#) process in the Federation Chamber to ask a lengthy question of Dreyfus, before hastily exiting the room prior to Dreyfus responding.

Calling Dreyfus' decision "extraordinary and unexplained", Leeser repeated the accusations against Collaery and K and quoted former director of public prosecutions (DPP) Sarah McNaughton — the former trade union royal commission counsel hand-picked for the DPP job by the Coalition — claiming the prosecution was in the public interest.

In fact at no stage during the extended legal harassment of Collaery did McNaughton explain how the prosecution was in the public interest — a [fact noted by Dreyfus](#) before the election.

"What message does this send to people who might deal in Australia's secrets?" Leeser said. "What warranted this action?"

As well as falsely accusing Collaery of being a Labor attorney-general, Leeser said "Did Mr Collaery represent himself to the attorney-general and make those requests? How many legal activists put pressure on the attorney-general to make this decision? What public interest has been served by the attorney-general's intervention here?"

Among the "legal activists" who called for an end to the persecution of Collaery were the [Australian Bar Association](#), the [ACT Bar Association](#), [Professor Spencer Zifcak](#) of the Australian Catholic University (where Leeser worked before entering politics) and the [Australian Lawyers' Alliance](#),

Leeser's claim that ending the prosecution of Collaery sends the wrong message to "people who might deal in Australia's secrets" again raises the possibility that, on returning to power, the Coalition might again move to prosecute Collaery via another hand-picked DPP. Leeser has previously refused to rule this out, and again refused to rule that out today when asked by *Crikey*.

Having not let decency stand in the way of its persecution of Collaery, it now seems the Coalition won't let the facts get in the way either.

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MR LEESER (Berowra) (13:09) I rise to day to seek answers from the AG regarding unprecedented actions he's taken in the few months since he'd taken office. The AG has intervened in two key proceedings that were underway before before Australia's independent judiciary before the courts had delivered their decisions. He put an end to those independent processes that were on foot, with no adequate justification. One case was before the ACT Supreme Court and the other was before the High Court. Australians deserve answers as to why he has done this and whether the Attorney has confidence in Australia's independent judiciary.

The first matter was the case of Bernard Collaery, a matter that was before the ACT Supreme Court. The A-G's unprecedented action in discontinuing proceedings against MR Collaery for security related offences is extraordinary and unexplained. Mr Collaery was facing five criminal charges. On the first count. Mr Collaery was facing a conspiracy charge which alleged that he conspired with Witness K to communicate information on matters to the government of Timor-Leste that was prepared by, or on behalf of, ASIS. It's alleged that information came to the knowledge of Witness K by reason of him being, or having been, a staff member of ASIS and that the communication was not made under the ways that would have made it lawful under the Intelligence Services Act. The other four charges were counts of breaching section 29 of the Intelligence Services Act, with Mr Collaery facing allegations that he unlawfully communicated to journalists information that came to him by reason of him having entered into a contract agreement or arrangement with ASIS.

The independent Commonwealth Director of Public Prosecutions, appearing in Senate estimates last October, was asked why the CDPP continued to prosecute the case against MR Collaery. The CDPPP made clear that decisions about whether or not to prosecute were based on public interest and must not be influenced by factors such as possible political advantage or disadvantage to the government or personal feelings concerning the alleged offender or victim. She stated:

"We continue to review matter, whether or not they're in the public interest, and we have determined, on the material known to us and the seriousness of the alleged conduct, that it remains in the public interest to proceed."

But, in July, just weeks after having been appointed, the AG announced that he was ending the prosecution against MR Collaery under section 71 of the Judiciary Act. This was an extraordinary and unprecedented step. In fact, it's the only time in Australia's history that this power has been used.

At the most recent Senate estimates, the acting DPP told the committee that the CDPP was never consulted about the decision to cease proceedings in the Collaery matter. Why, given all the indications from the CDPP that it was in the public interest to proceed, did the AG break with convention and cease this prosecution? What message does this send to people who might deal in Australia's secrets? Why has the AG chosen to intervene in this matter and not matters involving other whistleblowers? Was it because Mr Collaery was an Attorney-general in the ACT Labor government? What does this decision say about the operability of the Intelligence Services Act?

Honourable members interjecting

MR LEESER I can see those opposite are really enjoying these questions. The AG used powers never before exercised and has been opaque about his reasons. What warranted this action? Did Mr Collaery represent himself to the AG and make those requests? How many legal activists put pressure on the AG to make this decision? What public interest has been served by the Ag's intervention here?

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(13:30)

MR DREYFUS (Isaacs – Attorney-General and Cabinet Secretary) I'll deal first with matter raised by the Member for Berowra, who I see has left the chamber without waiting for the answers. The member for Berowra raised some questions about the decision I made under section 71 of the Judiciary Act to end the prosecution of Bernard Collaery, and I have to say that his allegation that I did not explain the decision is an absurd one. I held a press conference at which I explained the reasons behind the ending of the prosecutions of Mr Bernard Collaery. As I said the, and I'll say it again, it reflects the government's commitment to our national security and our commitment to our relations with our neighbours.

The government remains absolutely steadfast in our commitment to keeping Australians safe by keeping secrets out of the wrong hands. As such – and I explained this at the time – I made an application to the ACT Court of Appeal to consider redactions to parts of its judgements prior to publication. That's the end of what I will say publicly about this. The longstanding practice of the government has been to neither confirm nor deny claims about intelligence matters. I will strictly adhere to that practice. I reject completely the absurd, ridiculous and, might I say, disgraceful suggestion made by the member for Berowra that the decision to end the prosecution of Mr Bernard Collaery had anything to do with the service of Mr Collaery as an independent member of the Legislative Assembly of the ACT, during which time he was for a time the AG of the ACT.