

Judge rules against government over ‘unfair’ attempts to prevent Bernard Collaery’s use of new barrister

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<https://www.lawyersweekly.com.au/biglaw/30619-judge-rules-against-government-over-unfair-attempts-to-prevent-bernard-collaery-s-use-of-new-barrister>

In vacating appeal dates, Justice John Burns said the Attorney-General’s solicitors carried a “disturbing suggestion” that they could refuse Bernard Collaery’s new legal representation.

Justice John Burns has criticised the federal government and labelled its attempts to block Bernard Collaery from engaging barrister Bret Walker “unfair” and “disturbing”. He has allowed Mr Collaery to vacate the appeal dates to a time that better suits the new legal team, despite the Attorney-General’s controversial efforts.

Mr Walker, who was described by Justice Burns as an “eminent senior counsel well suited by experience of assisting in the appeal”, met with Mr Collaery during a social function where he offered his services to the appeal on a pro bono basis.

Under the *National Security Information (NSI) Act*, Mr Collaery’s lawyers had to ask the government to approve Mr Walker’s involvement and request permission to access confidential information relevant to the case, a private office and a safe.

As part of the request, Mr Collaery’s solicitors also requested that the appeal dates be delayed for a short time because Mr Walker was unavailable.

The lawyers for Attorney-General Christian Porter took almost a month to properly respond and, when they did, claimed it was “still considering the matter” and wanted to limit the sensitive information “to active and necessary participants in the proceeding”.

“We propose to await the outcome of your client’s application to vacate the hearing dates... before determining Mr Walker’s status under the certificate,” the Attorney-General’s solicitors wrote. “Having a clear picture of the expected involvement for Mr Walker will assist the Commonwealth to properly action this request.”

In his decision, Justice Burns said that the reply carried a “disturbing suggestion” that those who represented and advised the Attorney-General perceived that their satisfaction at the necessity for Mr Walker to be briefed “was in some way relevant”.

He added that counsel will often appear in court on behalf of an accused person “but it is obvious that this is only one of the many roles that counsel may assume”. He said that even if counsel were unable to appear, they could still provide advice to their client, draft submissions and converse with the counsel who will be appearing.

“If this had been a simple case of a late decision to brief Mr Walker in circumstances where he was unavailable on the dates allocated for the appeal, I would have refused the application to vacate the appeal dates,” Justice Burns said.

“The failure of the Attorney-General to act upon the request that the certificate be amended to permit Mr Walker to have access to the brief and take instructions... meant that any benefit to the appellant in briefing Mr Walker with regard to the appeal in the court was likely to be significantly reduced if not lost entirely.

“I consider this to be unfair on [Mr Collaery].”