

THE POWER TO DISCONTINUE PROSECUTION

The previous Attorney-General, Christian Porter, issued [a document](#) in August 2019 in which he commented on the Witness K and Bernard Collaery case. The current Attorney-General, Michaelia Cash, will not comment because the matter is [before the courts](#).

In Question 9 of Porter's document, he stated that requests for any discontinuance would have to be put to the Commonwealth Director of Public Prosecutions. Requests have been put, but Sarah McNaughton declined to answer because it is before the courts. (Written answer to letter.)

The mutual circling around the issue by the A-G and the CDPP appears not to be supported by the law, which clearly states that each of the parties has the power to discontinue cases, and that neither party can override the other.

Judiciary Act 1903 - Sect 71

Discharge of persons committed for trial

(1) When any person is under commitment upon a charge of an indictable offence against the laws of the [Commonwealth](#), **the Attorney-General** or such other person as the Governor-General appoints in that behalf **may decline to proceed further in the prosecution**, and may, if the person is in custody, by warrant under his or her hand direct the discharge of the person from custody, and he or she shall be discharged accordingly.

(2) Nothing in [subsection](#) (1):

(a) affects **the power** under [subsection](#) 9(4) of the *Director of Public Prosecutions Act 1983* **of the Director of Public Prosecutions**;

Subsection 9(4) of the Director of Public Prosecutions Act 1983

(4) Where—

- (a) a person is under commitment, or has been indicted, on a charge of an indictable offence against a law of the Commonwealth; and
- (b) the prosecution for the offence was instituted, has been taken over or is being carried on by the Director,

the Director may decline to proceed further in the prosecution and may, if the person is in custody, by warrant signed by the Director, direct the discharge of the person from custody, and where such a direction is given, the person shall be discharged accordingly.

Powers and functions of Director do not affect those of certain other persons

10. (1) Nothing in this Act affects—

(d) **the power** under section 71 of the *Judiciary Act 1903* **of the Attorney-General** or of a person appointed by the Governor-General;