

Alan Tudge's contempt seems to know no bounds. Why is he still a minister?

Scott Morrison has not said a word about why he is maintaining in his cabinet a minister so disgraced. That, too, is a disgrace.

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It is fair to conclude that acting Immigration Minister Alan Tudge has a deep contempt for the law.

What else could motivate him, when the Federal Court has just declared in explicit terms that he committed one form of contempt (wilful disobedience of court orders), to just double down on what the court may see as another — the one it calls “scandalising the court”?

Bear in mind that Tudge's original contempt was a triple: he refused to comply with an order by the Administrative Appeals Tribunal (AAT) to release a man from immigration detention, and then ignored orders by two Federal Court judges before finally relenting after five days of maintaining an imprisonment that was completely illegal.

Justice Geoffrey Flick of the Federal Court called Tudge's conduct "disgraceful" and "criminal", noting that it exposed him to "civil and potentially criminal sanctions, not limited to a proceeding for contempt".

That was a couple of weeks ago; Tudge has not resigned or been sacked.

Instead he has been layering on the contempt, telling the ABC that Flick's findings were "comments by a particular judge, which I strongly reject ... We're looking at our appeal rights, presently."

This seems to be the law according to Tudge: sort of an opt-in thing. As his lawyers had unsuccessfully argued to several judges, his reason for ignoring the AAT's original order was that he disagreed with it, intended to appeal it and therefore didn't really need to comply with it.

Flick's view on that was that Tudge had decided "to place himself above the law". He also said that "such conduct by this particular minister is, regrettably, not unprecedented".

That last is true. Tudge has been building quite the track record in his contempt for the rule of law. In 2017, he (along with fellow cabinet ministers Greg Hunt and Michael Sukkar) was hauled before Victoria's Court of Appeal over public statements criticising the sentencing practices of that state's criminal courts while the court was considering an appeal in a terrorism case.

Tudge only escaped contempt proceedings in that instance because his lawyers belatedly offered a grovelling apology to the court (Tudge didn't front the judges). I thought he was bloody lucky to get away with it.

A few months earlier, Tudge (at the time responsible for social services) had made himself famous when his office "accidentally" leaked to the media private details from the file of a welfare recipient who had gone public with her story of being monstered by Centrelink as it rolled out its robodebt catastrophe.

Tudge, challenged on the legality and ethics of leaking a citizen's private information to punish them for embarrassing the government, insisted that he had the legal right to do so, saying: "That is what the [*Social Services Act*] allows."

As I wrote at the time, that was wrong as a statement of the law, and I couldn't see how a crime had not been committed. That buck stopped with Tudge.

Returning to the current controversy, the legal needle eye through which Tudge is attempting to thread himself has two parts: first, the judge's statements about his criminality are "commentary" only, not legally significant findings; second, he's going to appeal them anyway because (obviously) the judge was wrong.

It would be correct to say that Flick's statements regarding the legal characterisation of Tudge's conduct — that it was criminal, tortious and in contempt — did not have any direct legal effect. For Tudge to face actual consequences, other processes are

required. For example, he can't be found in contempt without being charged and tried by the court first.

However, Flick's statements were not "commentary". The judge wasn't indulging himself in some casual editorial; he was considering whether he should refuse the discretionary relief Tudge was seeking (to overturn the original AAT decision) because of what he saw as Tudge's disgraceful behaviour. He decided that he should, on the basis of his findings as to just how appalling Tudge's conduct had been.

As to whether Tudge's claimed intention to appeal is relevant, no it is not. He can have a crack at appealing the judge's refusal of relief on the basis that the judge misapplied his discretion. He will have a lot of difficulty doing so, because an appeal court will be loathe to second-guess a first-instance judge's findings on a purely discretionary point. That's just the way the law works.

In the meantime, appeal or not, the judge's findings stand with the full authority of the law. Tudge's dismissal of them as commentary that he can ignore at his pleasure may also be seen as a further act of blatant contempt.

The court may feel that he is telling it, plainly, to get fucked, and that he considers himself, as Flick observed, above the law.

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