

The secrecy in the Witness K case is an attempt by the government to avoid scrutiny

By *Luke Gosling* in The Guardian, 5 July 2020

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Secret trials and secret evidence are often found in literature and history, but it doesn't sound like modern Australia, right?

Yet this is exactly how the Morrison government operates by seeking to impose an extraordinary shroud of secrecy over the prosecution of the Canberra lawyer and former ACT attorney general Bernard Collaery and Witness K for alleged breaches of national security laws.

Witness K, whose identity cannot be revealed because he is a former Australian secret intelligence service officer, has indicated he is going to plead guilty to the charges against him. Collaery has pleaded not guilty. We now know that some of Collaery's trial will be held in secret. And it is not clear whether he will be able to fully defend himself because he may not have access to all of the evidence that will be used against him.

How we got here is long, convoluted and not particularly glorious for Australia. But it's important to put the saga of Witness K and Collaery in the context of this history.

In 2004-05, the newly independent nation of Timor-Leste, one of the world's smallest and poorest nations, was negotiating its maritime boundary with its rich and powerful neighbour Australia. Though chiefly about borders, the negotiations would determine which country owned the oil under the Timor Sea. A lot was at stake for Timor-Leste.

Australia played hardball and was accused of bullying. The then foreign affairs minister, Alexander Downer, was the chief negotiator. When Downer retired from parliament in 2008, he worked with Woodside Petroleum, the major holder of oil leases in the Timor Sea.

Returning to today's trial, Witness K has reportedly been prosecuted for blowing the whistle on an alleged Asis operation at the time to install listening devices in the Timorese cabinet room to learn its negotiating position and gain an unfair advantage. When found out, this was universally condemned, including by the international court of justice.

Australia and Timor-Leste thankfully put these darker times behind them when they signed a treaty in 2018 settling the maritime border. Under the treaty, Timor gets the dominant share of the Greater Sunrise revenue: an 80%-20% split if gas is piped to Australia or 70%-30% if it is piped to Timor-Leste for processing. This was a big step forward.

A big leap backwards is the Morrison government's stubborn intent to continue to prosecute Witness K and Collaery for allegedly breaking laws that prohibit the sharing of intelligence information. The secrecy in the trial is being enforced

through the National Security Information Act, passed in 2004, which requires the court to give the greatest weight to the opinion of the federal attorney general on what is a national security issue. This gives the government disproportionate influence on the conduct of the trial.

The present case and secret trial of Collaery can only be seen as an attempt to prevent further embarrassment of the Coalition and as a vindictive punishment of Collaery for causing it. Taken in the context of Australian federal police raids on the ABC in 2019, the home of News Corp journalist Annika Smethurst and now the AFP recommendation to prosecute ABC journalist Dan Oakes for revealing allegations of war crimes by Australian special forces in Afghanistan, the secret trial of Collaery looks like another attempt by the Coalition government to avoid scrutiny and stifle any opposition to a heavy-handed government.



▲Luke Gosling at Balibo House, Timor-Leste, in 2019.

I understand that difficult decisions must be made on national security. There must be a balance between open justice and keeping the nation safe. But in a free and democratic society the scales must always tilt towards open justice. In the case of Witness K and Collaery there is no obvious national security reason for a secret trial. If there is, the government should clearly and publicly explain what it is.

There are two national security issues more serious than a government embarrassed by the past behaviour of its colleagues. The first is the risk that we, citizens, stay silent when a government abuses extensive national security laws to gag dissent, entrench its power and discourage contrary views. Some might shrug and say “we’re not there” or “it couldn’t happen here”. That’s not true. Our democracy is only as strong as our commitment to defending it from the slippery slope of creeping authoritarianism.

A second national security imperative is not to punish a whistleblower and a lawyer and to respect our valuable relationship with Timor-Leste. The government cannot be allowed to undermine the efforts of so many Australians, including second world war veterans, who fought for and helped our Timorese mates over the decades.

Like many Australians, I have a warm friendship with Timor-Leste. I served there with the Australian army and later worked as adviser to then president José Ramos-Horta. As a volunteer, I helped build schools and ran maternal health and water projects over 10 years ago.

This secret trial cuts against what former governor general Sir Peter Cosgrove called Australia's "debt of honour" to Timor-Leste, owed for their courageous support of Australian troops on their soil in the second world war. Many Timorese-Australian citizens came here fleeing violence in 1975 or 1999. Many Australians remember with pride that we helped in 1999, and in a few months we'll be hosting Interfet veterans in Darwin to remember the main force departing our shores on 20 September, 21 years ago.

This federal government has done much to undermine the ethical infrastructure of our nation and it must stop. It is not good for our resilience, our national security or our international reputation, and it is certainly not in the public interest. This trial has dragged on for many years at great cost to the taxpayer and to the individuals involved.

Like so many others I am appalled by this secret trial, both as a citizen and as a member of parliament. Security agencies do need the powers to protect us, but that must be balanced with the public's right to know and the ever present need for government to be held to account.

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