

Attorney-General Mark Dreyfus orders Commonwealth to drop charges against lawyer Bernard Collaery

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Bernard Collaery was charged in 2018 with helping his client, an ex-spy known only as Witness K, to reveal details of an alleged Australian spying operation in East Timor. (ABC News: Nick Haggarty)

Attorney-General Mark Dreyfus has ordered the Commonwealth to drop the prosecution of lawyer Bernard Collaery, four years after he was charged with conspiring to release classified information about an alleged spying operation in East Timor.

Mr Collaery was charged in 2018 for allegedly helping his client, an ex-spy known only as Witness K, to reveal details of the classified ASIS mission.

The Canberra lawyer was facing the prospect of jail, with [his trial date set for October 24 in the ACT Supreme Court](#).

But Mr Dreyfus confirmed on Thursday he had now determined the Commonwealth prosecution should end.

"It is my view that the prosecution of Mr Collaery should end. I have therefore decided to exercise my power under

Key points:

- Bernard Collaery's prosecution began in 2018 for allegedly helping his client, an ex-spy known as Witness K, reveal details of a classified mission in East Timor
- Mr Collaery thanked his legal team in a statement, and said the decision would allow him to move on

section 71 of the Judiciary Act not to proceed with the prosecution of Mr Collaery," he said in a statement.

"In taking this decision, I have had careful regard to our national security, our national interest and the proper administration of justice."

- Attorney-General Mark Dreyfus says the decision to discontinue the prosecution is informed by the government's commitment to protecting Australia's national interest and national security

'A good decision for the administration of justice in Australia': Collaery



Canberra lawyer Bernard Collaery says the dropping of charges against him will allow him to move forward with his life. (ABC News: Andrew Kennedy)

Mr Collaery released a statement in response to the charges against him being dropped, thanking his legal team at Gilbert + Tobin lawyers and the community at large for their support.

"I am very pleased that the new Attorney-General has looked at this prosecution and all it has involved and taken steps to bring the case to an end. This is a good decision for the administration of justice in Australia," he said.

"I want to thank all of the people across Australia who have supported me and worked so hard to assist me throughout this case. I am in awe of the depth of support in our community for ethical values. I also want to thank those close to me who gave me inner strength.

"I am deeply grateful for the inspirational and arduous work of the partners and staff of Gilbert + Tobin lawyers, and my dedicated team of barristers, all on a pro bono basis. Their resolute professionalism and humanity has restored my faith in the rule of law.

"This decision will allow me to move forward with my life and legal practice."

Partner at Gilbert +Tobin, Kate Harrison, said she had considered it a privilege for the firm to act for Mr Collaery in the case.

"The case raised important issues about the degree of secrecy permitted by our courts under current legislation to allow cases involving national security matters to be dealt with behind completely closed doors, even where they involve important issues of public interest," she said.

"The approach threatens the capacity of a defendant to receive a fair trial."

'An important day for Australian democracy'



Supporters of lawyer Bernard Collaery and 'Witness K' staged a protest outside the Supreme Court in Canberra in 2019. (AAP: Lukas Coch)

Human Rights Law Centre lawyer Kieran Pender, who has advocated over several years for the charges against Mr Collaery to be dropped, said the Attorney-General should be commended for the decision.

"This is an important day for Australian democracy. Bernard Collaery should never have been prosecuted. The Attorney-General has done the right thing and should be applauded for that," he said.

"Whistleblowers should be protected, not punished – it's as simple as that.

"There are many important stories that would never have been told were it not for the courageous actions of those who spoke up."

Following the decision, the Human Rights Law Centre is calling on the Attorney-General to similarly intervene in the [ongoing prosecutions of David McBride, who blew the whistle on alleged war crimes by Australian soldiers in Afghanistan, and Richard Boyle](#), who spoke up about unethical practices at the Australian Taxation Office.

Mr Pender said whistleblowers like Mr Collaery, Mr McBride and Mr Boyle make Australia a better place, and their prosecutions should be dropped "as a matter of urgency."

"The federal government must also make sure that cases like these can never happen again. Ensuring people can safely and lawfully speak up about wrongdoing, without fear of prosecution, must be a priority for the Albanese government," he said.

"The Collaery, McBride and Boyle cases are vivid illustrations of the importance of robust whistleblower protections and the damage done to the public interest when whistleblowers are prosecuted rather than protected.

"Those robust protections do not exist in Australia today and it's beyond time that changed."



Then attorney-general Christian Porter authorised charges being laid against Bernard Collaery and Witness K. *(ABC News: Ian Cutmore)*

Former prosecutor Nicholas Cowdery said he had been hoping the charges against Mr Collaery would be dropped, and was "very pleased" Mr Dreyfus had chosen to do so as one of his early decisions in the role of Attorney-General.

"I could never see how the public interest was being served by the prosecution of Collaery and Witness K and that was one of the principal tests that the Commonwealth DPP had to apply," he said.

"As the case went on, again I couldn't see the public interest justification for the attorney-general, Christian Porter, consenting to the prosecution.

"But there is at least the risk of a perception of a political motive for bringing the prosecution – the activity in East Timor having been conducted under a former Coalition government – so that brought a rather unpleasant tinge to the whole case."

