

## **George Brandis' security clean-up leaves out messy questions**

Richard Ackland - *The Sydney Morning Herald* - 3 January 2014

Loose ends tend to clutter our lives and, supposedly, a new year is a good time to tidy them up or burn them to cinders.

So it is with Attorney-General George Brandis' explanation to Parliament about the Australian Security Intelligence Organisation's raid on the office of Canberra lawyer Bernard Collaery, who is representing East Timor, and the home of his former client, now known as Witness K, who had worked for the Australian Secret Intelligence Service.

These raids occurred on the eve of proceedings brought by East Timor at the Permanent Court of Arbitration in The Hague, seeking to unstick what its government says is an unfair agreement with Australia over a 2006 Timor Sea maritime treaty.

At stake is the revenue sharing from petroleum resources, in circumstances where Australia's claim as to the maritime boundary is uncertain to say the least.

The first loose end is an annoying thread that hangs off the Attorney-General's statement about the ASIO raid.

Mostly it was the usual boilerplate stuff: we don't talk about national security issues (except when a political point can be scored or some irritating person can be squelched), the purpose of the search warrants had absolutely nothing to do with the arbitration in The Hague, the search warrants, signed by the Attorney-General, were sought by ASIO on national security grounds, other allegations are groundless, etc.

Then there was this: "Might I finally make the observation that merely because Mr Collaery is a lawyer that fact alone does not excuse him from the ordinary law of the land. In particular, no lawyer can invoke the principles of lawyer-client privilege to excuse participation, whether as principal or accessory, in offences against the Commonwealth."

That's a pretty clear imputation that somehow Collaery, in acting either for East Timor or the former ASIS officer, was running close to the legal wind. But is that so?

Much was omitted from Brandis' ministerial statement, including the allegation that ASIS had bugged offices in Dili used by members of the East Timorese government and its advisers in order to eavesdrop on their negotiating position over the Certain Maritime Arrangements in the Timor Sea.

<http://www.smh.com.au/comment/george-brandis-security-cleanup-leaves-out-messy-questions-20140102-307rp.html>

What was also omitted was something rather fundamental - that Witness K had gained approval to speak to Collaery about complaints and concerns he had in relation to his employment at ASIS.

On February 26, 2008, the then inspector general of intelligence and security, Ian Carnell, met with Witness K. This was followed by a letter on March 3, 2008, from the inspector general to the former ASIS officer setting out various options for handling his complaint. These included an inquiry conducted by the inspector general of intelligence and security, a grievance review panel, representations to the responsible minister or private legal action.

The complainant replied on March 25, 2008, saying he would like the inspector general of intelligence and security to conduct an inquiry into his concerns and also advised that he had spoken to Collaery and provided him with a general brief, conforming with his security obligations.

There was a further letter on April 2, 2008, from Carnell noting that there had been consultations with Collaery and that the lawyer was likely to be in touch with the inspector general to confirm he had a brief to keep watch of the matter on behalf of his client.

Implicitly, Collaery was authorised to act for the ASIS officer.

Indeed, Collaery had long been an "approved lawyer" in acting for ASIO, ASIS and other security officers. Documents relating to other officers he represented were not removed by ASIO during the December raid on his office.

The complaints that the inspector general of intelligence and security was to investigate flowed by the bugging of the relevant East Timor ministerial room. Collaery says the witness was personally directed by the then ASIS director general, now the Director-General of Security, David Irvine, to plan and effect the bugging mission.

It emerged that one of the beneficiaries turned out to be Woodside Petroleum, which has the licence to exploit the gas fields, which were the subject of the negotiations.

It is understood that all three personnel connected to the bugging operation were removed from their jobs at ASIS.

The explanation given was the need for "generational change". The complaint that was brought to Carnell and Collaery was that "generation change" was a tactic for constructive dismissal or being bundled out on spurious grounds.

The complainant was also concerned about the diversion of resources away from proper defence, security and national interest functions. This had nothing to do with intelligence priorities.

In Collaery's words, there was evidence of a conspiracy "to defraud Timor-Leste - a common law crime, which would support proceedings before an arbitral tribunal".

So, it's a puzzle why Brandis would suggest Collaery was engaged in offences against the Commonwealth when he had approval from the inspector general of intelligence and security to act for the ASIS officer. Nor it is easy to see how the proceedings before the permanent court at The Hague, which are held in-camera, threaten our national security.

At least under the Australian Security Intelligence Organisation Act, the definition of "security" is spelt out and does not include looking after the economic interests of Australian corporations. After the raids and claims by Collaery, the current Inspector General, Vivienne Thom, issued a rare and highly prized statement.

She wasn't aware, to the best of her knowledge, of any current or former ASIS officer raising concerns with her office "about any alleged Australian government activity with respect to East Timor". She checked with Carnell and he didn't have any recollection about this. Further, there were "no discussions with any former or current ASIS officer about any such concerns".

Maybe a bit too cute for words.

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