

Australia's attorney general Christian Porter accused of abusing powers in whistleblower trial

Christopher Knause – *The Guardian* -26 August 2020

The federal government faces accusations of invoking the National Security Information Act to interfere in case against barrister Bernard Collaery

During Senate question time, the government was asked why Christian Porter asked to have “first access” to documents held by Woodside Petroleum before they were provided to Bernard Collaery. (See text below)

<https://www.theguardian.com/australia-news/2020/aug/26/australias-attorney-general-christian-porter-accused-of-abusing-powers-in-whistleblower-trial>

Attorney general [Christian Porter](#) has been accused of abusing the National Security Information Act after interfering in court proceedings to screen documents held by Woodside Petroleum in a case against barrister Bernard Collaery.

Collaery is before court for his role in exposing Australia’s bugging of [Timor-Leste](#) during oil and gas negotiations.

Independent senator Rex Patrick used Senate question time on Wednesday to ask why Porter demanded the federal government have “first access” to documents held by Woodside before they were provided to Collaery.

“How is it possible that an energy company such as Woodside could be in possession of documents that could contain matters related to national security? Or is this simply the attorney further abusing the NSI Act?” Patrick asked.

Collaery faces accusations that he allegedly conspired with his former client, intelligence officer Witness K, to communicate information about the [Australian bugging operation](#) targeting the Timor-Leste government.

The intelligence operation gave Australia an upper hand over Timor-Leste in negotiations related to the Greater Sunrise gas fields, a resource critical to the future of the small, impoverished nation.

The government’s request was made so it could determine whether the documents should be kept secret, using powers of the National Security Information Act, the Senate heard.

Responding on behalf of Porter, Marise Payne, the foreign affairs minister, said the intervention was appropriate, reasonable and not uncommon in such cases.

She said the information in the Woodside documents may have included “national security” information, which, under the act, includes material affecting international relations, including economic relations with foreign governments.

“It was appropriate for the attorney general to have an opportunity to consider whether to issue a certificate under the act, or whether any other formal application or claim ought to have been made in relation to any documents produced by Woodside,” Payne said.

“The application was allowed by the court. Ultimately Mr President, I would note to the chamber and to senator Patrick, that the commonwealth did not seek any protection orders and the documents were provided to the parties.”

Patrick then asked whether the government feared the documents could reveal a “fraud” on Timor-Leste in relation to the giveaway of the nation’s helium assets.

Payne rejected the premise of the question.

The case against Collaery has been [costly, protracted and partly shroud by secrecy](#).

Collaery, who will fight the allegations at trial, has submitted a series of subpoenas to various intelligence and defence agencies and corporations involved in the affair, including Woodside, the operator of the yet-to-be-developed Greater Sunrise fields.

Guardian Australia has [previously revealed](#) that the cost of the case has so far reached \$2.47m, which includes the amount the government has spent responding to Collaery’s subpoenas.

The ACT supreme court had [previously heard](#) the federal government was resisting the release of documents, arguing, among other things, that the release of documents would harm Australia’s international relations.

Collaery’s barrister, Christopher Ward SC, said that argument would be contested.

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**Senate**

Senator PATRICK (South Australia) (14:34):

My question is to the Minister representing the Attorney- General and relates to interlocutory matters and matters incidental to the proceedings of the Commonwealth v Collaery. During the proceedings, Mr Collaery subpoenaed documents from the oil and gas producer Woodside. In response, the Attorney-General sought first access to Woodside's return to subpoena on the basis that their documents could contain matters related to national security. How is it possible that an energy company such as Woodside could be in possession of documents that could contain matters related to national security? Or is this simply the Attorney further abusing the NSI Act?

Senator PAYNE (New South Wales—Minister for Foreign Affairs and Minister for Women) (14:35):

I thank Senator Patrick for some advance advice of his question. While obviously I cannot—and will not—disclose national security information, what I can say in response to Senator Patrick's question is that the NSI Act provides a framework for how national information is disclosed and protected in legal proceedings. It seeks to balance the need to protect national security information with the principle of open justice. Importantly, what protections are put in place are ultimately a matter for the court.

With respect to the senator's specific question, I can advise that the Commonwealth made an application to the court seeking early access to any documents produced by Woodside Petroleum in response to the subpoena dated 2 March 2020. The subpoena called for Woodside to produce documents relating to its dealing with the Commonwealth in relation to negotiations between Australia and Timor-Leste in respect of revenue-sharing arrangements under the CMATS Treaty. **Given the nature of the information sought by the subpoena, documents produced by Woodside might have included national security information, the definition of which can include international relations, which in turn includes economic relations with foreign governments.** (*Emphasis added*)

It was appropriate for the Attorney-General to have an opportunity to consider whether to issue a certificate under the act or whether any other form of application or claim ought to be made in relation to any documents produced by Woodside. This was a precautionary approach. It's not uncommon where documents might reveal interaction with the Commonwealth. The application was allowed by the court. Ultimately I would note to the chamber and to Senator Patrick that the Commonwealth did not seek any protection orders and the documents were provided to the parties.

The PRESIDENT: Senator Patrick, a supplementary question?

Senator PATRICK (South Australia) (14:37):

Thank you for that answer, Minister. Was the Attorney- General's interest in the Woodside documents centred on a concern that they would reveal knowledge of a fraud on Timor-Leste in relation to the giveaway of Timor's helium assets to Woodside and ConocoPhillips?

Senator PAYNE (New South Wales—Minister for Foreign Affairs and Minister for Women) (14:37):

I absolutely don't accept the premise of Senator Patrick's question, and I refer the senator to my first answer.

The PRESIDENT: Senator Patrick, a final supplementary question?

Senator PATRICK (South Australia) (14:37):

Is the Attorney aware of claims that Timor's helium, a highly valuable commodity, was wrongly characterised as waste in the production-sharing contracts and therefore lost to Timor-Leste but a nice profit for Woodside? Is that the dirty secret that is being concealed?

Senator PAYNE (New South Wales—Minister for Foreign Affairs and Minister for Women) (14:38):

Again, I absolutely do not accept the premise of the question from Senator Patrick, and I refer him to my first answer.