The cost of courage:
Australia must do more to protect whistleblowers

Kieran Pender -*Sydney Morning Herald* – 17 December 2020

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As we reach the end of 2020, four brave individuals – Bernard Collaery, Witness K, David McBride and Richard Boyle – are being prosecuted by our government. These whistleblowers spoke up in the public interest and now face the real prospect of jail time. If we want to live in a transparent, accountable democracy, that should trouble us.

Collaery and Witness K revealed that Australia bugged Timor-Leste's cabinet, to help our government rip off an impoverished neighbour during tense oil and gas negotiations. McBride blew the whistle on Australian special forces in Afghanistan – conduct characterised as potential war crimes by the Inspector-General. Boyle called out aggressive debt recovery by the Australian Taxation Office, which targeted vulnerable small businesses.

Each whistleblower first raised his concerns internally. Witness K articulated his misgivings with the Inspector-General for Intelligence and Security, in consultation with his intelligence-approved lawyer, Collaery. McBride went to police. Boyle lodged an internal disclosure. They were sidelined or ignored. In desperation, they spoke up.

But for these principled people, we might never have known about the misdeeds – potentially illegal, or, at the very least, improper – done in our name. We should be praising these whistleblowers. Instead, the Morrison government is prosecuting them. Orwellian? Kafkaesque? Take your pick.

Whether or not Collaery, McBride or Boyle succeed in their defences (Witness K has indicated a willingness to enter a plea of guilty to a single charge of breaching the Intelligence Services Act, subject to a plea bargain), the chilling effect of the prosecutions is severe. What potential whistleblower – having seen the reality faced by this quartet– would accept the risks?

The cost of courage has become too high a price to pay.

It did not have to be like this. In 2013, the Labor government introduced protections for public servant whistleblowers. The Public Interest Disclosure Act provided a comprehensive regime for the disclosure and investigation of wrongdoing and protections for those who speak up. But while a step in the right direction, the law has proven ineffective. In 2016, an independent review by Philip Moss found ''the experience of whistleblowers under the PID Act is not a happy one''.

Last year, a Federal Court judge lambasted the law as ''technical, obtuse and intractable'' and ''largely impenetrable''.

On Wednesday, Attorney-General Christian Porter announced that the government was accepting, in part or in whole, 30 of the 33 recommendations made by Moss. This is welcome

news, but it is long overdue. Porter and his colleagues have sat on this reform for 4 1/2 years. In the meantime, homes have been raided, charges laid against whistleblowers and secretive trials commenced. The Attorney-General must reform the PID Act as a matter of urgency. In the government's official response, it flagged that it intends to go further than the Moss review. This is welcome, although the devil will be in the detail – detail which, for now, remains absent.

If Porter is serious about promoting transparency and probity within our democracy, he should commit to legislating stronger protections for government whistleblowers in early 2021.

Meanwhile, the government has doubled-down on secrecy laws to penalise unauthorised disclosure of official information. It terminates the employment of public servants who dare criticise it online and cuts funding to accountability agencies that were established to keep the government in check. Our freedom of information regime is in tatters. Collectively, these measures guarantee a culture of silence within our public service and make external oversight even harder.

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