

Collaery charges must be dropped and undemocratic secrecy orders must end

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<https://www.hrlc.org.au/news/2021/5/17/collaery-charges-must-be-dropped-and-undemocratic-secrecy-orders-must-end?rq=Bernard%20Collaery%20prosecution>

The Human Rights Law Centre is calling for the Commonwealth Director of Public Prosecutions (CDPP) to drop the prosecutions of whistleblowers Bernard Collaery and Witness K, which to date have been shrouded in secrecy.

Collaery's case returns to the ACT Court of Appeal today for a two-day hearing in which Collaery will appeal an order made under the *National Security Information (Criminal and Civil Proceedings) Act 2004* to hold his trial largely behind closed doors.

Collaery is charged with offences relating to the alleged disclosure of information to the Timor-Leste government and the Australian media. His former client, an ex-intelligence officer known as Witness K, has indicated that he will plead guilty to a summary offence.

The cases relate to allegations that Australian spies bugged the cabinet office of Timor-Leste to give Australia the upper-hand in oil and gas negotiations in the early 2000s. After Timor-Leste commenced legal proceedings in the International Court of Justice and Permanent Court of Arbitration, the two nations signed a revised energy treaty in 2018.

Human Rights Law Centre Senior Lawyer, Kieran Pender said:

“Whistleblowers should be protected, not prosecuted. What our government did in Timor-Leste was wrong and unlawful under international law. The right thing to do would be to apologise to the Timorese people. Instead, the Morrison Government is refusing to admit these misdeeds and prosecuting those who spoke up.

“There is no public interest in prosecuting Bernard Collaery and Witness K, who did the right thing by exposing wrongdoing. The Commonwealth Director of Public Prosecutions has the power to discontinue a prosecution at any time. They should exercise that power.”

The Attorney-General has invoked the *NSI Act* in the Collaery case to ensure that it is heard behind closed doors. The *NSI Act* requires the court to give “greatest weight” to the Attorney-General's views about the national security impact of a case, overriding the important principle of open justice.

“The Attorney-General's use of secrecy in this case is entirely undemocratic: it enables the government to concede in closed court that Australia spied on Timor-Leste while continuing to refuse to admit this publicly. The *NSI Act* should be reformed to better safeguard the principles of openness and transparency that are at the heart of our judicial system,” Pender said.

Defence whistleblower David McBride and Australian Taxation Office whistleblower Richard Boyle also currently face prosecution for speaking up about wrongdoing, while the

government has been sitting on reform to federal whistleblowing law, the *Public Interest Disclosure Act 2013*, for five years.

“The Bernard Collaery and Witness K cases are part of a broader trend. Australian whistleblowers are suffering – and that has a profound democratic cost. A transparent Australia, where people speak up about wrongdoing, is a better Australia. The *PID Act* should be urgently overhauled to empower everyday Australians to feel safe and supported when they do the right thing and call out wrongdoing,” Pender said.