

Australian government drops charges for lawyer who exposed spying on East Timor, but maintains anti-whistleblower laws

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Last Friday, Labor government Attorney-General Mark Dreyfus announced that he was ending the prosecution of Bernard Collaery, a lawyer who had been charged with breaching national security laws by allegedly exposing Australian spying on East Timor.

The end of the prosecution, which was launched in 2018, is no doubt welcome news to Collaery and his supporters.

The 78-year-old, who is a widely-respected barrister and prominent political figure, has been subjected to state harassment and persecution for the best part of a decade. His only supposed “crime” was bringing to light the unlawful actions of the intelligence agencies, as part of Australia’s neo-colonial bullying and thuggery in the Pacific.

Dreyfus’ order, however, will do nothing to end the onslaught against whistleblowers as well as journalists who publish information deemed to be of “national security” significance.

In a press conference outlining the decision, Dreyfus made this plain. “Governments must protect secrets, and this government remains steadfast in our commitment to keep Australians safe by keeping secrets out of the wrong hands,” he declared.

The attorney-general emphasised that he was not establishing any sort of precedent for an end to whistleblower prosecutions. The Collaery case was “exceptional,” he insisted.

The government has given no indication that it will drop other such cases. David McBride, a former military lawyer, is being prosecuted for allegedly exposing Australian war crimes in Afghanistan. Charges carrying a maximum sentence of ten years imprisonment remain against Richard Boyle, who is accused of revealing the aggressive debt-collection practices of the Australian Taxation Office.

Labor is also fully committed to the draconian legislation under which Collaery was being prosecuted.

The barrister faced five charges under the Intelligence Services Act, passed in 2001 by Labor and the Liberal-

National Coalition. The laws aim to outlaw any exposure of the activities of the Australian Secret Intelligence Service (ASIS), the country’s foreign spy agency.

Collaery’s defence lawyers argued that the legislation’s secrecy provisions were voided, by the fact that the conduct of ASIS that had been revealed was unlawful. The prosecution insisted that there was no such public interest defence. In other words, even illegal actions by the spy agency were protected on “national security” grounds.

The federal Liberal-National Coalition government and the prosecution also attempted to hold most of Collaery’s trial in complete secrecy. They invoked provisions of the National Security Information Act, which permits court proceedings to be entirely closed, if “national security” material is being discussed. The attorney-general has sweeping powers to recommend a case be heard in such a Kafkaesque manner. That legislation was also passed by Labor in 2004.

While in opposition, Labor did not oppose the Collaery prosecution, giving the Coalition government a green-light to proceed with it.

More broadly, the Collaery case has highlighted militarist policies and dirty-tricks operations, implicating the entire political and state apparatus, including Labor.

Collaery first became involved in the matter, when he represented an ASIS employee known only as Witness K, in a 2008 workplace dispute. Witness K, a lifelong intelligence agent, allegedly revealed to Collaery that in 2004 he had been involved in a spying operation against East Timor.

ASIS had secretly bugged cabinet meetings of the East Timorese government. The material was then used by the Australian government, on behalf of major corporations, in negotiations aimed at securing favorable access to massive oil and gas deposits in the Timor Gap.

The material was particularly explosive because it exposed the predatory, imperialist character of Australia’s military intervention into East Timor in 1999. At that time, the

Howard Coalition government, Labor and the entire official media, insisted that it was necessary to send troops to the Pacific nation to protect civilians against Indonesian militias.

The Collaery revelations made clear that in reality, all of Australia's dealings in East Timor had been aimed at securing dominance over the strategically-important nation and its significant natural resources as East Timor's nominal "independence" was established.

The spying information was reported in the media in 2013, with Collaery accused of passing on the revelations to Australian Broadcasting Corporation journalists. The same year, Collaery and Witness K testified at the Permanent Court of Arbitration in The Hague, providing evidence in support of an East Timorese legal case against the bugging.

The then Coalition government responded with 2013 police raids against Witness K and Collaery. Witness K was prosecuted under national security laws, pleading guilty last year after court proceedings held entirely in secret.

Most significantly, Dreyfus' decision was not motivated by any intention to end Australia's dirty-tricks operations and meddling in the Pacific. Instead, Dreyfus and the Labor government as a whole are intensifying Australia's aggressive intervention in the region, directed against China.

Dreyfus stated that "All prosecutions involve a balancing of interests. The balance of interests can change over time. This is such a case." He added, "My decision was informed by the government's commitment to Australia's national security and our relations with our neighbours."

The language is vague and includes the usual rhetoric about "neighbours." But what Dreyfus was really raising was that the prosecution of Collaery, which East Timor has consistently denounced, risked complicating the Labor government's drive to dominate the Pacific on behalf of American imperialism.

Since coming to office less than two months ago, this has been a major focus of the new government. During the May election itself, Labor led the charge in a hysterical frenzy over the signing of a security pact between China and the Solomon Islands. This was the "greatest foreign policy failure in the Pacific since World War Two," Labor declared.

It made those statements, under conditions where the US administration of President Joe Biden and the Liberal-National Coalition government threatened the Solomons with military intervention, if China were to establish a permanent defence presence there.

Labor's new Foreign Minister Penny Wong has continued this line. In a series of visits throughout the Pacific, she has threatened the impoverished Pacific Islands with "consequences" if they turn away from the US and Australia and orient to China.

The kind of intrigues exposed by Witness K, are no doubt integral to this aggressive campaign. The Pacific is viewed as a central arena of the US-led confrontation with China, the key front in American imperialism's drive to dominate Eurasia and hence the world.

This militarist program is incompatible with democratic rights. Labor supported the intelligence legislation, under which Witness K and Collaery faced prosecution, as it did all of the anti-terror laws associated with the "war on terror" and the neo-colonial occupations of Iraq and Afghanistan.

Then in 2018, as part of the current war policies against China, Labor joined with the Coalition to pass sweeping "foreign interference" laws. In addition to potentially illegalising much anti-war activity, the legislation contained expanded provisions for the prosecution of whistleblowers, as well as journalists who expose "national security" material, with penalties of up to life imprisonment (see: "Australia's new espionage laws target whistleblowers and political opponents").

In a 2018 interview, Andrew Hastie, then the Coalition's chair of the joint parliamentary intelligence and security committee, said the laws were necessary to prevent "radical transparency" and to stymie those "seeking to get secrets from the United States."

Hastie added: "Radical transparency is Julian Assange dumping a whole bunch of Commonwealth secrets out for public consumption."

Labor did not differ from this attack on WikiLeaks publisher Assange, as it passed laws specifically designed to prevent the sort of journalistic exposures with which he was identified.

Since then, Assange has been charged with 17 Espionage Act offenses by the United States, which is seeking his extradition from Britain. He faces 175 years in a US prison, for exposing US-led war crimes in Iraq and Afghanistan.

The Labor government has rejected demands that it secure Assange's freedom, as a persecuted Australian citizen and journalist.



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