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The Witness K affair is one of the most debased abuses of power in the postwar era

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Witness K revealed a shocking misuse of Australia's spy agencies. It's time that those responsible face the consequences

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Bernard Collaery with senators Tim Storer, Rex Patrick, Nick McKim and MP Andrew Wilkie at Parliament House in Canberra, 28 June 2018. Photograph: Mike Bowers for the Guardian

Nothing chills political debate in Australia faster than claims of “national security”. The term has come to mean whatever politicians choose it to mean, and the lazier and more mendacious the politician, the vaguer the usage.

Straightforwardly, most of us interpret the term as being about state protection from violent terrorism. The first result that shows up if you search for “Australia national security” is nationalecurity.gov.au. The sole focus of this information hub appears to be the prevention of terrorism. Similarly, the blurb on the national security hotline page is entirely preoccupied with gathering evidence that might prevent a violent attack.

If you call this hotline to discuss a multinational gas company needing more negotiating

leverage to rip off the poorest country in our region, I presume they will hang up in your ear. Surely such a task would be a shabby fit for the nation's spy agencies, and miles outside the commonly understood definition of what constitutes national security.

But under cover of a foreign aid project, it is alleged that in 2004 the Australian Secret Intelligence Service (Asis) under then foreign minister Alexander Downer installed listening devices in the wall cavities of government offices in Timor-Leste during tense negotiations over the maritime boundaries covering the Greater Sunrise oil and gas fields in the Timor Sea. The chief beneficiary of this action appears to have been the private consortium led by Woodside, which eventually ended up with exactly what it was after.

The spy in charge of this squalid operation, then the head of Asis technical operations now known only as Witness K, made a complaint to his statutory watchdog - the inspector-general of intelligence and security (IGIS) - about the use of his agency for what amounted to commercial espionage. Shortly afterwards he found himself unemployed. Again on advice of the IGIS, he sought legal advice for wrongful dismissal. Through good fortune, he ended up with barrister and former ACT attorney general Bernard Collaery. For Collaery, whose background in international maritime and treaty law had made him a key legal adviser to the fledgling government of Timor-Leste, Witness K's story was a bombshell revelation.

What follows must surely rate as one of the most debased and bipartisan abuses of power in the postwar era, with one government after another adding new layers of deceit and deflection to the original transgression. It has included Asio raids, passport seizures, further physical surveillance and bugging of premises, and legal threats against those most directly involved. Most recently, in June 2018 the commonwealth director of public prosecutions laid criminal charges against Witness K and Collaery for conspiring to breach section 39 of the Intelligence Services Act 2001. Under this Act, it is prohibited to even reveal instances in which Asis breaks the law.

Naturally, this corrupted spectacle has been justified entirely on grounds of "national security".

"We don't interfere in cases but we always act to ensure that our national security is being properly upheld - that's what we're doing", prime minister Tony Abbott told reporters immediately after the Asio raids on Collaery's legal practice and Witness K's home in December 2013.

"If it's a matter of national intelligence then we're not able to comment and that is the convention", opposition leader Bill Shorten lip-synched not long afterwards.

The bipartisanship extends to complicity. As Collaery told a rally outside Parliament House early in 2016, "... after we drafted a letter to Julia Gillard, saying we wanted confidential arbitration in relation to the espionage, it was the Labor government that authorised clandestine monitoring and other devices to be installed in my chambers, offices and Witness K's home."

Politicians wielding frightening coercive and surveillance powers have only to intone the words "national security" to ensure automatic compliance - and a guaranteed parliamentary majority.

And therein lies the most profound flaw in the accountability tools we rely on to avoid sliding towards a police state. When the major parties cover for each other, it leaves the Greens and crossbenchers with fewer options for holding these people to account.

Why the major parties would let each other get away with behaviour like this is no real mystery.

Four years after the bugging of the Timorese cabinet rooms is alleged to have occurred, Downer quit politics and took up a position as a paid lobbyist for Woodside Petroleum. The former secretary of the Department of Foreign Affairs and Trade Dr Ashton Calvert had already joined the board of directors of Woodside by the time Downer arrived. Labor's former minister for resources and energy Gary Gray was also a former director of corporate affairs at Woodside Petroleum, and his Labor predecessor, resources minister Martin Ferguson, took up an "advisory" role with the oil and gas industry's peak lobby group APPEA only six months after retiring from politics.

It may not surprise you to know that Woodside had donated more than \$1.4m to the major parties in the decade prior to 2017, before they abruptly ceased making such overt influence claims.

None of these rapid career swaps, cash handovers or revolving doors are in any way illegal, which is precisely the scandal.

Using spy agencies in this way, and then compounding the initial abuse with layers of deflection and eventual prosecution of the truth-tellers is outright unethical. But is it illegal? Even allowing for a through-the-looking-glass interpretation of national security so warped that it allows for corporate espionage against our neighbours, can intelligence services lawfully be used in this way?

To find out, a group of four crossbenchers have referred the matter to the Australian federal police, to determine whether or not the actions of Asis in Timor-Leste were illegal in the first place. Greens senator Nick McKim, senators Tim Storer and Rex Patrick, and Independent MP Andrew Wilkie announced the referral on 12 July.

While we await word on whether the perpetrators of this dramatic misuse of Australia's spy agencies will ever face consequences, those who took the risk of disclosing the truth face a much more imminent day in court: a directions hearing on Wednesday, in which the government will argue that the hearing should proceed in secret.

This has gone on for long enough. In his statement confirming that he and Witness K had been summonsed, Collaery sounds the alarm:

The proposition by the Liberal Party that it can use ASIS in plundering the resources of one of the poor nations to our north has to be tested in open court. There must be humanity and honesty in our dealings with developing nations. I call upon the Australian people to stand with me and Witness K in saying, 'We Care.'

Caring, in this context, needs the firepower of a national Independent Commission Against Corruption to prevent future behaviour of this kind. Caring also requires us all to push back hard on these cynical and counterproductive appeals to "national security" by people who clearly mean no such thing.

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