

NATIONAL PRESS FREEDOM

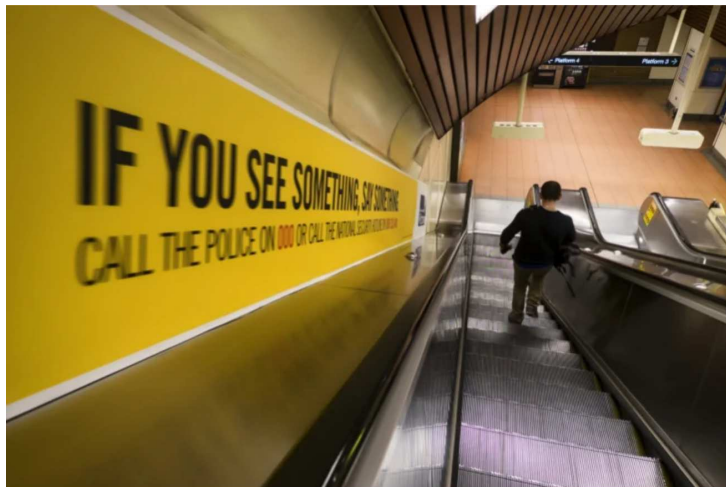
OPINION

With greater powers must come greater accountability

By Alice Drury

October 20, 2019 – 11.39pm

“If you see something, say something,” the bright yellow bus stop sign urged. In 2014 the prominent terrorism awareness campaign saw these billboards strewn across inner Melbourne, urging people to call the national security hotline if something didn’t add up.



The “If you see something, say something” campaign in 2014. LUIS ASCUI

At the same time, Commonwealth Government lawyers were building a prosecution case against two men who saw something – something scandalous – and said something. The government responds very differently to whistleblowers who come forward with information about the national security agencies.

The two men, lawyer Bernard Collaery and his client, known as “Witness K”, now face jail time for blowing the whistle on a disgraceful chapter in Australian intelligence history. The episode highlights the need for stronger whistleblower protections in Australia.

In 2004, Australia and Timor-Leste were engaged in sensitive negotiations over oil and gas rights in the Timor Sea. At that time, Australia’s international intelligence service, ASIS, was in Foreign Minister Alexander Downer’s portfolio. ASIS directed its officer, Witness K, and his team to bug Timor-Leste’s cabinet room to gain an unfair advantage during the treaty negotiations. Despite international law putting the oil and gas reserves almost entirely within Timor-Leste’s boundaries, the negotiations resulted in Australia sharing entitlement to the reserves. One of the greatest beneficiaries of the deal was Woodside Petroleum, [who later gave a lucrative consultancy contract to Downer after he left office.](#)

Most people in government do the right thing. However, if they don't, we should expect that any misconduct will be raised internally and promptly escalated and addressed. When that doesn't happen, we rely on ordinary people to show extraordinary courage and speak out publicly. Whistleblowers are these ordinary people who play a critical role in exposing government wrongdoing.

Witness K and Collaery did the right thing. They did not ask to be the ones faced with the impossible decision to risk their careers, reputations and freedom to come forward, but they did Australia a great service in doing so. We must do much more to support them and other whistleblowers like them.

In a welcome move, Attorney-General Christian Porter has announced that he is reviewing whistleblower laws. Whistleblowers rely on these laws to create a safe and legal path to disclose information; they may well face prison time if they get it wrong. Yet, as described recently by a Federal Court judge, these laws are "technical, obtuse and intractable ... [and] largely impenetrable, not only for a lawyer, but even more so for an ordinary member of the public". An independent review three years ago recognised that the experience of whistleblowers under the laws "is rarely a happy one".

These laws should simplify the process and introduce an independent body to advise and assist potential whistleblowers. The laws should also actively incentivise whistleblowing by setting up a reward system for those who come forward, as they do in the United States.

Crucially, there must also be a safe pathway for disclosing misconduct that occurs within our intelligence agencies. Currently there is a blanket ban on any public disclosure of information that has originated with or been received from an intelligence agency. Even if a person stumbles across grave misconduct or corruption within an intelligence agency, and revealing that misconduct poses no risk to our national security, telling a journalist could land the whistleblower in prison.

Disclosures of misconduct from within intelligence agencies can be made to the Inspector-General of Intelligence Services, but she has very limited powers to act if the conduct is technically within the law. Our Parliament has given such extraordinarily broad powers to intelligence agencies, that this form of oversight is woefully inadequate.

Public accountability is becoming more important as our intelligence agencies are gaining more powers. In the past couple of years, Parliament has passed laws giving them the ability to watch all of us all of the time. They can access to our metadata telling them where we go and who we know, without a warrant. They can access encrypted communications (like WhatsApp messages) and hack our phones and laptops, with inadequate judicial oversight. Now, the government wants to create a massive national database of our driver's licence and passport photos to facilitate facial recognition, which will hugely expand their surveillance capabilities over all Australians.

With greater powers must come greater accountability. This is how we maintain public trust in the institutions charged with keeping us safe and how we ensure that they act within the law.

However, the government has consistently refused to include appropriate checks and balances when legislating these broad powers. This means that now more than ever we need laws to protect and encourage people who, when they see something wrong, say something.

Alice Drury is a lawyer at the Human Rights Law Centre.