

Sic 'em Rex: forget the election, one principled politician is fighting for tiny Timor instead

By *Callum Foote* in Michael West Media, May 11, 2022

Former submariner Rex Patrick has found time to stick a periscope up the collective clacker of the Australian government over its cruel treatment of its poorest neighbour. Senator Patrick's battle with the bureaucracy reveals Australia's problem with transparency, reports **Callum Foote**.

He's fighting for re-election, not only without the resources of the big parties, but also against his old boss Nick Xenophon, for the last of six South Australian Senate seats. Most politicians in his shoes would be shilling for donations and paying people to walk around in a sandwich board.

But instead, Senator Rex Patrick is fighting for the people of the tiny nation of Timor-Leste in its ongoing dispute with Australia. He is disputing a Freedom of Information ruling which has kept secret legal advice given to the Howard government over its bugging of the Timor Leste government in 2000.

The battle is being held in the court of the Administrative Appeals Tribunal (AAT), the body that reviews administrative decisions made by the Australian government. Patrick has just wrapped up a two-day hearing in Adelaide.

Patrick and his office were after key legal documents which if disclosed would shed light on the motivations of the Australian government in negotiations with our poorest neighbour, Timor Leste, that resulted in Australian company Woodside laying claim to half of the oil and gas riches found in the waters around the former Portuguese colony and Indonesian territory.

This "cluster fiasco" as Patrick calls it has already resulted in the widespread clamping down on information surrounding the prosecution of whistleblower Witness K and his lawyer Bernard Collaery.

The National Archives denied the independent senator's request by reference to a clause in the Freedom of Information Act that permits the non-disclosure of documents if it is contrary to the public interest if it is revealed.

The government's argument is that if these documents were to be disclosed it would harm the public interest by negatively affecting Australia's international relations and reputation.

Patrick stresses that he "is fighting this battle with both arms tied behind my back", as he cannot see the document in question. And he has no access to the argument government lawyers have made to keep it secret. Both out of public interest grounds, according to the government.

Moreover, Patrick doubts the importance of the document in question given it occurred before Australia bugged the Timor Leste delegation. "This government is trying to hide secrets which date back to 2000 in circumstances where there have been a series of sordid events that have taken place afterwards, which are so serious that anything said in those documents would have to be insignificant and inconsequential".

Patrick argues that these documents could not possibly harm Australia's international reputation given that "the rest of the world would have already looked very closely at these matters". This fact is acknowledged by the government's witnesses, who only agreed to answer a number of the senator's questions in a closed court so that the information would remain confidential.

The near total lack of transparency regarding Australia's dealings with Timor Leste has dramatically damaged our relations with the country in the years since Australia led the international INTERFET mission that helped the nation gain independence.

In a speech in 2019 on the 20th anniversary of independence, Timorese President Francisco Guterres made direct reference to Indonesia's role in an open and transparent relationship with his nation, while snubbing Scott Morrison and Marise Payne who were in attendance.

Former president Xanana Gusmao stated in his affidavit to the hearing that Indonesia has managed to repair its relationship with Timor Leste through transparency and open dealings, despite the history of the two nations. About 204,000 Timorese died during the Indonesian occupation from 1975 to 1999.

A witness to the court, Professor of Public International Law and Ocean Governance at the University of Southampton Andrew Serdy, noted that there is little justification for keeping these 20-year old documents a secret given that there is already widespread knowledge of Australia's actions to Timor Leste.

"It wouldn't be a startling revelation," Professor Serdy said. "You don't want cabinet documents being released while negotiations are going on but It's now 20 years on from that. Whatever may have been in this memorandum could really only have fit in a narrow spectrum of possibilities." Serdy was working with the Department of Foreign Affairs and Trade during the period in question.

Professor Serdy concludes that "continued secrecy creates the only risk to Australia's security... because it creates the impression that after all these years Australia still has something to hide."

The Fall of Transparency

Patrick's battle goes to the heart of Australia's transparency regime, which has been steadily deteriorating over the years.

The Australian Conservation Foundation conducted an audit of Australian FOI, labelling it "dysfunctional". The ACF found that refusal rates had more than doubled from 12% to 25%, while the proportion of requests that were more than a month overdue stood at 60% over the past five years.

The Office of the Australian Information Commission's (OAIC) 2021 review showed that Australia's FOI regime has been hit hard by the Morrison government.

The OAIC is receiving 39% more complaints than previous years despite a lower number of FoI requests, while the percentage of requests granted in full had fallen to 41% from 52% in 2018-19. The number of requests rejected outright was up to 18% from 2019-20's 15% while the number of requests decided three months after the statutory timeframe 12%, up from 2% in 2018-19. Only 77% of FoI requests were processed within the lawful timeframe.

The prime minister's office processed "fewer than 50% of FoI requests within the statutory timeframes in 2020-21" with *The Guardian* reporting that Morrison's office's compliance [sat at 7.5% the year prior](#).

In 2022, according to Transparency International's analysis Australia received its worst score ever on the [Corruption Perception Index](#) at 18th place.