

## Australia's treatment of whistleblowers will be its damnation

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Deception, exploitation and cover-up are messages Australia is sending to our foreign neighbours, writes Dr [Kyle Mervin](#).

IT IS AN UNFORTUNATE truth that it is sometimes necessary for a government to conduct its business in secret. That necessity is born of the complex nature of international relations, but I'm not sure that necessity extends to all international dealings.

Bad things happen behind closed doors and if unconscionable conduct by vested interests hides behind the veil of secrecy mandated by national security, it should and most likely will in the fullness of time be exposed and should be prosecuted.

In recent history, the *modus operandi* of the major democracies of the world in dealing with whistleblowers, the United States, the United Kingdom and Australia included, has been to shoot the messenger.

A case in point and most notably on the international stage has been the treatment of [WikiLeaks](#) founder [Julian Assange](#), who for the last decade or so has been holed up initially under political asylum in the Ecuadorian embassy in the UK and, more recently, incarcerated in the UK awaiting extradition to the U.S. to face charges of espionage.

Closer to home, [Witness K](#) and his barrister [Bernard Collaery](#) have been the subject of legal proceedings by the Abbott/Turnbull/Morrison Coalition Government, over the leaking of information to the East Timorese Government of secret recordings made by the Australian Secret Intelligence Service ([ASIS](#)) and used to prejudice trade negotiations in our favour.

But here is the point. If there is a whistle to be blown, someone is going to blow it.

People like Julian Assange and Witness K are not the problem, they are inevitable. The way they are being treated sends a message to the world that our great democracies intend on continuing to deceive and cover up in trade agreements.

We need to change the way we do business with the world and quickly. The economic ascendancy of China coupled with the stagnation of the USA symbolises a paradigm shift in world order and unless we open our eyes to the new reality, we will surrender a seat at the table.

And a good first step to ensure that the right signal is being sent to the world is to seek a pardon for Witness K, drop the case against Bernard Collaery and if the USA will not do the same for Julian Assange, Australia should offer him political asylum.

For the sake of brevity, I'll not elaborate on the Assange case as it is well known.

## **Witness K and East Timor**

If Facebook was around in the latter part of the 20th Century, the relationship status between Australia and East Timor would read “it’s complicated”. The road to [independence](#) for East Timor was paved with violence and the most turbulent era, between 1975 and 1999, was bookended by Australian government involvement.

In 1975, the soon to be dismissed Government of [Gough Whitlam](#) supported the Indonesian occupation and in 1998, the [Howard](#) Government send in the troops to help end it.

Save for the [gun buyback scheme](#), it was the best thing John Howard's administration did.

In 2004, the Howard Government entered into negotiations with our poor, war-ravaged and impoverished neighbour over oil and gas royalties in the Timor Sea in bad faith. In so doing, it damaged our international reputation. In having [listening devices](#) installed by ASIS to monitor the private conversations in the East Timorese cabinet and prejudice the negotiations in favour of Australian interests, they acted unethically and illegally.

In 2013, East Timor took Australia to the Permanent Court of Arbitration at the Hague in order to have the agreement overturned, based on the information provided to them by an Australian whistleblower known only as Witness K.

Witness K did the morally right thing. He was aware of the illegal tactics employed by the Australian Government in essentially trying to rip off one of the poorest countries on Earth and he put himself at risk to correct that injustice. He engaged a barrister in Bernard Collaery to assist in informing the East Timorese Government and as a result, both Witness K and Collaery have been prosecuted in Australia over breaches in *Section 39* of the [Intelligence Services Act](#).

In handing down his decision on 19 June 2021, magistrate [Glenn Theakston](#) noted the noble intentions of Witness K in blowing the whistle but found it prudent to convict Witness K and impose a suspended sentence, as a message to other would-be whistle-blowers. The case against Bernard Collaery is yet to be heard.

That prosecution and conviction sent a message to the Australian Intelligence community that their obligation to preserve secrets under the *Intelligence Services Act* is a matter of national security and any departure from those obligations will be prosecuted and punished — irrespective of the seriousness of the whistle.

Unfortunately, that prosecution and conviction also sent a very clear and unintended message to our regional neighbours: Australia can’t be trusted. The Australian Government is prepared to act unethically towards its neighbours in any commercial negotiation and will punish anyone who breaks ranks to conceal it.

Deception, exploitation and cover-up. This is not the way forward.