

# Federal ICAC must investigate Timor-Leste spying scandal

By Hannah Thomas in Independent Australia | 17 May 2022

Law reform and investigations into cases such as the Timor-Leste spy scandal are long overdue, writes [Hannah Thomas](#).

IF THE [96% of people](#) who want a federal ICAC with teeth get their way after the Election, it's difficult to imagine an institution with a bigger backlog of work from its very inception. From [sports rorts](#) to [car park rorts](#), from the [Leppington triangle purchase](#) to the [Paladin contract](#) — a federal ICAC will have an overflowing pile of cases to investigate.

There's a strong argument that the [Timor-Leste spying scandal](#), which occurred under the [Howard](#) Government, and the associated cover-up by subsequent governments should sit atop that pile. Firstly, for the audacious greed that motivated the spying; secondly, for the vicious pursuit of the brave souls who blew the whistle; and thirdly, because not a single person responsible for the actual wrongdoing has suffered a consequence.

The facts are worth repeating (and repeating often). In 2004, the new nation of Timor-Leste began negotiating maritime borders with Australia. The stakes were high for us — commercial rights to lucrative underwater oil and gas reserves. But they were much higher for Timor-Leste, a newly independent and desperately poor country, ravaged by decades of Indonesian repression.

The outcome of the negotiations was crucial to its chances of success and to its ability to raise the quality of life of its impoverished population.

Yet under the sickening guise of an [AusAid](#) project, the Australian Secret Intelligence Service ([ASIS](#)) infiltrated government offices in Dili and installed listening devices in the cabinet room to gain an insight into Timor-Leste's negotiating strategy. The bugging was likely illegal under domestic and international law. At the time, AusAid and ASIS operated under the oversight of Foreign Minister [Alexander Downer](#).

The result was an inherently unjust, one-sided deal. The beneficiaries were [Woodside Petroleum](#) and U.S. multinational [ConocoPhillips](#). The people of TimorLeste, the poorest country in Asia, were the losers.

Following the Howard Government's defeat in 2007, Downer obtained a consulting role with Woodside. The then-Secretary of the Department of Foreign Affairs and Trade (DFAT), [Ashton Calvert](#), had by this time also been appointed to Woodside's board of directors.

Troubled by the events, an ASIS officer known as [Witness K](#) complained about the operation through proper internal channels and was permitted to speak to ASIS-approved lawyer and former A.C.T. Attorney-General, [Bernard Collaery](#).

In 2013, Timor-Leste brought a case against Australia to the Permanent Court of Arbitration in The Hague to challenge the deal. Collaery organised for Witness K to travel to The Hague to testify, but Witness K's passport was seized by the Australian Security Intelligence Organisation ([ASIO](#)) under orders from then Attorney-General [George Brandis](#) to prevent that happening.

ASIO also raided the homes of Witness K and Collaery. Importantly, ASIO was then headed by [David Irvine](#), who had also headed ASIS at the time of the bugging.

A new maritime border deal, much more favourable to Timor-Leste, was finally signed in 2018. Shortly after, charges against Witness K and Collaery under the [Intelligence Services Act 2001](#) were signed off by then Attorney-General [Christian Porter](#).

As Independent MP [Andrew Wilkie](#) said of [the matter](#):

“...with the diplomacy out of the way, it’s time to bury the bodies.”

Witness K pled guilty and received a suspended sentence but Collaery is fighting the charges.

And what a fight it’s been. So far, the Government has spent over \$4 million of taxpayer money and more than 60 hearings have occurred, yet the case is nowhere near resolution. Collaery himself has not been allowed to see all the evidence against him, which should trouble anyone with the faintest concern for human rights.

The manic determination to shroud the trial in secrecy is driven by the Government’s desire to have its cake and eat it, too – in other words, secure a conviction without having to publicly admit to the operation (and face the consequences that would follow). The case has been condemned by organisations like the Human Rights Law Centre ([HLRC](#)) and the [Australian Bar Association](#).

Positively, Shadow Attorney-General [Mark Dreyfus](#) QC has [recently referred](#) to the prosecution of Collaery as “*an affront to the rule of law*”, suggesting that a Labor win may herald the end, finally, of Collaery’s ordeal.

The whole episode raises many questions that the public deserve answers to and that a federal ICAC must investigate. Who knew about and authorised the bugging? Were those decisions lawful? How are these prosecutions in the public interest? Do the claims of “national security” justify the secrecy around the cases? Has the Commonwealth Director of Public Prosecutions acted independently and in accordance with prosecutorial guidelines and her obligations as a Model Litigant?

A federal ICAC investigation and, of course, the dropping of the prosecution is crucial but would not be a stand-alone solution. Law reform is badly needed to prevent the disturbing avalanche of retribution visited upon the whistleblowers in this case from ever occurring again.

This is especially true because Witness K and Collaery are not alone in suffering such consequences. War crimes whistleblower [David McBride](#) and ATO whistleblower [Richard Boyle](#) (who both followed the correct procedures under the relevant disclosure legislation) are also being prosecuted by the Commonwealth Government.

As the [HRLC](#) says, whistleblowers are a ‘*crucial safety valve*’ in a democracy because they expose unacceptable conduct so that those responsible can be brought to account and so that we can make informed decisions about who we vote for.

The war on whistleblowers is therefore a war on us and our right to know what the government we elect and pay for is doing in the shadowy corridors of power. We all must demand that the next government investigate these cases, commit to law reform and drop the prosecutions.

***[Hannah Thomas](#) is a lawyer currently working in public policy. She has a keen interest in Australian and Malaysian politics.***

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