

Gareth Evans says conviction of Witness K should be reversed after Bernard Collaery decision

Former Australian attorney general and foreign minister says prosecution of Witness K's lawyer Collaery, now abandoned, was 'indefensible'

Christopher Knaus in The Guardian, 11 July 2022

The former attorney general and foreign minister Gareth Evans says decency demands Witness K's conviction be reversed after last week's decision to abandon the "completely indefensible" prosecution of Bernard Collaery.

Evans, who was due to give evidence in the Collaery proceedings, praised the decision to abandon the prosecution of the former lawyer and ACT attorney general, saying it showed "judgment and integrity beyond anything of which the Coalition ... has been capable".

But he said Witness K, who was [convicted and handed a three-month suspended sentence](#) last year, should now be afforded similar treatment.

"Decency would also demand that the Witness K conviction be effectively reversed, but that's probably a bridge too far," he told the Guardian. "The very short suspended sentence he received is probably vindication enough."

The pair were [prosecuted for their role](#) in exposing a 2004 espionage mission that bugged the government of Timor-Leste as it bartered with Australia over oil and gas reserves in the Timor Sea, which were crucial to its future. Their actions helped Timor-Leste, a young and impoverished nation, achieve a far greater share of the resources, and both men are [widely considered heroes](#) in the country.

The attorney general, Mark Dreyfus, [intervened to end the prosecution of Collaery](#) on Thursday, more than four years after it began, but has been clear that he considered it "an exceptional case".

The intervention came too late for Witness K, a [Vietnam veteran and decorated intelligence officer](#), who suffered significant post-traumatic stress disorder, which was compounded by the proceedings.

Supporters of the pair, including the Alliance Against Political Prosecutions, have called for Witness K to be pardoned in the wake of the Collaery case. The group also wants to see compensation for both men.

The government has given little indication so far that it is considering any further intervention.

A spokesperson for Dreyfus said simply: "Witness K's case concluded in June 2021. Witness K pled guilty and it would not be appropriate to comment further."

The Guardian understands no federal attorney general had ever no-billed a prosecution until last Thursday's intervention.

Evans, a Labor foreign minister from 1988 to 1996, was due to give evidence in support of Collaery's attempt to prevent the use of the National Security Information (NSI) Act to shroud parts of the trial in secrecy.

He said the case had inflicted "serious damage to Australia's international reputation".

"The intelligence community has shown little capacity for rational judgment in recent years, and it can only be hoped that their apparent acquiescence in at last now dropping the case is a turning point," Evans said.

"A good start would be unwinding the [Office of National Intelligence] structure and the group-think that goes with it, restoring a distinct role for [the Office of National Assessments], and generally getting more contestability back into the system."

He said the inspector general of intelligence and security should provide an avenue for whistleblower complaints.

"If that role needs recreating or strengthening that would be wholly desirable," he said.

The prosecution of Collaery was authorised by former attorney general Christian Porter. His predecessor, George Brandis, was asked to consider the case but did not provide the required authorisation. Brandis was asked about the case on Friday.

"Well, when I was the attorney general, I had to consider that case. And as you know, I didn't authorise a prosecution for reasons that I don't propose to comment on publicly," he told the ABC.