

# Whistleblowers could have citizenship revoked under proposed laws

Disclosing matters relating to national security could see dual citizens stripped of their citizenship, including those involved in the Timor-Leste bugging scandal

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Whistleblowers with dual citizenship who speak out on Australia's national security - including those involved in allegations that Timor-Leste's cabinet room was bugged - could face having their citizenship revoked under proposed laws.

A bill introduced to the federal parliament by the immigration minister, Peter Dutton, on Wednesday enhances the power of the immigration minister to revoke or initiate a renunciation of citizenship for conduct deemed to relate to certain terrorism offences. The new bill seeks to strip only dual nationals of their citizenship.

The proposed section 35A of the bill also outlines that citizenship will be lost automatically for Australians who are convicted of particular offences.

While some of those offences are related to terrorism, they also include commonwealth property offences. Legal experts have warned the government has overreached in applying the revocation powers to these kind of offences.

The proposed law would also capture a range of offences for disclosing matters relating to national security under section 91.1 of the Criminal Code.

The section is titled "offence relating to espionage and similar activities", but includes several offences for intentionally disclosing matters pertaining to national security.

This offence has been expressly considered by the federal government in relation to the international case surrounding the alleged Timor-Leste bugging.

Ben Saul, a professor of international law at the University of Sydney, said the breadth of the citizenship laws highlighted serious questions about the proportionality of the legislation.

"The fact that the terrorism definition is so wide and sweeps up all these miscellaneous security offences is too drastic and goes too far," he said. "You can see situations where utterly trivial information is classified as a matter of national security, and you can see someone being caught up and then being de-nationalised."

Australia is alleged to have bugged Timor-Leste's cabinet room during negotiations for an oil and gas treaty in 2004. A whistleblower from the Australian Secret Intelligence Service - known as Witness K - is a key witness.

The federal government authorised raids on Timor-Leste's Canberra-based lawyer, Bernard Collaery, and Witness K in 2013 to seize documents in relation to the case, but recently agreed to return them.

During the proceedings at the International Court of Justice relating to the seizure of the documents, the Australian solicitor general, Justin Gleeson, expressly flagged the possibility that Witness K and others involved in the case could be prosecuted under section 91.1.

He told the court: "On the basis, however, of what I have just taken you to, there are reasonable grounds to consider that the materials over which Timor-Leste asserts privilege may include written statements, or affidavits, by a former AIS officer, made to Mr Collaery on behalf of Timor-Leste, disclosing national security information of Australia.

"If that be the case, these disclosures would involve the commission of serious criminal offences under the law of Australia, and I reference sections 39 and 41 of the Intelligence Services Act 2001 (Cth), section 70 of the Crimes Act 1914 (Cth) and section 91.1 of Schedule 1 to the Criminal Code Act 1995 (Cth)."

Guardian Australia understands that Collaery, who is representing Timor-Leste, is himself a dual citizen. It is not known whether Witness K has dual citizenship, and no details can be disclosed about his identity due to secrecy laws.

The bill that is currently proposed will not apply retrospectively for previous convictions.

But Abbott said on Tuesday the Parliamentary Joint Committee on Intelligence and Security had been asked to expressly consider whether the new bill should operate retrospectively.

Because Witness K has yet to give evidence in the international dispute, it is possible he could be prosecuted after the bill becomes law.

It was revealed in May that the Australian federal police (AFP) had prepared a brief of evidence in relation to the disclosures made by Witness K.

Guardian Australia asked the AFP whether the brief of evidence for Witness K prepared by the Australian Security Intelligence Organisation related to any of the offences under section 91.1 of the Criminal Code.

A spokeswoman for the AFP did not confirm the particular section of the referral, but said in a statement: "On 13 December 2013, the Australian federal police received a referral from the Australian Security Intelligence Organisation relating to an allegation a former Australian intelligence officer disclosed information relating to operational activity in Timor-Leste.

"Following a thorough investigation, on 18 February 2015, a brief of evidence was provided to the Commonwealth Director of Public Prosecutions for consideration."

"As this matter is ongoing, it is not appropriate to comment further."