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Interview: Nick Xenophon, Independent Senator

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Emma Alberici speaks with Nick Xenophon about his calls for a Royal Commission following Lateline's exclusive report on the spying scandal between Australia and East Timor.

Transcript

EMMA ALBERICI, PRESENTER: First though, this week on Lateline we've revealed new details surrounding the Australian operation to bug East Timor's Cabinet rooms in 2004. We've heard about dissatisfaction among high-ranking officers in the Australian secret intelligence service about the incident. We exposed an extraordinary tale of diplomatic bungling where Australia sent the person involved in the original operation back to Dili to meet with Xanana Gusmao in an attempt to smooth things over with Timor's then Prime Minister and we've heard from East Timorese leaders past and present who believe the bugging was immoral and criminal.

MARI ALKATIRI, FORMER EAST TIMOR PRIME MINISTER: I have no doubt on this. This kind of thing, even in international law it's a crime.

XANANA GUSMAO, FORMER EAST TIMOR PRESIDENT AND PRIME MINISTER: Australia would not allow it would be under then security act it will be criminal act, no?

EMMA ALBERICI: Today, South Australian Independent Senator Nick Xenophon stood side by side with the former New South Wales Director of Public Prosecutions, Nicholas Cowdery, and Bernard Collaery, the lawyer for Witness K. They're calling for a Royal Commission into the bugging scandal.

NICK XENOPHON, INDEPENDENT SENATOR: We know this week that ABC TV's Lateline program has revealed anger within Australian intelligence circles and that senior ASIS officers are very concerned that intelligence resources have been misused. This is the biggest intelligence scandal in this country in the past generation. It warrants a Royal Commission. It warrants a judicial inquiry.

NICHOLAS COWDRY, FORMER NSW DIRECTOR OF PUBLIC PROSECUTIONS: I support an inquiry, yes. Whether you call it

a Royal Commission or independent judicial inquiry or whatever, I think it would need to have the powers of a Royal Commission in order to be effective. I think it would need to include investigation into the question of whether or not criminal offences had been committed.

BERNARD COLLAERY, LAWYER FOR WITNESS K: The Royal Commission has to boost plural in our services and has to free ASIS, which is a very professional organisation, from the shackles of commercial boardrooms. They should not be acting to the dictates of commercial boardrooms by proxy through managing Ministers.

EMMA ALBERICI: Independent Senator Nick Xenophon joins me now from Adelaide. Nick Xenophon, many thanks for joining us. What is it exactly that you'd like a Royal Commission to explore?

NICK ZENOPHON, INDEPENDENT SENATOR: A Royal Commission needs to look at the - whether intelligence resources were being misused. I believe they were and let's put this in context - this is a massive scandal in our intelligence services.

It affects our reputation internationally, not just with East Timor but in the entire region, that if Australia resorted to dirty tricks of this nature for what appears to have been a commercial operation in order to benefit oil companies, then that to me appears to be an abuse of resources. The other issue here is that the mob of - there are a number of questions to ask.

The first is the relationship between the department and commercial firms, for instance, Dr Ashton Calvert, former head of the Department of Foreign Affairs and Trade, after retiring, went to the board of Woodside within a matter of weeks if not months.

The second issue is volunteers were - aid workers were used as the cover for the espionage. That puts every Australian volunteer - magnificent ambassadors, each and every one of them, for the work they do on behalf of Australia overseas - under suspicion and so that's a real concern.

And the third issue is that if precious intelligence resources were used in this way, particularly in had the wake of the Bali terrorist attacks and the fact that Jemaah Islamiah was very active in Indonesia, perpetrated bombings in 2005, 2009 involving Australians at the JW Marriott Hotel in Jakarta to what extent were precious intelligence resources shifted away from dealing with murderous terrorist groups like Jemaah Islamiah and, rather, were used in what appears to be for the benefit of commercial firms? That to me is doubly scandalous.

EMMA ALBERICI: Let's unpack that and first of all, I guess, step back. In dispute here is a treaty governing oil and gas revenue-sharing agreements signed with Australia shortly after East Timor gained Statehood in 2002.

NICK ZENOPHON: Yes.

EMMA ALBERICI: You'd be aware that the ASIS national security remit is a fairly broad one and it includes, to quote the act, "Foreign intelligence work related to Australia's economic wellbeing."

NICK ZENOPHON: Well, section 11 of the Intelligence Services Act must be read, in my view, in the context of our national security, protecting Australians from acts of terror and our national economic wellbeing must be read quite broadly, not for the economic wellbeing of a particular company and even if you accept that proposition I know professor Ben Sol whom had that respect for, seemed to take that view on your program last night, the argument is Australia being involved in espionage of this type would actually be damaging our economic wellbeing much more broadly in the region than if we're prepared as a nation to be involved in dirty tricks against one of the most poorest and vulnerable nations in the world in order to secure a commercial advantage over them, to bug their Cabinet room during the sensitive negotiation then that surely can't be good for our reputation or our economic wellbeing in the longer term.

EMMA ALBERICI: During your first answer you mentioned the name Ashton Calvert, who was, I understand, the former secretary of the Department of Foreign Affairs and Trade. Are you suggesting he did something improper in leaving the department and going to work for Woodside Petroleum?

NICK ZENOPHON: Well I'm suggesting it is extraordinary that you have the secretary of the department of foreign affairs

and trade under whom ASIS, the intelligence agency, sits because it's within that department, they were responsible for the bugging operation and for that person to then go to the board of Woodside within a matter of weeks or months of retiring I think raises legitimate questions. That is something that ought to be looked at, as to whether there should be some real barriers between someone going from a senior position - the most senior position in the department to a company that appears to have been arguably a potential beneficiary of the bugging operation.

EMMA ALBERICI: Negotiations over drilling in the East Timor sea involved future earnings in the potentially tens of billions of dollars. The then Foreign Minister Alexander Downer told the 'Four Corners' program that the Australian Government unashamedly should be trying to advance the interests of Australian companies.

NICK ZENOPHON: And Alexander Downer should be ashamed of himself if he thinks it's fair game to be bugging the offices of the East Timorese Cabinet room using precious-

EMMA ALBERICI: I must make the point of course that he didn't make any acknowledgment that indeed his Government did do this or in any way sanctioned it.

NICK ZENOPHON: But it's fair to say that his view of national economic wellbeing appears to be incredibly broad.

The fact is we just don't know who authorised what. I mean clearly, based on material from Witness K, that something did happen, that there was bugging, that Witness K has had his passport seized. It was seized on 2 December, 2013. He cannot appear, it appears, as a witness in the international Court of Arbitration in the Hague. I understand never before in the history of this court - and it's been going for well over 100 years - has there ever been a situation where there has been a case of treaty-related fraud which is the case that East Timor has brought against Australia in this case.

EMMA ALBERICI: And in fact East Timor wants the Maritime Treaty terminated on the grounds that Australia illegally bugged its Cabinet rooms in Dili during those negotiation. That action, should it proceed, in itself arguably is against Australia's economic interests?

NICK ZENOPHON: Well, let's look at the broader Australian economic interests. Firstly, do we want to be known as a nation that is involved in extraordinary dirty tricks and it's also the cover-up here but I think it's legitimate to ask were precious intelligence resources being used for effectively commercial espionage, as is the allegation, when those resources ought to have been used to protect Australians from terrorist acts from Australian lives being at risk because Jemaah Islamiah, in 2004, 2005 and subsequently, was incredibly active, putting Australian lives at risk.

I mean, these are issues where our resources, intelligence resources, should be used to protect Australians from terrorist acts not being involved in dirty tricks in the commercial negotiation.

EMMA ALBERICI: The strength of the East Timorese case in the Hague rests with Witness K, whose evidence won't be able to be presented unless his passport is returned. Now, have you spoken to the Government about this and queried why they continue to hold his passport two years after the ASIO raids?

NICK ZENOPHON: Emma I can only just direct you to Senate Estimates Hearings where I've attempted to raise this and I get shut down very quickly. It's quite extraordinary. I will pursue it again with the supplementary estimates in February of next year and I suggest to you, just wait and see what the response from the Government will be. I suggest it will be one that they will not talk about it in any way but how can this enhance Australia's international reputation, a reputation in the region, the reputation of our aid workers who do magnificent work around the world if aid workers were used as a cover for this espionage and I can't see how this would be in our long-term economic interests or our national security interests at all.

EMMA ALBERICI: What are the prospects for a Royal Commission going ahead?

NICK ZENOPHON: Well, if you don't ask you don't get and I think this issue won't go away.

EMMA ALBERICI: Presumably - pardon the interruption we are running out of time - presumably, the Government isn't

receptive of the suggestion of a recognition into this matter given many in the Coalition now, including Malcolm Turnbull, were members of the Howard Government in 2004 who ordered the spying operation in East Timor?

NICK ZENOPHON: And I would like to think the Turnbull Government will want to clear this enormous stain on Australia's international reputation once and for all.

The best way to do this with an independent judicial inquiry, a Royal Commission to get to the truth of what occurred.

EMMA ALBERICI: Nick Zenophon, I appreciate the time you've taken to speak to Lateline tonight.

NICK ZENOPHON: Thanks, Emma.



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