

# NICK XENOPHON

Independent Senator for South Australia

## Releases

### **Revealed: Heroes of East Timorese spying scandal could have their Australian citizenship stripped**

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It was revealed last night during a Senate debate on new laws to revoke Australian citizenship – intended for terrorists – that the laws could also be used against the heroes of the East Timorese spying scandal.

Under repeated questioning by Independent Senator for SA Nick Xenophon, Attorney-General George Brandis QC refused to rule out a prosecution being brought against Witness K – a senior, highly decorated former intelligence officer - and his lawyer, former ACT Attorney-General, Bernard Collaery.

In 2004 the Australian Government ordered the bugging of East Timor's cabinet rooms in Dili, to gain an advantage over newly independent and poverty stricken East Timor. This occurred during the negotiations over oil rights in the Timor Sea Treaty.

After voicing his objections within the system - to no avail - Witness K sought legal advice from Mr Collaery.

Mr Collaery told ABC's Lateline program on the 25 November this year about the concerns raised by Witness K over the misuse of such intelligence resources.

"When you have such dedicated veterans involved who might see the relative priorities of following up on the Bali bombing, the Marriott Hotel issues and find themselves taken off duties and organising to bug this poverty-stricken state's cabinet room so a trade deal can get over the line, one, if you were part of that staff, might wonder about priorities.

"There's a squalid operation, and indeed, I recall in my instructions mention being made of the infant mortality rate. So this was morally-based grievance, not on lost promotion or the end of a career, which in my view was a very legitimate grievance, but it was a grievance based on the immorality of that conduct.

"No one's been exposed, no techniques have been disclosed and we must recall this evidence was to be given in the presence of Australia's lawyers in camera," said Mr Colleary.

On 2 December, 2013, ASIO raided Mr Collaery's law offices and Witness K's home. Documents were seized and Witness K's passport was confiscated.

In legal proceedings between East Timor and Australia in the International Court of Justice in The Hague, over the seized documents, Australia's Solicitor-General Justin Gleeson SC made a formal submission claiming that section 91.1 of the Criminal Code may have been breached. This section deals with espionage.

There is a fear that Witness K and Mr Collaery could face charges, based on the Solicitor-General's submission. This is because the definition of espionage would even include a protected disclosure by Witness K to the Arbitration Panel in The Hague. Australia's intelligence laws authorise operations, such as bugging, if it is done for 'Australia's economic well-being' – even if it benefits a single private corporation.

Mr Collaery is a dual national (it is unknown if Witness K is a dual national) who, if convicted under section 91.1 of the Criminal Code, could face being stripped of his Australian citizenship under the new laws.

It's estimated that up to one third of Australia's population were either born overseas or are dual nationals, often by virtue of their parents being born overseas.

An examination of numerous public statements and media releases by the Abbott Government over the laws shows that not once was section 91.1 referred to – but instead the references were focused on terrorist acts and ISIS.

The Attorney-General, who must consent to an action to strip citizenship, refused to rule out taking action in the case of Witness K and Mr Collaery.

“Here we have Australia’s biggest spying scandal in a generation and the heroes of that scandal – not the villains – face prosecution and losing their citizenship, the modern day equivalent of medieval banishment.” Nick said.

“This is an intellectual sleight of hand that has turned into a sledge hammer to crush a person speaking the truth over the misuse of our intelligence services, and his lawyer. They both are doing what fair minded Australians would think is right.”

“Any suggestion that Mr Collaery or Witness K could be charged under section 91.1, face a long jail term, and be subject to anti-terror laws that strips citizenship is itself a scandal.”

Senator Xenophon renewed his calls for a Royal Commission into the spying scandal, and the damage it has caused to Australia’s international reputation.

East Timor continues to be in an international legal dispute with Australia in The Hague, involving the spying and the legitimacy of the treaty entered into.