

The Guardian

Attorney general accused of breaching Senate rules with Witness K answers

Crossbencher Rex Patrick says Christian Porter's response to questions about the case did not meet obligations



Attorney general Christian Porter has been accused of not meeting his obligations to the Senate for refusing to supply details about the Witness K prosecution. Photograph: Mick Tsikas/AAP

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Fri 7 Sep 2018 16.00 EDT

The attorney general has been accused of breaching his obligations to the Senate by refusing to properly answer questions on the controversial prosecution of former spy Witness K and his lawyer Bernard Collaery.

The case against Collaery and Witness K is due to first appear in the ACT magistrates court next week, amid continuing protest over what critics see as a pointless and politically-motivated prosecution.

Collaery and Witness K are being prosecuted for their roles in helping to reveal a covert operation mounted by Australian spies against an ally, Timor-Leste, to gain a commercial advantage during sensitive oil and gas negotiations.

Centre Alliance senator Rex Patrick has been one of many championing the cause of Witness K and Collaery, who face up to five years behind bars if convicted.

In early July, Patrick asked a series of detailed questions on notice in the Senate about the prosecution, which was consented to by attorney-general Christian Porter. He asked, among other things, when commonwealth prosecutors began preparing a case against Collaery and Witness K, and on whose instructions. Patrick asked which departments and agencies were consulted, and whether senior intelligence and defence figures were aware or informed of the plan.

Porter's response this week did little more than confirm the prosecution was occurring, and that he had given his consent. "As the matter is before the court, it would not be appropriate to comment further," the response said. "Regarding Senator Patrick's questions relating to alleged Asis activities, it is the long-standing practice of the Australian government not to comment on the operation of our intelligence agencies."

Patrick told Guardian Australia on Friday that many of the questions he asked had related to government process, and could have been answered without compromising national security or the court proceedings. He said Porter had failed to set out any public interest immunity grounds to answering the questions on notice, as required.

The senator said he was writing to Porter to tell him he had failed to comply with his obligations in answering question on notice.

"The answers are totally inadequate," he said. "The attorney has not properly advanced public interest immunity and I can see no way that he can advance public interest immunity on some of those questions. Some of those questions go to proper process within his office and he cannot hide behind national security or other immunities just because he might be embarrassed or uncomfortable with answering the questions."

The composition of the Senate has made securing the passage of legislation difficult for the Coalition, giving the Centre Alliance a degree of power.

Patrick said: "Centre Alliance works well with government but it does so on the basis that they work well with us. This would be an example of them failing to meet their obligations."

A spokesman for the attorney general denied he had in any way breached the requirements of the Senate.

"The attorney general replied to questions as he saw appropriate and within the requirements of the practices and procedures of the Senate," the spokesman said.

In July, Porter said he only consented to the prosecution after "very detailed, very thorough" advice from commonwealth prosecutors. He said there was "an independent decision made by the director of public prosecutions based on their evidence and the law and their guidelines", and he simply consented to that decision.