

The Guardian

Labor MP Julian Hill criticises Witness K prosecution

MP says attorney general hasn't justified his support for action against the Timor-Leste spying whistleblower



Julian Hill's raising of concerns constitutes the first major-party criticism of the controversial case. Photograph: Mal Fairclough/AAP

Katharine Murphy *Political editor*

Tue 18 Sep 2018 01.18 EDT

The Labor MP Julian Hill has implicitly criticised the prosecution of the former spy Witness K and his lawyer, Bernard Collaery, telling caucus colleagues the attorney general has failed to justify his decision to support the legal action.

Hill raised a number of concerns about the prosecution in the Labor caucus on Tuesday in the first major-party criticism of the controversial case, which centres around the two men blowing the whistle on Australia's spying on Timor-Leste.

The Victorian MP asked whether the shadow attorney general, Mark Dreyfus, could provide an update on the legal proceedings, and whether the case would be tried in open court.

According to people present at Tuesday's meeting, Hill expressed concern about the ongoing failure of the attorney general, Christian Porter, to give reasons for supporting the prosecution.

Hill said Labor had supported a tranche of national security reforms partly on the basis that the package included a safeguard that the attorney general consent to certain prosecutions, but the attorney general had then proceeded with a prosecution without providing detailed explanation.

The Victorian MP also expressed the view that the case should proceed in open court - a position that was endorsed by Dreyfus during Tuesday's debate.

During a hearing last week in Canberra, the counsel for Collaery, Christopher Ward SC, said his client wanted the case conducted "as much in open court as possible".

He said it was "likely or at least possible" that the commonwealth would need to apply for a court order about the handling of national security information because the parties may not agree between themselves.

Counsel for Witness K, Haydn Carmichael, said it was "not in issue" that information that would undermine the anonymity of his client was secret and should not be disclosed.

But he warned that commonwealth agencies' classification of information was "not determinative" and the court would have to form its own view whether disclosure would be likely to prejudice national security and should therefore be prevented.

During Tuesday's caucus debate, two other Labor MPs, Warren Snowden and Luke Gosling, also asked questions about the legal proceeding. Dreyfus agreed to hold a briefing for all MPs concerned about the proceedings later this week.

Labor is under pressure from minor parties and independents to drop the case if it wins the next federal election. The independent Andrew Wilkie and Green Nick McKim have argued the attorney general can stop the case at any time under a power in the Judiciary Act.

As well as the discussion about Witness K, there was also debate in Tuesday's caucus about the trans-Pacific partnership trade pact TPP-11, which the opposition agreed to support last week. Two left-wingers, Victorian Gavin Marshall, and Doug Cameron from New South Wales, attempted to reopen last week's decision to support the TPP.

In a curtain raiser for what is expected to be a significant debate at Labor's national conference about trade liberalisation, one of Tuesday's motions proposed last week's caucus decision be recommitted, and the other said supporting the TPP was inconsistent with Labor's policy platform.

In the ensuing debate, MPs expressed concern about the impact of the TPP on the Pharmaceutical Benefits Scheme and about investor state dispute settlement clauses. But members of the NSW right argued against the opposition to the TPP, including shadow ministers Chris Bowen, Jason Clare and Michelle Rowland.

Both motions were defeated on the voices.