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Senator asks why prosecutors sat on Witness K evidence for three years

Rex Patrick uses parliamentary privilege to query delay in charges being brought against spying whistleblowers



Senator Rex Patrick has used parliamentary privilege to query the reason for a three-year delay in the prosecution of Witness K and his lawyer. Photograph: Mike Bowers for the Guardian

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Prosecutors sat on evidence for three years before charging former spy Witness K and his lawyer Bernard Collaery, parliament has heard.

Centre Alliance senator Rex Patrick has used privilege to question whether the case was deliberately delayed to avoid a diplomatic incident between Timor-Leste and Australia during recently completed talks on their maritime boundary, which split up lucrative oil and gas reserves.

Patrick called on the commonwealth director of public prosecutions, Sarah McNaughton SC, to explain the “interesting timing” and questioned whether she and her predecessors held off “until the diplomacy was out of the way”.

“The AFP began its investigation on 10 February 2014. One year later, on 18 February 2015,

the AFP gave a brief of evidence to the commonwealth director of public prosecutions,” Patrick said in the Senate on Wednesday.

“The result - nothing. Zip. Nada. Then in May 2018, three years later, and just weeks after the joint standing committee on treaties finally held public hearings on a new Timor Sea treaty, the CDPP filed charges.”

The new information on the delay was made available to Patrick in a series of responses to questions on notice made to the Australian federal police.

The case against Collaery and Witness K relates to their role in revealing an Australian spy operation against Timor-Leste in 2004. The spy operation took place during earlier bilateral negotiations to split up the oil and gas reserves in the Timor Sea, and gave Australia a commercial advantage.

Witness K, an Australian Secret Intelligence Service agent, became concerned about the operation, which diverted resources from the Bali bombings. He approached the inspector general of intelligence services. He was permitted to approach an approved lawyer, Collaery. Collaery came to the belief that the operation was unlawful, and helped Timor-Leste mount a case in The Hague.

Earlier this year the pair were charged with illegally disclosing information. Collaery is accused of unlawfully communicating intelligence secrets to journalists. The case appeared in the ACT magistrates court earlier this month. Collaery and Witness K face the possibility of jail if convicted.

Patrick also used his speech to highlight the role of the former foreign affairs minister Alexander Downer and the oil giant Woodside.

He said Downer had played a key role in the oil and gas negotiations with Timor-Leste. Woodside, he said, was a major beneficiary of the exploitation of the Timor Sea gas reserves, known collectively as the Greater Sunrise fields.

“The bottom line here is that Downer (and Woodside) wanted to force East Timor, one of the poorest countries in the world, to surrender most of the revenues from Greater Sunrise, revenue it could have used to deal with its infant mortality rate - currently 45 out of 1,000 children in East Timor don’t live past the age of one,” Patrick said. “And yet our plan was to deprive them of oil revenue.”

Patrick said it was Downer who ordered the spy operation. Downer went to work as a consultant for Woodside in 2008, after leaving office, Patrick said.

He said the senior adviser to Downer at the time of the negotiations was Josh Frydenberg, the current treasurer.