

## When whistleblowers are prosecuted, it has a chilling effect on press freedom in Australia

July 20, 2018 4.50am AEST



Lawyer Bernard Collaery, who will be prosecuted along with his client, known as Witness K, for exposing Australia's spying on Timor-Leste. Mick Tsikas/AAP

### Author



**Johan Lidberg**

Associate Professor, School of Media, Film and Journalism, Monash University

Fear is a tricky thing. It's often hard to distinguish between what is real and perceived danger. US President Donald Trump, being more comfortable with autocrats than democratic leaders, is arguably a real danger to the world order.

But a former Australian spook blowing the whistle on our spy agencies eavesdropping on an impoverished neighbour to gain advantage in a business deal? Embarrassing for the government, absolutely. But dangerous to national security? Really?

The Turnbull government's decision to prosecute Witness K (a former Australian spy) and his lawyer Bernard Collaery, is yet another example of punishing messengers speaking truth to power.

Witness K blew the whistle on Australia's eavesdropping on the newly formed Timor-Leste government during negotiations over an oil and gas treaty in 2004. Not a good look, to put it mildly.

It used to be that when governments were caught spying, they denied the allegations then wore the embarrassment in the public eye. Not anymore in Australia.

## Chilling effect of security laws

This is the continuation of a pattern that started with the terror attacks on the US on Sept. 11, 2001.

In our recently published book, I and a number of colleagues document and track the impact that anti-terror and national security laws have had on in-depth public interest journalism in Australia and a number of other countries. We conclude it has become much harder for journalists to hold governments to account for what is being done in the name of security.

Australia is a potent case in point. Since 2001, 64 new or amended national security and anti-terror laws have been passed. Meta-data retention laws for internet service providers and telecommunication companies have made it very hard for journalists to protect confidential sources. The new espionage and foreign interference law that just passed in parliament makes it a potential crime for journalists to receive, read and store confidential, security-related documents.

Add to this the decision to take Witness K and his/her lawyer to court, and a pattern of a government drunk on security powers emerges.

In our book, we use Italian philosopher Giorgio Agamben's "state of exception" framework to analyse this situation. Agamben argues that some nation states use a fear-driven paradigm to continuously increase their anti-terror and national security powers to a point where they reach a state of constant exception/emergency justified by a high-threat level.

The Turnbull government had the choice not to charge Witness K. Another high-profile whistleblower and current independent member of parliament, Andrew Wilkie, did not mince words when he labelled the prosecution of Witness K a disgrace and said K should be given the Order of Australia for disclosing the Australian bullying of Timor-Leste.

Instead, K and Collaery now risk becoming "political prisoners" in Australia's "pre-police state", in the words of Wilkie.

Wilkie resigned from the Office of National Assessment in the lead-up to the 2003 Iraq war to warn the Australian public there was no case for war. We now know that not only was he right, but the Iraq conflict, led by the Coalition of the Willing of which Australia was a member, was the greatest foreign policy blunder since the second world war.

The depth of the blunder was laid bare in the UK's Chilcot report, a 2.6 million-word document that examined the British government's reasons for going to war in Iraq (and took seven years to complete).

It's symptomatic we haven't had the equivalent of a Chilcot inquiry in Australia. It's yet another example of how Australian political leaders have refused to explain and wear the consequences for poor decisions and embarrassing actions.

## **Press freedom at stake**

A few days ago, Reporters Without Borders published its annual Press Freedom Index (PFI). Surprisingly, Australia had improved six places from 25th in 2016 to 19th in 2017. But the general comment about Australia in the index should not give the government reason to celebrate:

*Whistleblowers who disclose information about conditions in the refugee centres or operations by the Australian Security Intelligence Organisation are now exposed to the possibility of imprisonment. A telecommunications law has opened the way to surveillance of the meta-data of journalists' communications. In January 2018, Prime Minister Malcolm Turnbull's government yet again proposed legislation that would jeopardise the confidentiality of journalists' sources.*

I know for a fact that the Australian rapporteurs to the PFI will view the prosecution of Witness K extremely dimly. A government that hunts down whistleblowers is on the slippery slope towards a police state in which press freedom will be under increasing pressure. Shooting the messenger is a tool used by autocrats and is not worthy of a mature liberal democracy.

It will be interesting to see what ranking Australia gets in the 2018 Press Freedom Index.