

Cost of prosecuting Witness K and lawyer Bernard Collaery balloons to \$3.7m

Federal government continues to pursue whistleblowing ex-spy's lawyer as senators urge it to drop case

The Guardian, 23 July 2021. By Daniel Hurst and Christopher Knaus

The prosecution of whistleblowing former spy Witness K and his lawyer, Bernard Collaery, has now cost the Australian government \$3.7m, new figures reveal.

The government's external legal costs in connection with the high-profile cases have risen significantly since mid last year, [when the tally was \\$2m](#).

The latest figures have prompted the independent senator Rex Patrick to describe the prosecution as "unjust" and "hugely costly".

"It sends absolutely the wrong message to potential whistleblowers: if you blow the whistle we will come after you with the full force of the government, and we will not spare any expense," Patrick said on Friday.

Witness K and Collaery were charged over their alleged roles in [exposing Australia's bugging of its impoverished neighbour](#), Timor-Leste, during negotiations to carve up the resource-rich Timor Sea in 2004.

Witness K, a former Australian Secret Intelligence Service officer who was disturbed by the bugging operation, pleaded guilty last month to a [single charge of conspiring with his lawyer](#), Collaery, to disclose intelligence information to the government of Timor-Leste.

The ex-spy was spared jail time and sentenced to a suspended prison term of three months. Collaery, a former Australian Capital Territory attorney general, plans to fight the allegations at trial.

The federal attorney general's department disclosed the latest legal costs associated with pursuing both men in response to a question on notice from the last round of Senate estimates hearings.

"As at 14 May 2021, the total external legal costs incurred by the commonwealth in the prosecutions of Witness K and Mr Bernard Collaery totalled approximately \$3,670,379.91 excluding GST," the department wrote in a response to the Greens senator Lidia Thorpe.

"This amount includes the services of the Australian government solicitor and external legal services, which includes solicitor and counsel fees and legal disbursements."

In the question, submitted on 4 June, Thorpe also asked why the attorney general, Michaelia Cash, had "neglected to provide parliament with an explanation" for commencing the prosecution.

The department pointed to subsequent comments by Cash in the Senate chamber.

In [the exchange on 17 June \(PDF\)](#), Patrick asked the attorney general to “please provide this chamber with an explanation as to why it is in the public interest to prosecute Bernard Collaery and Witness K for calling out unlawful activity”.

Cash replied that the commonwealth director of public prosecutions (CDPP) had “considered the brief of evidence and made an independent decision that a prosecution was the appropriate course of action in relation to this case”.

She said this was done “in accordance with the prosecution policy of the commonwealth that requires the CDPP be satisfied that the prosecution would be in the public interest”.

Patrick told the Senate the government had “worn Witness K down over the years – including the removal of his passport in 2013 so that he could not leave this country”, prompting Cash to say the government did not agree with that “commentary”.

Patrick said on Friday he saw “no public benefit to this prosecution”.

Thorpe called on the government to “drop all prosecutions against Bernard Collaery”.

“The Morrison government spending over \$3m of public money prosecuting a whistleblower is ludicrous, particularly when Witness K risked everything to uncover that the Australian government sent spies to [Timor-Leste](#) to obtain advantages for Australian oil and gas companies,” Thorpe said on Friday.

“This government, and the previous government, will pay anything to keep their skeletons in the closet.”

Timor-Leste has [previously said it had irrefutable proof](#) that Australia bugged the country’s cabinet room to gain an unfair advantage in the lead-up to a 2006 agreement extending the length of a crucial oil and gas treaty.

In 2014 the international court of justice in The Hague heard a case brought by Timor-Leste, which was [seeking to prevent Australia from using documents](#) the domestic spy agency ASIO seized from Collaery in 2013.

The treaty at the heart of the dispute was renegotiated in 2017. The following year the then attorney general, Christian Porter, signed off on the prosecution of Collaery and Witness K for disclosing protected intelligence information.