

Australian government backflips on secrecy push in Witness K court case

Shift surprises ABC during its attempt to stop commonwealth from automatically closing court proceedings

By Christopher Knaus in *The Guardian*, 28 March 2021

Lawyers for the federal attorney general have flipped their position on secrecy in the [Witness K case](#) by abandoning a push to automatically close the court whenever sensitive material is raised.

The government's sudden change of position had wasted "considerable time and expense" for Australian Broadcasting Corporation lawyers who were preparing to intervene to keep the case as open as possible, the ACT magistrates court heard on Monday.

The case against former intelligence officer Witness K is continuing to slowly make its way through the Canberra court. Witness K previously [indicated he would plead guilty](#) to an allegation he unlawfully shared secret information about an Australian spy operation against its impoverished ally, Timor-Leste, during negotiations to carve up oil and gas in the Timor Sea.

Witness K is [described as a whistleblower and a hero](#) by the people of Timor-Leste for his role in exposing the 2004 operation that diverted intelligence resources for commercial gain during the heightened threat environment following the Bali bombings.

The proceedings against Witness K and his former lawyer, Bernard Collaery, [have been made opaque](#) by the National Security Information Act, legislation designed to prevent sensitive national security information from being made public.

On Monday, Witness K's case returned to the magistrates court so it could make orders on how those laws would be applied to his coming sentencing proceedings.

Lawyers for the attorney general – currently Michaelia Cash, acting in the role while Christian Porter is on leave – indicated they did not want to devise a regime that would see the court automatically closed whenever sensitive information was likely to be discussed.

The court heard the commonwealth wanted to keep proceedings as open as possible. That submission took lawyers for the ABC by surprise. The broadcaster had intervened in the case to stop the commonwealth from automatically closing the court throughout the proceedings.

ABC senior lawyer Hugh Bennett told the court the attorney general's new position was "totally at odds" with previous correspondence from the commonwealth. He said the ABC had devoted "considerable time and expense" preparing an objection to the proposed regime that would have automatically closed the court.

Bennett suggested the court specifically note that orders made under the NSI Act did not "provide for the automatic closure of the court". The magistrate, Glenn Theakston, agreed and thanked the ABC for appearing to ensure open justice occurred.

The case will return next month for mention and the sentencing hearing is currently expected to take place in June.

Collaery is fighting separate charges and is planning to take the matter to trial in the ACT supreme court.