



## RESOLUTION ON THE EROSION OF CIVIL LIBERTIES IN AUSTRALIA

We are severely concerned about the erosion of civil liberties and threats to freedom of expression posed by actions of the Australian government over the past few months. These include the introduction of new legislation that would have a severe chilling effect on free expression and open democratic debate, the criminal prosecution of a whistle-blower and his lawyer. We remain concerned about the continued ill-treatment of asylum seekers under Australian law on Manus Island in Papua New Guinea and on the island state of Nauru. They are marooned and effectively imprisoned and PEN Main Case, Kurdish-Iranian writer Behrouz Boochani is detained on Manus Island.

### Introduction of new Espionage and Foreign Interference Act

On 28 June 2018 the Australian government passed The Espionage and Foreign Interference Act<sup>1</sup> purportedly to restrict foreign political influence in Australia in response to “unprecedented” threats<sup>2</sup>, and to muzzle people looking to “disrupt Australia’s democracy”.<sup>3</sup> This came after three UN Special Rapporteurs - on freedom of expression, human rights while countering terrorism, and human rights defenders – had warned the Australian government that proposed changes to national security laws would impose “draconian criminal penalties” on freedom of expression, and could be “inconsistent” with Australia’s international treaty obligations.<sup>4</sup>

Amendments to the Act removed restrictions originally intended to apply to charities, unions and arts bodies. However, legal rights groups including GetUp!, Change.org and the Australian Human Rights Law Centre<sup>5</sup> criticised the new laws’ capacity to criminalise both protests and the communication of anti-government opinions as espionage. Several activist groups have highlighted serious concerns with the legislation and its potential impact on citizen campaigning and the global reputation of Australia. For example, the activist organization GetUp! has said that “The espionage laws . . . threaten journalists who expose subject matter that could damage Australia's international reputation or harm its economic relations. The punishment for such reporting could be a prison sentence between 20 years and life.”<sup>6</sup>

### Prosecutions under the Intelligence Services Act

On 28 June 2018 – the same day as the introduction of the above Act – a prosecution was brought under section 39 of Australia’s Intelligence Services Act, and section 11.5 of the Criminal Code, against lawyer and former ACT Attorney-General Bernard Collaery and his client, known as Witness K (a

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<sup>1</sup> <https://www.legislation.gov.au/Details/C2017B00263>

<sup>2</sup> <https://www.theguardian.com/australia-news/2018/jan/31/asio-says-threat-to-australia-greater-now-than-in-cold-war>

<sup>3</sup> <https://www.theguardian.com/australia-news/2018/feb/20/un-warns-australia-against-imposing-draconian-penalties-on-journalists>

<sup>4</sup> <https://freedex.org/2018/02/16/un-human-rights-experts-urge-australian-parliament-to-reconsider-draconian-espionage-bill/>

<sup>5</sup> <https://www.hrlc.org.au/news/2018/5/3/report-shows-threats-posed-to-press-freedom-by-australian-governments-national-security-laws>

<sup>6</sup> <https://www.getup.org.au/campaigns/democracy/defend-your-democratic-rights-1/our-democratic-rights-are-worth-fighting-for>

former staff member of the Australian Secret Intelligence Service), for disclosing allegedly unlawful acts of the spy agency.<sup>7</sup>

The charges relate to Witness K's disclosures about Australia's covert surveillance of East Timorese government offices to obtain unfair economic advantage during negotiations between East Timor and Australia over the possession of valuable sea-bed oil-fields. An independent Member of Parliament, Mr Andrew Wilkie, revealed the prosecution under parliamentary privilege.<sup>8</sup> The current Australian Attorney-General Christian Porter warned against commentary on the Witness K case and refused to explain why he had approved the prosecution.<sup>9</sup>

We see this prosecution as part of a worrying trend of bringing criminal charges against whistleblowers when they reveal information that governments do not want to be brought to the attention of the public. Such whistleblowers put themselves at significant risk to expose or report government wrongdoing, corruption, or other dangers to society. Other human rights groups have also expressed concern at the prosecution and highlighted that whistle-blowers should be protected and not be prosecuted for exposing allegations of state misconduct, as is necessary to ensure democratic accountability.<sup>10</sup>

### **Appalling conditions and ban on publishing information about detention camps for asylum seekers**

There are severe restrictions on publishing information about Australia's offshore detention centres where more than 1,500 asylum-seekers and refugees have been held for over five years. Staff are subjected to gag orders and journalists are unable to visit Nauru. Help from advocates has assisted courageous Kurdish-Iranian detainee Behrouz Boochani (an honorary member of PEN Melbourne<sup>11</sup>) to publish articles in the on-line and daily press, and, with a hand-held phone, to produce a film on conditions at Manus Island, Papua New Guinea.<sup>12</sup> The violations of the rights of detained asylum-seekers include medical neglect which has resulted in deaths, and mental deterioration in detainees leading to a number of suicides.<sup>13</sup> After more than five years, no end is in sight for those detained and 12 of those detained have died in custody.<sup>14</sup>

### **The Assembly of Delegates of PEN International calls on the Australian Government:**

- to repeal the Espionage and Foreign Influence Act which stifles legitimate protest and expression of anti-government opinions, in line with the recommendations of UN Special Rapporteurs
- to stop the prosecution of Bernard Colleary and Witness K which is contrary to Australia's human rights obligations, and sets a dangerous precedent for silencing whistleblower activity. If the prosecution continues, it should be conducted in an open court, with public access to court hearings and information unless there are legitimate national security reasons for not doing so
- to protect all whistleblowers – including government employees – from prosecution for disclosing state activity deemed unlawful

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<sup>7</sup> <https://www.attorneygeneral.gov.au/Media/Pages/prosecution-matter-28-june-2018.aspx>

<sup>8</sup> <https://www.afr.com/news/timor-bugging-case-whistleblower-charged-andrew-wilkie-tells-parliament-20180628-h11zfi>

<sup>9</sup> <http://www.abc.net.au/news/2018-06-28/witness-k-and-bernard-collaery-charged-intelligence-act-breach/9919268>

<sup>10</sup> <https://www.hrw.org/news/2018/07/23/australia-dont-prosecute-exposure-misconduct>

<sup>11</sup> <http://www.penmelbourne.org/>

<sup>12</sup> <https://pen-international.org/news/on-human-rights-day-take-action-for-journalist-behrouz-boochani-stranded-on-manus-island>

<sup>13</sup> As per above

<sup>14</sup> <https://pen.org.au/blogs/news/failure-to-remove-the-refugees-from-dire-circumstances>

- to end the continued violation of the internationally guaranteed rights of asylum-seekers, and the suppression of information on their detention
- to immediately make safe and meaningful resettlement arrangements for Behrouz Boochani and all other refugees and relocation arrangements for other asylum-seekers currently located on Manus Island and Nauru in line with international law.

