

A Legislative Breakthrough in the pursuit of Justice in Australia

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This paper consists of 3 sections:

1. A timeline to provide a framework for the discussion
2. An outline of the difficult cases
3. Some comments on the new right of appeal

The timeline

Over the last 12 years we have worked together on the Networked Knowledge project. The goal has been to research, publish and press for law reform on issues related to serious miscarriages of justice in Australia, and particularly in the state of South Australia.³

2000 – We commenced work on problem cases in South Australia.

2001 - ABC 4 Corners “Expert Witness” broadcast nationally.⁴ It introduced a series of alleged miscarriage of justice cases and the systemic problems which gave rise to them.⁵

2004 - *A State of Injustice* - provided extended details of cases discussed by ABC program.⁶

2006 - *Losing Their Grip – the case of Henry Keogh* – forensic and legal errors in the case.⁷

2010 - *Forensic Investigations and Miscarriages of Justice* - the law and case studies on investigations, forensic science, forensic pathology - Australia, Britain, Canada.⁸

March 2011 – to implement the main recommendation of our book, a Bill to establish a

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³ The Networked Knowledge website is at <http://netk.net.au> – to date nearly 4 million documents have been downloaded to over 200 countries. The AI Rule of Law page is at <http://netk.net.au/RuleofLawHome.asp>

⁴ Videos, transcripts and summaries of programs are available at <http://netk.net.au/VideosHome.asp>

⁵ We include here ‘failed conviction’ or ‘no prosecution’ cases as well as ‘wrongful conviction’ cases where the outcome appears to be inappropriate in the context of the available evidence; see for example, the Baby Deaths, Peter Marshall and Terry Akritidis cases which follow.

⁶ Robert N Moles *A state of Injustice* (Lothian Books) 2004, now available as e-book: <http://www.amazon.com/dp/B009ZCIN0S>

⁷ Robert N Moles *Losing Their Grip - the case of Henry Keogh* (Elvis Press) 2006, now available as e-book: http://www.amazon.com/dp/B00A4TFL0G#reader_B00A4TFL0G

⁸ Sangha, Roach and Moles, *Forensic Investigations and Miscarriages of Justice* (2010) Irwin Law, Toronto, further details available here: <http://netk.net.au/ForensicInvestigationsHome.asp>

Criminal Cases Review Commission (CCRC) based upon the UK model,⁹ was drafted and presented to the South Australian parliament. This was subsequently referred to the Legislative Review Committee of the parliament.

March - November 2011 – we made submissions to the Australian Human Rights Commission (AHRC) advising that the Australian criminal appeal system did not comply with the International Covenant on Civil and Political Rights (ICCPR).¹⁰

November 2011 – We made a lengthy submission to the LRC (78pp).¹¹

November 2011 – the AHRC advises the LRC that the criminal appeal system in all states and territories of Australia fails to comply with international human rights obligations.¹²

February 2012 - Advocates International conference in Barcelona.

March 2012 – we provided oral evidence to the LRC.¹³

July 2012 – The LRC report was issued. It did not recommend the establishment of a CCRC. It recommended a new statutory right of appeal, the establishment of a Forensic Review Panel and a review of the use of expert evidence in criminal trials.¹⁴

November 2012 – the *Statute Amendment (Appeals) Bill* is published for consultation.¹⁵

7 February 2013 – Bill considered and passed by the House of Representatives.

19 March 2013 – Bill considered and passed by the Legislative Council.

It is due to receive the Royal Assent and to be proclaimed any time now.

This Act represents an historical change for the Australian legal system. It is the first time in 100 years that the appeal rights in Australia have been changed. It is the first time in 100

⁹ Articles and cases on the UK CCRC are available here: <http://netk.net.au/CCRCHome.asp>

¹⁰ Our submissions are available here: <http://netk.net.au/HumanRightsHome.asp>

¹¹ Available at: <http://netk.net.au/CCRC/LRCSubmission.pdf> - the submission [hereinafter referred to as 'LRC submission'] was formally published by the parliament and has parliamentary privilege which means that any accurate report of what it contains will not constitute defamation. The information in this paper concerning our problem cases and issues is taken from it except where otherwise stated.

¹² The AHRC submission is available at <http://netk.net.au/CCRC/AHRCSubmission.pdf> - the necessary implication is that the system of criminal appeals in Australia has failed in this respect for the last 32 years. Australia ratified the ICCPR in 1980.

¹³ The link to the video and transcript of our evidence is available here: <http://netk.net.au/AppealsHome.asp>

¹⁴ <http://netk.net.au/CCRC/CCRCReport.pdf> - the reason for the new right of appeal will be apparent after reading the 'systemic problems' section.

¹⁵ This Bill replaced the previous CCRC Bill – the Appeals Bill is available at <http://netk.net.au/Appeals/Bill.pdf> - the Attorney-General's explanatory memo is available at: <http://netk.net.au/Appeals/Report.pdf>

years that there has been any significant inconsistency in the appeal rights between the various Australian states and territories. This raises directly ‘Rule of Law’ and ‘equality before the law’ issues which we mention at the end of this paper.

The outline of difficult cases

The Law: on an appeal the court is not seeking to determine guilt or innocence, but merely whether a substantial or significant error has occurred at trial. If it has and there is a *possibility* that the jury would have been influenced by it, then the conviction *must* be set aside.¹⁶

The pathologist - in the beginning

1968 – “When Dr Manock was appointed [as Chief Forensic Pathologist] he had no formal qualifications as a forensic pathologist.”¹⁷

1971 – He was made a Fellow of Royal College of Pathologists. He was exempted from 5 years of study and exams. The oral-only exam would have lasted for about 20 minutes, and he would have been asked some questions about pathology.¹⁸

1978 - his employer said in court proceedings: “[Dr Manock] was unable to do certifying the cause of death because his lack in histopathology.”¹⁹ Yet, he went on to conduct over 10,000 autopsies:

... in fact, it’s shameful to think that the autopsies of nearly 10,000 South Australian men, women and children were certified by a man – not scientifically qualified to sign off on *one*.²⁰

The pathologist – mid career

1981 – The High Court in *R v Emily Perry* (1981) said that some of the evidence in the case “revealed an appalling departure from acceptable standards of forensic science..” adding, “the evidence [of malicious poisoning] was not fit to be taken into consideration.”²¹ It said the prosecutor should use experts who are *substantially* and not just *nominally* experts in their field. Dr Manock went on to give ‘expert’ evidence in other cases for the next 14 years.

¹⁶ *LRC submission* pp 16-19.

¹⁷ *LRC submission* p28.

¹⁸ *LRC submission* p29.

¹⁹ *LRC submission* p28.

²⁰ *LRC submission* p29 citing G. Archer, Channel 7 *Today Tonight* (Adelaide) <http://netk.net.au/Media/TT17.asp>

²¹ These comments are from *LRC submission* p34.

The pathologist – at the end

1995 – The Coronial Baby Deaths Inquiry – the Coroner said Dr Manock must have seen things which couldn't have been seen (in these cases 'bronchopneumonia') because it didn't exist.²² The Coroner said the autopsy reports had achieved the opposite of their intended purpose – they closed off inquiries instead of opening them up. He said some of his answers to the Coroner, on oath, were 'spurious'.

The cases

Frits Van Beelen (1972): Convicted of the murder of a young girl on a beach near Adelaide.²³ Timing of death was crucial. On the basis of an examination of stomach contents Dr Manock said it was "virtually certain" that she was dead by 4.30pm. A few years later, he agreed in his evidence in another case, that estimates of time of death on the basis of stomach contents were "very unreliable".²⁴

Another person had confessed to the murder – he was ruled out of consideration on the basis of pathology evidence which also had no proper scientific basis to it.

The physical evidence (the radio) contradicted the Crown hypothesis and there was other expert evidence to say that the Crown's pathology evidence was unreliable or wrong.

David Szach (1979): He was convicted of the murder of criminal lawyer Derrance Stevenson.²⁵ After being shot, Stevenson's body was placed in a freezer where it was found the following day. Dr Manock calculated a time of death which coincided with witness statements which placed Szach at the scene around that time.²⁶ At the trial, the prosecutor said, "... the objective and scientific evidence means that he was dead by 6.40, and the accused was there." Professor Bernard Knight, a world-leading authority on the issue of timing death based upon post mortem cooling, said of the calculations in this case, "... all I can say is that in my opinion his reliance upon very speculative and tenuous calculations is ill founded and that the degree of accuracy he offers cannot be substantiated." He said in relation to another aspect of the calculations, "this to me appears to be a figure snatched from the air without any scientific validation."

²² These remarks on these cases are from *LRC submission* p37.

²³ See *A state of Injustice* ch 5 - and <http://netk.net.au/VanBeelen/VanBeelen.asp>

²⁴ These remarks on this case are from *LRC submission* p30-31.

²⁵ See *A state of Injustice* ch 6 - and <http://netk.net.au/SzachHome.asp> .

²⁶ The remarks on this case are from *LRC submission* pp32-33.

Gerald Warren (1992), a young aboriginal boy was found dead on a dirt track just outside Port Augusta.²⁷ Dr Manock had initially stated that he died after having fallen from a moving vehicle whilst intoxicated.²⁸ Subsequently two men were convicted of his murder on the basis that they had beaten him with a metal rod, and driven their vehicle backwards and forwards over his body. During the trial, when questioned about whether Warren had fallen from the vehicle or had the vehicle driven over him, Dr Manock stated, “the forces involved in either scenario are very similar.” That of course, was not correct. He also stated that certain injuries may have been caused by being beaten with a metal rod with a thread on the end (as it appeared at trial) or perhaps by the corduroy fabric of his trousers coming into contact with his hand and face (as was initially suggested). It was his view that either scenario would leave similar injuries. Again, that was not correct.

Derek Bromley (1984): this case involved a person who had been found dead in the river Torrens in Adelaide.²⁹ It was accepted that his body had been immersed in water for five days. At trial, Dr Manock gave evidence concerning a number of injuries to the body which he variously described as resulting from blows, kicks, fists, contact with rough ground and possible karate chops. The injuries were said to have occurred shortly before death which was said to have been caused by drowning, after the victim had been beaten and thrown in the water. Professor Plueckhahn, an expert forensic pathologist, with special expertise of drowning cases stated, after having reviewed the evidence in this case, “[i]t is my firm opinion that there is no scientific basis in the post mortem findings for an unequivocal diagnosis of death from drowning.”³⁰ In addition, it is clear that where a body has been immersed in water for two days or more, it is not possible to distinguish between post mortem and ante mortem injuries and to identify particular causes of injuries.

Terry Akritidis (1990): A young man was reported to have jumped from a radio communications tower, collided with the concrete roof of an adjacent building, bounced off that and landed on the ground.³¹ The Coroner was told that the impact of the body had knocked a hole in the concrete roof about 1 foot square. It was made of thick (2.5”) reinforced concrete. Dr Manock reported that there were no substantial external injuries to the

²⁷ See *A state of Injustice* ch 6 – and <http://netk.net.au/WarrenHome.asp>

²⁸ The remarks on this case are from *LRC submission* pp34.

²⁹ See *Petition of Derek John Bromley To His Excellency Rear Admiral Kevin Scarce AC CSC RANR Governor of South Australia*, November 2010 available at <http://netk.net.au/BromleyHome.asp>

³⁰ The remarks on this case are from *LRC submission* p35.

³¹ The remarks on this case are from *LRC submission* p35-36.

body. He said that the clothing (being interposed between the body and the surface that it struck) would have helped to reduce the severity of the injuries. The young man was wearing a shirt and a pair of jeans. As we said in *A state of Injustice*, “[w]hen bodies and concrete collide, the normal expectation is that the body will come off worst.”³² Dr Manock informed the Coroner that the time of death was 12 hours before the body was undressed at the autopsy. This meant that the deceased would have died 2 hours *after* his body, with rigor already advanced, was discovered by the police.³³ A previous pathologist had stated that he had died 12 hours before his body was discovered. It was later learnt that at that time he would have been in the custody of the police at Yankalilla police station.³⁴

Peter Marshall (1992): He was found dead at his home, lying on the floor next to his bed with blood pooling around his head.³⁵ Dr Manock attended at the scene and concluded that Marshall had died by falling out of bed and hitting his head. “There being nothing suspicious” the body was taken to the mortuary where nothing further was done until the following day. During the autopsy, a bullet hole was found in his head and a bullet was lodged in his brain.

Baby Deaths (1994): [See comments earlier] 3 babies, aged variously 3 months and 9 months had died in separate incidents. Dr Manock said each had died of bronchopneumonia. A subsequent Coronial Inquiry found that none of them had died of bronchopneumonia. One of them had sustained 15 broken ribs, 2 fractures of the skull and a very serious fracture of the spine. The Coroner made a series of serious adverse findings, referred to earlier. However, he then decided, because the trial of Henry Keogh was under way, and the same pathologist was to give evidence at that trial, he would withhold his findings until the Keogh trial had been resolved. 2 days after Keogh was found guilty the Coroner published his Findings. As we said in our submission to the Legislative Review Committee, “[t]he failure to disclose the Coronial Findings in this case .. amounts to a serious prosecutorial non-disclosure .. that alone would totally justify the verdict in the Keogh case being set aside.”³⁶

³² *LRC submission* p36.

³³ *A state of Injustice* p134.

³⁴ *A state of Injustice* p134.

³⁵ The remarks on this case are from *LRC submission* p36.

³⁶ *LRC submission* p37.

Surprisingly, the Coronial Findings were not mentioned in the course of Mr Keogh's appeal.³⁷ His defence counsel later explained that: "he had considered them, but could not see how they could assist Keogh. As the Findings only came out after the trial he did not have time to consider them in more than an embryonic level and was without the opportunity for an in-depth analysis prior to the appeal being heard."³⁸

There has been no judicial review of this matter and Mr Keogh remains in prison having now served some 19 years of his 26 year sentence.

Henry Keogh (1995): this involved an alleged homicidal drowning in a domestic bath.³⁹ Major deficiencies in the Crown case have been revealed since the trial and the appeal. No court has yet considered them in terms of the safety of the conviction, because of the 'systemic problem' which we discuss in the next section.

The grip: at trial Dr Manock said that someone (presumably Keogh) pushed her head under the water with the *left* hand. Later, at Medical Board proceedings he said that marks on the leg were caused by a *left* hand grip. [At trial he had said a right hand grip]

Consciousness: At trial, Dr Manock stated that no damage to the outer surface of the brain at autopsy correlated to consciousness whilst drowning thus enabling him to rule out an accidental "slip and fall" explanation. Later, at the Medical Tribunal, he accepted that the principle he had relied upon at trial had not been a valid one.

Diagnosis of drowning. At trial, Dr Manock said aortic staining was a "classical" sign of drowning. Later, in the Medical Board, he said that he was not aware of any support for the principle in the scientific literature. However, he added, this did not mean that he was wrong, just that "the rest of the world hadn't caught up." However, it did mean that such evidence would have been inadmissible at trial.

Non-disclosure of forensic test result: Dr Manock admitted at the Medical Board that he had not disclosed the potentially exculpatory result of a forensic test. He said he didn't disclose it to the prosecutor, because the issue "did not come up in conversation". In subsequent proceedings, the Chief Justice of South Australia stated that the non-disclosure by an expert

³⁷ *R v Henry Vincent Keogh* 1995 SASC 5397 available at <http://netk.net.au/Australia/Keogh1.asp>

³⁸ Affidavit of Michael Sykes, solicitor, 7 November 1996, discussed in *Losing Their Grip*, ch 7 pp117-118, affidavit available at http://netk.net.au/Reports/Affidavits_Sykes.asp - there were some three months between the date the Findings were issued and the hearing of the appeal and they consisted of 72pp.

³⁹ The remarks here are taken from *LRC submission* p38-42.

witness of a potentially exculpatory forensic test result was not necessarily a breach of duty of an expert witness. The Chief Justice did not cite any legal authority to support his view, and he did not discuss any of the extensive legal authorities which clearly stated the opposite view.⁴⁰ Such a non-disclosure is clearly a sufficient basis upon which to set aside a verdict of a jury arrived at in ignorance of it.⁴¹

Medical Board opinions: in 2005, an expert pathologist on the Medical Board formed the following opinions:

The autopsy was sub-standard. The information recorded was deficient in detail and substance. For example, the absence of organ weights and the minimal histological examination characterise an autopsy falling remarkably short of what might be considered a minimum data set appropriate for any autopsy, let alone a forensic autopsy. It is the absence of data that is the problem in this case because it renders the conclusions untestable...

The documentation in the autopsy in question was manifestly inadequate, even by the lowest of standards...

In my opinion the standard of the conduct of the autopsy and the quality of the resulting evidence was markedly sub-standard to the point of incompetence...

Dr Manock merits reprimand and exclusion from further independent function as a forensic pathologist. If one takes this view then the charge of unprofessional conduct is proven.⁴²

As the Dr pointed out in his report, the autopsy in this case failed to comply with standards which had been laid down in 1908. Shortly after, the Medical Board issued a formal finding that Dr Manock was not guilty of unprofessional conduct.⁴³ Subsequently the Chief Justice of South Australia stated that he did not see any necessary inconsistency between the opinions expressed by the medical board members in the memoranda, and the formal finding of the Medical Board.⁴⁴ However, they would provide a sufficient basis upon which to set aside a verdict of a jury, arrived at in ignorance of them as noted above.

⁴⁰ *Keogh v James* [2009] SASC 258 discussed in Kevin Borick QC "Expert Witnesses and the Duty of Disclosure - *Keogh v James: per incuriam*" September 2011 - LexisNexis - Direct Link - Volume 8 No 11. See also *Forensic Investigations* pp 18, 291.

⁴¹ See *Forensic Investigations* pp 158-163.

⁴² 16 March 2005 - internal memo from Dr Mark Coleman to members of the Medical Board – available at <http://netk.net.au/MedicalBoard/Coleman16mar.asp> - the other medical specialists on the Board expressed their agreement with it.

⁴³ 22 June 2005 - the Report of the Medical Board is available at <http://netk.net.au/Reports/MedBoardDecision.pdf>

⁴⁴ *Keogh v The Medical Board Of South Australia & Anor* [2007] SASC 342 available at <http://netk.net.au/Keogh/Keogh16.asp>

Timing and causal connection of bruises: At trial, the evidence was that the bruises to the leg were close to the time of death and constituted a grip mark, which was “the one positive indication of murder”. In a television interview broadcast in June 2011, Dr Manock stated that the bruises could have been there several days prior to the death and in circumstances unconnected with any homicidal assault.⁴⁵

Depth of water in the bath: at the Medical Board hearings, Dr Manock said that he had *assumed* that the water in the bath was sufficiently deep to drown someone in the way he had suggested. This means that the evidence of drowning ought not to have been admitted at the trial. The law of Australia and the UK states that expert opinions are not admissible unless the facts upon which they are based have been proved (or will be proved) by admissible evidence.⁴⁶

Comments on the new right of appeal

The Statutes Amendment (Criminal Appeals) Act 2013 which has now been passed by the South Australian parliament represents an historic change in the system of criminal appeals in Australia.⁴⁷ It creates a new statutory right of appeal in cases where there is “fresh and compelling” evidence of a miscarriage of justice. It is the first time in 100 years that the appeal rights in Australia have been changed. It is also the first time that there has been any differentiation in appeal rights between the various states and territories.

Until now, where a person has been convicted and has had an unsuccessful appeal, there has been no further right of appeal. The appeal court has said that it cannot reopen an appeal or hear a second appeal. The High Court has said that, for constitutional reasons, it cannot consider “fresh evidence” in such cases.⁴⁸ The only remaining procedure has been to lodge a petition to the Governor with a request that the matter be referred back to the court of appeal by the Attorney-General. There is judicial authority which states that the procedure is the

⁴⁵ LRC submission p41.

⁴⁶ LRC submission p42.

⁴⁷ The Act together with the various submissions to the AHRC and the parliamentary inquiry together with its report and the parliamentary debates and statements may be found at <http://netk.net.au/AppealsHome.asp>

⁴⁸ Bibi Sangha and Bob Moles, “Post-Appeal Review Rights, Australia, Britain and Canada” 36 Criminal Law Journal (2012) pp300-316 available at <http://netk.net.au/CrimJustice/CriminalLawJournal.pdf>

subject of an “unfettered discretion”, is not subject to judicial review, and does not involve any “legal rights”.⁴⁹

As John Rau, the South Australian Attorney-General said in introducing the Bill to the parliament, that process was a “mysterious” process, because it was all happening “behind closed doors”.⁵⁰

Under the new system, he said, anyone can “take the matter to a court in a public forum and say whatever they want to say in public, hear whatever anyone else wants to say about it in public”. The net effect is that now “we have that marvellous disinfectant of sunshine just covering the whole circumstance — magnificent. I am starting to feel quite warm about it right now.”

As mentioned earlier, over the previous 12 years, we had been researching, publishing our findings and assisting with various legal procedures into the significant miscarriage of justice cases which we have mentioned. ABC 4 Corners, Channel 9’s 60 Minutes, ABC Radio National and Channel 7’s Today Tonight had all broadcast programs about them.⁵¹ Some of this had met with unfair and unreasonable comments and criticisms from politicians and legal officials.⁵² It was this which largely motivated us to jointly author a key text (*Forensic Investigations*) covering the law and forensic cases on this topic in Australia, Britain and Canada.

In 2011 we were able to persuade the Australian Human Rights Commission that the current procedures on criminal appeals were in breach of the UN International Covenant on Civil and Political Rights. In November 2011, the AHRC provided a formal submission to the Legislative Review Committee which was looking at the situation in South Australia. The AHRC said that the current procedures *throughout Australia* failed to protect the right to a fair trial. It also said that the current appeal procedures also failed to provide a fair opportunity for an appeal, where evidence came to light after an unsuccessful appeal, which showed that there had been a serious miscarriage of justice.⁵³

⁴⁹ Bibi Sangha and Bob Moles, “Mercy or Right? Post-Appeal Petitions in Australia”, 14 Flinders Law Journal pp293-328 available at <http://netk.net.au/CrimJustice/FlindersLJ2012.pdf>

⁵⁰ This and the following comments are taken from Hansard, House of Assembly, Statutes Amendment (Appeals) Bill 7 February 2013 available at <http://netk.net.au/Appeals/Appeals6.asp>

⁵¹ Most of the programs are available online at <http://netk.net.au/VideosHome.asp>.

⁵² See for example, *Losing Their Grip* chs 6 and 7.

⁵³ 25 November 2011, the AHRC submission is available at <http://netk.net.au/CCRC/AHRCSubmission.pdf>.

The Legislative Review Committee recommended there be established a new statutory right of appeal, which this Act embodies, and which will do much to correct the unfortunate situation in South Australia.⁵⁴ We are pleased to see that this initiative has not only been supported by the Australian Human Rights Commission but also by the South Australian Law Society, the Australian Lawyers Alliance, the Law Council of Australia and Civil Liberties Australia, amongst others.⁵⁵

However, the appeal rights in Australia have been in “common form” since they were introduced by each state and territory shortly after the UK *Criminal Appeal Act* 1907. As the AHRC pointed out, the failure to comply with international human rights applies equally in all states and territories in Australia. This means that the introduction of a remedy in South Australia, if not followed in other Australian jurisdictions, would give rise to an additional problem.

In recent cases, the High Court of Australia has outlined the fact, usually taken for granted, that the “rule of law” not only applies in Australia but is taken to be more fundamental to the legal framework of Australia than even the constitution. In *South Australia v Totani*, the Chief Justice of the High Court stated that, ‘[t]here must be the universal application throughout the Commonwealth of the rule of law; an assumption “upon which the Constitution depends for its efficacy”’.⁵⁶

A key component of the ‘rule of law’ is the principle of ‘equality before the law’. This requires that the laws of the land should apply equally to all except where objective differences justify differentiation - ordinary people regard this as a cornerstone of our society.⁵⁷ Living in South Australia, as opposed to any other part of Australia, is clearly not an ‘objective difference’ which would justify differential treatment in access to the courts where people claim to have been wrongly convicted. Clearly there is much to be said for the view being advocated by the Hon Michael Kirby AC CMG (former justice of the High Court

⁵⁴ 18 July 2012, the Committee’s report is available at <http://netk.net.au/CCRC/CCRCReport.pdf> - there are a number of technical problems with the new legislation which will require some discussion before being taken up by other states, but which it is unnecessary to dwell on at this stage.

⁵⁵ Their respective submissions and comments are available at <http://netk.net.au/AppealsHome.asp>

⁵⁶ *South Australia v Totani* (2010) 242 CLR 1, [6] available at <http://netk.net.au/Australia/Totani.asp> - This issue was discussed in the final sections of the *Criminal Law Journal* and *Flinders Law Journal* articles mentioned earlier. See also the lecture notes and other materials on the Rule of Law web page at <http://netk.net.au/RuleofLawHome.asp>

⁵⁷ Tom Bingham, *The Rule of Law* (2010) Penguin Books, at p55, <http://netk.net.au/RuleOfLaw/Bingham2.asp> and Prof Sir Neil MacCormick QC *Rhetoric and the Rule of Law – a Theory of Legal Reasoning* (2005) Oxford University Press <http://netk.net.au/RuleOfLaw/MacCormick1.asp>

of Australia) when he suggests that other states and territories should urgently and carefully consider rectifying this problem. In concluding, we can do no better than to quote his comments which were provided to the Parliament upon the final reading of this Bill:

I welcome the provisions of the Statutes Amendment (Appeals) Bill 2012 (SA) to address cases of possible miscarriage of justice in a more effective way.

This is innovative legislation. I congratulate the South Australian Parliament on returning to this tradition of innovation and leadership in legal reform. I hope that the measure adopted in South Australia will be quickly considered in other Australian jurisdictions because the risks of miscarriage of justice arise everywhere and they need more effective remedies than the law of Australia presently provides.

The desire of human minds for neatness and finality is only sometimes eclipsed by the desire of human minds for truth and justice. There will always be a disinclination to reopen a conviction, particularly where it has been reached after a lengthy criminal trial and a verdict of guilty from a jury of citizens. Sometimes, however, that disinclination must be confronted and overcome with the help of better institutions and procedures than we have so far developed in Australia.

Fortunately, the Parliament of South Australia is now enacting sensible legislation that responds to the problem of miscarriages of justice. It is the first step for Australia. Judges, lawyers and administrators throughout Australia will be studying the operation of the South Australian law with vigilance. Any law that helps society to avoid serious miscarriages of justice is to be welcomed. The new South Australian law is such a measure. I welcome it and praise the Parliament of South Australia. I also praise Ms Bressington for her initiative and the lawyers and the civil society organisations who have been urging the adoption of such a law for so long. Their success is an instance of democracy in action and of principle triumphing over complacency and mere pragmatism. I hope that other jurisdictions in Australia will take steps to enact legislation for the same purpose.⁵⁸

⁵⁸ 19 March 2013, Legislative Council, *Statutes Amendment (Appeals) Bill* available at <http://netk.net.au/Parliament/LC16.asp>