

## Networked Knowledge Media Reports

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On 7 June 2014 Julieanne Strachan of the Canberra Times reported “SA's new appeal laws may spread around country”.



Former Justice of the High Court of Australia Michael Kirby. *Photo: Reuters*

South Australia introduced historic reforms last year that granted prisoners a statutory right to appeal their convictions where there was fresh and compelling evidence. It was the most significant change to SA's criminal appeals laws in a century and was hailed by former Justice of the High Court of Australia Michael Kirby as a decision that should potentially be copied by other states and territories.

Justice Kirby said in an opinion piece, published by Fairfax in May 2013, that experience had shown that errors could slip through the system. He said that if appeal courts examined a case and rejected it, then it was difficult to introduce new arguments on further appeal to the High Court. "The court has also repeatedly ruled that, under the constitution, it cannot receive new evidence (such as DNA evidence), no matter how persuasive and powerful that evidence might be," he said.

Justice Kirby said if there was fresh evidence, prisoners would have to petition to the governor for a referral to the Court of Appeal. "If the relevant minister, advising the governor, decides against it, the courts have said that decision is not susceptible to further judicial review," he said.

"Again, the decision can effectively rest upon the determination of a single official advising the minister. That advice takes place behind closed doors. In times of scarce resources, the temptation to refuse further enquiry is very large. "Where questions of human freedom are at stake, it is not appropriate to repose final power in so few hands."