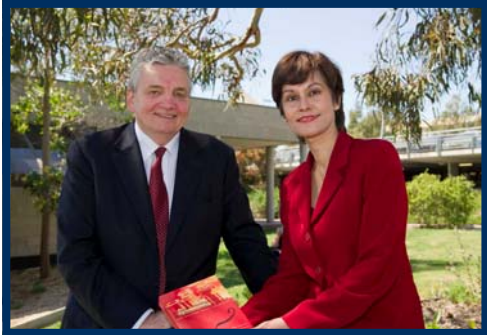


### A New Right of Criminal Appeal



*Bibi Sangha and Dr Robert Moles*

On 5 May 2013 the *Statute Amendment Appeals Act* was passed by the South Australian Parliament. It created a new right of appeal for those claiming to be wrongly convicted. It was the first substantive change to the appeal rights in Australia in 100 years.

As the Hon Michael Kirby said in his article in *The Australian Financial Review* (2 May 2013), “The initial stimulus for this new Act was the publication of the book *Forensic Investigations and Miscarriages of Justice* (2010) by Bibi Sangha, Kent Roach and Robert Moles.”

The book had recommended the establishment of a Criminal Cases Review Commission modelled on the UK

CCRC which had successfully referred some 350 convictions over the last 14 years. The Australian system only allowed for one appeal following a conviction. If after that, compelling evidence emerged to show that it was a wrongful conviction, there was no *legal right* to any further review of the case.

Bibi Sangha assisted in drafting a Bill to establish a CCRC in South Australia (*Criminal Cases Review Commission Bill 2010 (SA)*) and in putting submissions to the Australian Human Rights Commission to the effect that the above arrangements were in breach of international human rights obligations.

The issues came together during a parliamentary inquiry into the CCRC Bill. The committee recommended the establishment of a new statutory right of appeal. The South Australian Attorney-General agreed. He said there was a need for greater transparency in dealing with such cases. Given that the appeal rights have been in ‘common form’ since they were introduced around 100 years ago, there is now interest from all other states in considering similar reforms.

As Michael Kirby said, “I hope that other jurisdictions in Australia will take steps to enact legislation for the same purpose. Wrongful convictions and miscarriages of justice haunt the conscience of a civilised society.”

### Prisoners Build a New Foundation for Life

The Flinders Foundation Studies Program, a semester-long preparation course for university study, has its first ‘graduates’ from within the South Australian prison system. Ten serving prisoners (from an initial class of 17) have completed the first intake of the course, which was taught at Mobilong Prison by teachers from Flinders and TAFE SA, with the support of the Department of Correctional Services.

At a ceremony at Mobilong last week, six of the completing students received their certificates from Flinders University’s Deputy Vice-Chancellor (Academic) Professor Andrew Parkin. Professor Parkin congratulated the completers on their sustained efforts. “The Foundation Program has been offered by Flinders for 30 years and, through our partnership with TAFE SA, has been made more widely available in the community in the past year, including this unique initiative with Mobilong,” Professor Parkin said. “By providing an alternative method for gaining access to university study, the Foundation Studies Program offers truly transformative opportunities for people who want to alter the course of their lives.”

One of the completing students said that undertaking the course had changed his life. The course’s principal teacher said the students had been engaged, focused and enthusiastic participants, and that the classroom had “crackled with intensity”. The initiative to trial some sort of educational engagement with Mobilong Prison came from Professor Mark Halsey in the Flinders Law School; the Foundation Studies Program was then identified as the most appropriate option.

Staff from the University’s Transition Office, Dr Michael X Savvas and Associate Professor Salah Kutieleh, will present a paper on the pilot program, including student feedback, to the Australasian Corrections Education Association (ACEA) conference later this month. Dr Savvas said that with most education in prison devoted to basic literacy and numeracy, running the Foundation Studies Program at Mobilong had been a radical and successful forward step that showed real potential in assisting prisoners towards reintegrating into society on their release.