

A REPOSITORY OF WRONGFUL CONVICTIONS IN AUSTRALIA: FIRST STEPS TOWARD ESTIMATING PREVALENCE AND CAUSAL CONTRIBUTING FACTORS

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While the occurrence of wrongful convictions is not contested today, the extent of the problem is debated and unknown. Over the last two decades, international scholars in the area, primarily from the United States and the United Kingdom, have focused efforts on identifying the causes of wrongful conviction and estimating a prevalence rate for the phenomenon through varied means. Less is known about the prevalence and causes of wrongful conviction in Australia. This article reviews the literature on estimating the prevalence of wrongful conviction in international contexts and identifies the challenges of extrapolating numbers from particular populations to determine this estimate. A complete listing of 71 identified and known wrongful convictions in Australia from 1922 to 2015 is provided and discussed in terms of potential causes of and contributing factors to wrongful conviction to serve as a basis for future studies and international comparisons. All causal and contributing factors to wrongful conviction that are established in the international literature are present in Australian cases, though the distributions vary from their international counterparts. Additional issues including erroneous judicial directions and the Indigenous ethnicity of the accused featured highly in the sample as causal or contributing factors of wrongful conviction in Australia.

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I INTRODUCTION

There is now little contestation that wrongful convictions can and do occur in Australia.¹ This is especially so when state misconduct and forensic error are exposed;² when the wrongfully convicted are awarded monetary compensation by the state;³ or when they win lawsuits against state officials responsible for their wrongful conviction.⁴ However, the extent of the problem is unknown in Australia. Part of the difficulty in estimating its prevalence lies in the fact that no biological evidence is systematically collected or retained for subsequent post-conviction retesting that can be instrumental in demonstrating innocence.⁵ In light of this, research over the last two

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- ¹ See generally Edwin M Borchard, 'European Systems of State Indemnity for Errors of Criminal Justice' (1913) 3(5) *Journal of the American Institute of Criminal Law and Criminology* 684; Edwin M Borchard, *Convicting the Innocent: Errors of Criminal Justice* (Yale University Press, 1932) for discussion of wrongful conviction as a contested phenomenon. See generally Lynne Weathered, 'Wrongful Conviction in Australia' (2012) 80(4) *University of Cincinnati Law Review* 1391 for discussion of wrongful conviction in Australia.
 - ² See, eg, Farah Jama's conviction involved the mishandling of forensic DNA evidence: Victoria, Inquiry into the Circumstances That Led to the Conviction of Mr Farah Abdulkadir Jama, *Report* (2010); or the Andrew Mallard case that exposed police misconduct during the investigation: Corruption and Crime Commission, *Report on the Inquiry into Alleged Misconduct by Public Officers in Connection with the Investigation of the Murder of Mrs Pamela Lawrence, the Prosecution and Appeals of Mr Andrew Mark Mallard, and Other Related Matters* (Corruption and Crime Commission, 2008).
 - ³ See, eg, Lindy Chamberlain received an ex gratia payment of \$1.3 million: Chips Mackinolty and Malcolm Brown, 'NT Government Awards Chamberlains a Payment of \$1.3m', *Sydney Morning Herald*, 26 May 1992, 10. See generally Rachel Dioso-Villa, 'Without Legal Obligation: Compensating the Wrongfully Convicted in Australia' (2012) 75(3) *Albany Law Review* 101 for a discussion on compensation for wrongful conviction in Australia.
 - ⁴ See, eg, Roseanne Catt Beckett was awarded \$4 million in damages for 10 years of wrongful imprisonment: 'NSW drops \$4m malicious prosecution battle against Roseanne Beckett', *The Guardian* (online), 23 November 2015 <<http://www.theguardian.com/australia-news/2015/nov/23/nsw-drops-4m-malicious-prosecution-battle-against-roseanne-beckett>>.
 - ⁵ As Gross and O'Brien state, 'there is no systematic way to identify false convictions in retrospect ... There is no general test that can be applied after the fact to confirm or disprove the guilt of convicted criminal defendants'. See Samuel R Gross and Barbara O'Brien, 'Frequency and Predictors of False Conviction: Why We Know So Little, and New Data on Capital Cases' (2008) 5 *Journal of Empirical Legal Studies* 927, 929.

decades has measured the extent of wrongful convictions within specific populations⁶ or matched comparison samples of convicted or executed offenders to groups of known exonerees.⁷ The additional difficulty lies in the fact that there are few clear-cut cases (except, for example, in the case of DNA exonerations) that irrefutably demonstrate innocence and that these cases represent but a fraction of the types of cases and convictions that come before the courts. As a result, low level, non-serious crimes are not captured in estimates, as actual innocence is difficult to prove when there is no biological evidence produced for re-testing. Moreover, most of these studies are based on American populations, though there are attempts at estimates in other parts of the world.⁸

This article offers a repository of wrongful convictions in Australia as a first step toward estimating prevalence rates and identifying causal and contributing factors that may lead to wrongful conviction in Australia. In Part II of this article, the causes of wrongful conviction as established in the American literature are briefly discussed followed by a review of the international research that estimates the prevalence of wrongful convictions in different populations (including indirect measures of surveys and estimates based on extrapolations from exonerations or selective samples). In Part III, the article examines what is known about wrongful conviction in Australia and reviews the limited research on its prevalence and causes. Part IV introduces the collection of cases for the repository of wrongful convictions in Australia and outlines the parameters of its collection. The full listing

⁶ As will be discussed in Part II, specific populations including death penalty eligible cases such as: Michael Risinger, 'Innocents Convicted: An Empirically Justified Factual Wrongful Conviction Rate' (2007) 97 *Journal of Criminal Law and Criminology* 761; serious felonies such as sexual assault or sexual homicide such as Tony G Poveda, 'Research Note: Estimating Wrongful Convictions' (2001) 18 *Justice Quarterly* 689.

⁷ Also discussed in Part II, for comparison match population studies see, eg, Poveda, above n 6; Gross and O'Brien, above n 5; Risinger, above n 6.

⁸ For example, the English Criminal Cases Review Commission (CCRC) was established by the *Criminal Appeal Act 1995* (UK) c 35 and began operation in 1997. They refer cases to the Court of Appeal, which may result in the quashing of convictions if it finds it unsafe or unsatisfactory. Rates of quashed convictions generated based on these cases include factual innocence as well as legally innocent defendants.

of known and established wrongful convictions from 1922 to 2015 and case details are provided in Table 1 at the end of this article. In Part V, the causes and contributing factors of wrongful conviction in Australia are discussed based on the findings from the aggregate data from the repository. The article concludes by offering that the Australian repository of known wrongful convictions can potentially serve in future match comparison studies to estimate the prevalence of wrongful conviction in Australia and for retrospective research to identify and better understand the events, actors and activities that may lead to wrongful conviction.

II ESTIMATING THE PREVALENCE OF WRONGFUL CONVICTION

The term “wrongful conviction” is used to refer to factual innocence, where the individual did not commit the act in question or that the act or crime did not occur in the first place. This is distinguished from other miscarriages of justice where the individual 1) committed the act(s), but was not found culpable for actions (for example, due to defenses of insanity or battered woman syndrome); 2) committed the act(s) and was culpable for actions, but where the court erred by dismissing procedural errors as harmless error; and 3) a miscarriage of justice in which the police could not detect the true perpetrator or the courts have acquitted individuals who are guilty and culpable of committing the crime.⁹ For the purposes of this article, “wrongful convictions” refer to cases of factual innocence, rather than erroneous convictions due to lack of culpability or procedural errors.

Even when cases are restricted to factual innocence, where the individual did not commit the crime, it is exceedingly difficult to measure the prevalence of wrongful conviction in the justice system. For the most part, there is no systematic check or collection of cases in which the authenticity of the convictions are reviewed.¹⁰ Certainly

⁹ See Risinger, above n 6.

¹⁰ See generally Samuel R Gross, ‘How Many False Convictions Are There? How Many Exonerations Are There?’ in C Ronald Huff and Martin Killias (eds),

the appellate process and subsequent post-conviction reviews are included as safeguards built into the system, but they are limited in application and are arguably not conducive to proving innocence.¹¹ Therefore, known and identified wrongful convictions represent but a fraction of possible cases of factual innocence that remain undetected and uncorrected in the justice system. Despite this, American scholars have grappled with the challenge of estimating the prevalence of wrongful convictions by using social science methodologies and different data sources as the basis for their calculations, which have produced varied results, as will be discussed in detail below.

Perhaps this is why the majority of early research on wrongful conviction has focused on determining its potential causes by investigating the circumstances surrounding known exonerations.¹² The majority of early research using these datasets has identified a selection of factors that are correlated with or can lead to wrongful convictions including: false confessions, inaccurate eyewitness testimony, invalid or misleading forensic evidence, inaccurate or deceptive informant testimony, prosecutorial or police misconduct, inadequate defence counsel, police or prosecutorial tunnel vision, and the race and ethnicity of the individual.¹³ These events or factors tend

Wrongful Convictions and Miscarriages of Justice: Causes and Remedies in North American and European Criminal Justice Systems (Routledge, 2013).

¹¹ See Bibi Sangha and Robert Moles, 'Mercy or Right? Post-Appeal Petitions in Australia' (2012) 14 *Flinders Law Journal* 293; Bibi Sangha and Robert Moles, 'Post-Appeal Review Rights: Australia, Britain and Canada' (2012) 36 *Criminal Law Journal* 300.

¹² The earliest work investigating the causes of wrongful conviction started with work by Hugo A Bedau and Michael L Radelet, 'Miscarriages of Justice in Potentially Capital Cases' (1987) 40 *Stanford Law Review* 21. This has continued through to Talia Roitberg Harmon, 'Predictors of Miscarriages of Justice in Capital Cases' (2001) 18 *Justice Quarterly* 949; Brandon L Garrett, 'Judging Innocence' (2008) 55 *Columbia Law Review* 121.

¹³ See Jon B Gould and Richard A Leo, 'One-Hundred Years of Getting It Wrong? Wrongful Convictions after a Century of Research' (2010) 100(3) *Journal of Criminal Law and Criminology* 825; Garrett, above n 12; Bedau and Radelet, above n 12; Harmon, above n 12; Maeve Olney and Scott Bonn, 'An Exploratory Study of the Legal and Non-Legal Factors Associated with Exoneration for Wrongful Conviction: The Power of DNA Evidence' (2014) 26 *Criminal Justice Policy Review* 400. On the changing use of DNA and trends in DNA exonerations, see Greg Hampikian, Emily West, and Olga Akselrod, 'The

not to occur in isolation, and one or more factors are typically present in a given wrongful conviction.¹⁴ The factors also do not appear to be unique to the American experience, as several Australian legal scholars and researchers have also identified the presence of these same factors in specific case studies of known wrongful convictions in Australia.¹⁵ As a starting point, in Part V this article examines the repository of cases listed in Table 1 (located at the end of this article) to identify common causes and correlates of wrongful conviction in Australia.

A *Surveys of Criminal Justice Personnel*

American surveys of criminal justice personnel including police officers, prosecutors/crown attorneys, defence attorneys and judges estimate the incidence of wrongful conviction as between 0.5 percent to 3 percent of serious felony convictions.¹⁶ As personal opinions, these qualitative estimates¹⁷ are subject to contextual factors that may directly and indirectly impact the respondent's perception of the problem. In fact, the earliest survey of police officers, crown attorneys and defence attorneys conducted in the 1980's by Huff and colleagues reported 0.5 percent, which was the lowest level of perceived incidence of wrongful conviction in America for serious felony

Genetics of Innocence: Analysis of 194 US DNA Exonerations' (2011) 12 *Annual Review of Genomics and Human Genetics* 2011, 97.

¹⁴ On the interaction of causes, see Brandon L Garrett, *Convicting the Innocent: Where Criminal Prosecutions Go Wrong* (Harvard University Press, 2011).

¹⁵ See Weathered, above n 1; Paul R Wilson, 'When Justice Fails: A Preliminary Examination of Serious Criminal Cases in Australia' (1989) 24 *Australian Journal of Social Issues* 3; Juliette Langdon and Paul R Wilson, 'When Justice Fails: A Follow-up Examination of Serious Criminal Cases since 1985' (2005) 17 *Current Issues in Criminal Justice* 1.

¹⁶ See Marvin Zalman, 'Qualitatively Estimating the Incidence of Wrongful Convictions' (2012) 48 *Criminal Law Bulletin* 221; Robert J Ramsay and James Frank, 'Perceptions of Criminal Justice Professionals Regarding the Frequency of Wrongful Conviction and the Extent of System Errors' (2007) 53 *Crime and Delinquency* 436; C Ronald Huff et al, 'Guilty until Proven Innocent: Wrongful Conviction and Public Policy' (1986) 32 *Crime and Delinquency* 518; Marvin Zalman, Brad Smith, and Angie Kiger, 'Officials' Estimates of the Incidence of 'Actual Innocence' Convictions' (2008) 25 *Justice Quarterly* 72.

¹⁷ See Zalman, 'Qualitatively Estimating the Incidence of Wrongful Convictions', above n 16.

offences.¹⁸ Twenty years later, in subsequent studies, this rate increased to between 1 percent and 3 percent in similar surveys of criminal justice personnel.¹⁹ The rates do not reflect the actual changing incidence of wrongful convictions in the justice system, since respondents would have received no information on this; rather, they are reflections of legal actors' perceptions of the problem at the time of the survey. As such, this can reflect their own personal bias depending on their perceived role or involvement in potential wrongful convictions in the criminal justice system.²⁰ For example, in all three studies, defence counsel estimated the highest rates of wrongful conviction compared to judges, prosecutors/crown counsel and police, while prosecutors/crown counsel and police estimated the lowest rates in the samples.²¹ This is not necessarily surprising, since defence counsel may not view their role in wrongful convictions as a substantial one: rather, they may see it as the result of a flawed or weak case put forward by the prosecution. Similarly, in two surveys by Frank and Ramsay, and Zalman and colleagues, respondents on the whole tended to believe that there were lower rates of wrongful convictions in their own jurisdictions compared to the rest of the country.²²

B *Matched Comparison Studies*

What we know about wrongful convictions is more or less taken from the retrospective analysis of erroneous cases identified after conviction and corrected through an official legal process such as a subsequent acquittal, dismissal of charges or the innocent person receiving a pardon by a state official. Recent research has compared known exoneration cases or cases where there is doubt about the offender's guilt to matched cases where the individuals were presumed innocent, but not exonerated²³ and/or matched to presumed rightful

¹⁸ See Huff et al, above n 16.

¹⁹ See Ramsay and Frank, above n 16; Zalman, Smith, and Kiger, above n 16.

²⁰ See generally Gross, above n 10.

²¹ See Zalman, above n 16; Ramsay and Frank, above n 16; Huff et al, above n 16.

²² See Zalman, Smith, and Kiger, above n 16; Ramsay and Frank, above n 16.

²³ See Bedau and Radelet, above n 12; Talia Roitberg Harmon and William S Lofquist, 'Too Late for Luck: A Comparison of Post-Furman Exonerations and Executions of the Innocent' (2005) 51 *Crime and Delinquency* 498.

convictions.²⁴ Such comparisons have identified specific case factors that can predict the detection of wrongful conviction and lead to the correction of these errors that can be particular to the population examined in the study.²⁵ For example, Harmon compared a sample of 76 death row inmates between 1970 and 1998 where there were doubts about their guilt with a matched sample of executed inmates to identify predictors that influenced the likelihood of inmates' release from death row as opposed to execution.²⁶ The discovery of new evidence and allegations of perjury were statistically significantly related to reversals on appeal and a release from death row. Conversely, as types of evidence against the defendant increased, the chances of a reversal or release from death row post-conviction decreased. In a follow up study, Harmon and Lofquist looked at 97 cases of exonerations compared to executions and found similar results with regards to allegations of perjury and the presence of multiple types of evidence affecting appeal outcomes.²⁷ In addition, they found that police misconduct during the investigation or trial increased the likelihood of a reversal and release from death row at a statistically significant level, as did obtaining private defence counsel (compared to public defenders or court-appointed counsel). If the convicted person had a criminal record of felony offences, they were less likely to be released than those that had no prior felony record. By making comparisons between individuals believed to be innocent who were either exonerated or executed, we can better understand what factors are unique to wrongful convictions that may have led to the convictions in the first place, along with those factors that may lead to its detection and correction post-conviction.

Matched comparison studies also provide the opportunity to determine the actual proportion of exonerations among specific populations and the possible extrapolation of estimates in these subsets of known cases. For example, Poveda found that exonerations

²⁴ See Garrett, above n 12; Samuel R Gross, 'Convicting the Innocent' (2008) 4 *Annual Review of Law and Social Science* 173.

²⁵ For example, the use of measures of the release from death row rather than the release from prison as a measure of factual innocence: see Harmon, above n 12; Harmon and Lofquist, above n 23. For a discussion of this limitation: see Gould and Leo, above n 13, 860.

²⁶ See Harmon, above n 12.

²⁷ See Harmon and Lofquist, above n 23.

represented 1.4 percent of murder sentences in New York;²⁸ Gross and O'Brien reported that they represented 2.3 percent of death row sentences (from 1973 to 1989);²⁹ and Risinger calculated estimates between 3.3 percent to 5 percent when comparing exonerees to capital rape-murder cases (from 1982 to 1989).³⁰ These estimates do not capture all wrongful convictions, since they are based on exonerations, typically DNA exonerations. Moreover, they miss individuals released from death row without exoneration, but who are innocent.

Gould and colleagues looked at violent felony offences after 1980 and compared wrongfully convicted individuals to “near misses”, or individuals who were arrested, indicted and/or prosecuted, but the defendant was either dismissed prior to trial or acquitted at trial due to factual innocence.³¹ By comparing known exonerations to near misses, the researchers were able to identify factors that increased the likelihood of a wrongful conviction, rather than factors that led only to the mistaken arrest, indictment or prosecution of an innocent person.³² In effect, they capture what it is that led to the correct outcome, despite similar circumstances in wrongful conviction cases. They found that certain factors were statistically significantly more likely to lead to a wrongful conviction than others, such as a strong death penalty culture in the jurisdiction; if the defendant had a criminal history; if there were errors in forensic testimony by the prosecution/crown; if the prosecution withheld evidence; or the defendant had family and friends testify as witnesses at trial. The likelihood of erroneous conviction was statistically significantly *decreased* if the defendants were older; there were intentional misidentifications or false testimony by witnesses; and if the prosecution/crown and defence had strong cases. These identified

²⁸ See Poveda, above n 6.

²⁹ See Gross and O'Brien, above n 5, 948.

³⁰ See Risinger, above n 6.

³¹ See Jon B Gould et al, *Predicting Erroneous Convictions: A Social Science Approach to Miscarriages of Justice* (US Department of Justice, 2013); Jon B Gould et al, 'Innocent Defendants: Divergent Case Outcomes and What They Teach Us' in Marvin Zalman and Julia Carrano (eds), *Wrongful Conviction and Criminal Justice Reform: Making Justice* (Routledge, 2014).

³² See Gould et al, 'Innocent Defendants: Divergent Case Outcomes and What They Teach Us', above n 31, 78-9.

factors arguably affect the investigation and prosecution of a crime that can influence the likelihood of a wrongful conviction. They illustrate the complex breakdown that can occur in the criminal justice system in wrongful convictions that may go unnoticed and uncorrected. In comparison, near misses illustrate how and when errors are detected and corrected within the system before they escalate into a possible wrongful conviction. The authors argue for a focus on preventing future errors as well as figuring out means of effectively de-escalating tunnel vision propagated by errors, so that the system can correct itself before it results in a wrongful conviction.

Taken together, the research on matched samples can provide information on actual prevalence rates of exonerations in a small subset of cases where the parameters are known about the population of cases. It can also extend the research on the causal factors of wrongful conviction to determine the unique set of factors that may lead to a wrongful conviction and the correction of a wrongful conviction. Though this research is still limited in its generalisability, it demonstrates a developing understanding and commitment to the study of wrongful convictions as a social problem worthy of investigation.

C Testing for Innocence

It is conceivable to estimate the proportion of wrongful convictions in the population by taking a random sample of convictions and reviewing these cases retrospectively for evidence of innocence. With the advent of forensic DNA testing, it is possible to do so by selecting cases with biological evidence that occurred before the use of forensic DNA testing and then testing these samples to potentially eliminate the convicted person as a contributor of the sample. The National Institute of Justice funded such a project where the Virginia Department of Forensic Sciences estimated the rate of possible wrongful convictions in serious and personal crimes of homicide and sexual assault by conducting retrospective forensic DNA tests of the

physical evidence retained on file.³³ They selected a representative sample of rape and homicide cases from 1973 to 1987, before forensic DNA testing was possible, and found that the convicted offender could be eliminated as a contributor of the probative evidence in 8 percent of homicides and sexual assaults and that in 5 percent of convictions the DNA elimination was supportive of exoneration.

These findings should be interpreted with some caution: as the authors note, due to the quality of the samples retained for retesting, only a small fraction of homicide convictions produced a determinate finding (8 percent of the total sample), and about half of the sexual assault cases resulted in a determinate finding (54 percent of the total sample).³⁴ Also, in cases of sexual assault, biological specimens are not always collected (eg. in cases of hearsay where the act of intercourse is not in question), retained or retested.³⁵ Therefore, the sample used in the study is not necessarily representative of all sexual assaults and homicides. More accurately, the 5-8 percent prevalence rate for homicides and sexual assaults reflects cases where biological specimens were collected, retained and were available for re-testing after a significant portion of time had lapsed since the sample's collection.

III WHAT IS KNOWN ABOUT WRONGFUL CONVICTION IN AUSTRALIA?

There is little empirical research on the prevalence or causes of wrongful conviction in Australia relative to other international jurisdictions.³⁶ Rather, Australian legal scholars and researchers have referenced the international literature to argue that causes and

³³ See John Roman et al, *Post-Conviction DNA Testing and Wrongful Conviction* (Urban Institute Justice Policy Center, 2012).

³⁴ *Ibid* 4.

³⁵ For this critique, see Gross, above n 10, 12-3.

³⁶ With the exception of Wilson, above n 15 and Langdon and Wilson, above n15, the majority of the research on wrongful convictions in Australia is based on case studies with no analysis of aggregate data or subsets of cases.

prevalence rates may well be similar to those in Australia³⁷ and have focused their efforts on legal changes to admissibility standards and appeal and post-appeal review procedures to prevent current and future occurrences.³⁸ Part of the problem that may account for this lack of research is that there is no information on wrongful convictions that is systematically collected, reviewed or retained in Australia.³⁹ This lack of publicly available data makes it extremely difficult to extrapolate a prevalence rate for wrongful conviction in any given jurisdiction, or to look at aggregate data to determine possible causal factors or correlates related to wrongful conviction in Australian cases.

In the face of these limitations, there are a few avenues of exploration. For one, the Supreme Court Director of Public Prosecution produces annual reports on criminal convictions, which may or may not include information about criminal appeals against convictions. When criminal appeals are reported, the numbers of appeals that come before appellate courts in a given year are recorded; however, this may not include the case outcomes nor any indication of how many appeals resulted in retrials or acquittals. Also, since the data is aggregated annually by jurisdiction, there is the added difficulty of distinguishing appeals based on procedural error and those based on factual innocence. There are no details provided in the reports that can assist with this distinction. These limitations prevent any extrapolations of the data that could lead to the estimation of the incidence of wrongful conviction within each jurisdiction.

³⁷ Weathered, above n 1; David Hamer, 'Wrongful Convictions, Appeals, and the Finality Principle: The Need for a Criminal Cases Review Commission' (2014) 37 *University of NSW Law Journal* 270.

³⁸ See David Caruso, 'Return of the Wrongly Convicted: The Test for Post-Conviction Executive References in Australia' (2012) 57 *Studies in Law, Politics, and Society* 125; Sangha and Moles, 'Post-Appeal Petitions in Australia', above n 11; Hamer, above n 37; Gary Edmond, 'The Science of Miscarriages of Justice' (2014) 37 *University of New South Wales Law Journal* 376.

³⁹ See Hamer, above n 37; Dioso-Villa, above n 3.

In the recent monograph, *Conviction Appeals in New South Wales*,⁴⁰ the Judicial Commission of New South Wales examined the outcomes of over 300 cases where the High Court or the Court of Criminal Appeal ordered retrials from 2001 to 2007. In their analyses of the grounds of appeal, they coded for ‘grounds based on: admissibility errors, misdirections, other wrong decisions of law, and acts or omissions which resulted in a miscarriage of justice’.⁴¹ For this period, they found that 35.3 percent of successful conviction appeal cases could be classified as miscarriages of justice (333 out of 937 cases). This high rate of successful conviction appeals may be due to the way in which they define what are miscarriages of justice. That is, they use a broad definition that includes factual innocence cases that are not distinguishable from legal errors (or failures in the judicial process that require a fair trial by law).⁴²

Specifically, in this report, the miscarriage of justice cases included acts or omissions related to the discovery of fresh evidence, issues around the conduct of the Crown, defence or judge at trial, issues with juries, procedural irregularities at trial, and withdrawals of the guilty plea.⁴³ It comprised 15 percent of the sample when the data is isolated according to fresh evidence cases where innocence may be best demonstrated.⁴⁴ However, we cannot interpret this as the rate of wrongful convictions given the uncertainty as to whether the appellants were factually innocent or whether they were acquitted, retried, or had their convictions quashed on appeal.

Another means of attempting to generate an estimate of the prevalence of wrongful conviction in Australia is to look to established international research in other jurisdictions and apply it to Australian conviction rates. Hamer applies Risinger’s published 3 percent rate of

⁴⁰ See Hugh Donnelly, Rowena Johns and Patrizia Poletti, *Conviction Appeals in NSW* (Judicial Commission of NSW, 2011).

⁴¹ *Ibid* xi.

⁴² *Ibid* 143.

⁴³ *Ibid* 146, Table 9.2.

⁴⁴ Of the 73 cases, 11 allowable appeals were based on the discovery of fresh evidence, where the evidence was absent at trial (with the exclusion of cases based on the appellant’s fitness to stand trial): see *Ibid*.

wrongful convictions for rape and homicide cases to the Australian Bureau of Statistics 2011/12 total number of convictions (12,158) and states that, ‘in Australia, we would expect about 350 convictions a year to be factually wrong or left uncorrected by appeal’.⁴⁵ Though he acknowledges this number and rate may vary depending on factors specific to Australia,⁴⁶ he argues, ‘it appears doubtful that the figure for Australia would be lower by orders of magnitude’.⁴⁷ This reinforces the notion that wrongful convictions are a problem in Australia, perhaps comparable to that of its international counterparts, but what we know about its occurrence and prevalence in the population is limited. Any further extrapolation from these reports may not be possible without identifying the set of cases that they represent to serve as the basis of subsequent analysis and testing.

The collection of all known wrongful conviction cases in Australia may be the next area of research that may serve to address this limitation and move us one step closer to generating a wrongful conviction rate. Such a repository of cases can serve as a basis for matched comparison studies and the development of actual rates of exoneration, as it has served as the basis of comparison studies in the United States.⁴⁸ To date, there are only a few examples in which researchers have identified such a collection of cases. Wilson’s work from 1989 and his follow-up study with Langdon in 2005 identified 42 official and possible miscarriages of justice or factual innocence for convictions of murder, manslaughter, attempted murder and other serious offences including sexual assault.⁴⁹ The website Networked Knowledge, serving as a resource on wrongful convictions in Australia, also includes a listing of 32 official and possible wrongful conviction cases in Australia with overlap from Wilson and Langdon’s studies.⁵⁰ Finally, earlier work by the author identified 57 cases of known wrongful convictions from 1957 to 2011 in Australia that

⁴⁵ See Hamer, above n 37, 276.

⁴⁶ For a discussion of these differences, see Ibid 278-9.

⁴⁷ See Ibid 277.

⁴⁸ See discussion in Part II for further details.

⁴⁹ See Wilson, above n 15; Langdon and Wilson, above n 15.

⁵⁰ See, eg, Bibi Sangha and Bob Moles, Networked Knowledge Miscarriages of Justice (2014) <<http://netk.net.au/researchprojectshome.asp>>.

added new cases to existing listings.⁵¹ This repository is listed, updated and discussed below in the following section.

IV REPOSITORY OF WRONGFUL CONVICTIONS IN AUSTRALIA

In 2012, the author published a listing of 57 cases of wrongful convictions in Australia in an examination of state compensation outcomes for miscarriages of justice.⁵² This listing has been updated to include cases of known wrongful convictions occurring in Australia between 1922 and 2015 and is reproduced in Table 1 at the end of this article. The inclusion criteria were broadly set to capture cases of wrongful convictions where there was the greatest likelihood that the convicted individuals were factually innocent, or at the very least, in cases where factual innocence was in question, there were significant concerns about their guilt and the safety of the original conviction. This was done in order to draw comparisons with U.S. findings that tend to follow a strict factual-innocence criterion. However, this strict definition will have its limitations of excluding wrongful convictions that a court or state body has not officially acquitted or pardoned the individual for the convicted offence, but where individual has not committed the offence or where a clear miscarriage of justice has occurred. Individuals listed in the repository have had their sentences: 1) quashed on appeal without retrial or an acquittal entered (labeled “Quashed” in Status column of Table 1); 2) quashed and an acquittal entered on appeal (“Quashed, Acquittal entered”); 3) quashed on appeal and were acquitted at retrial (“Quashed, Acquitted at retrial”); 4) the charges were withdrawn after conviction (“DPP withdrew charges”); or the individual received an official pardon from the Attorney-General or Governor, which does not necessarily accompany an appeal or retrial (“Pardoned”).⁵³ Given that attention was paid to

⁵¹ See Dioso-Villa, above n 3.

⁵² See *Ibid.*

⁵³ Note the inclusion of Rupert Max Stuart is based on widespread belief of factual innocence, despite no official record of exoneration: see Michael Kirby, ‘Black and White Lessons for the Australian Judiciary’ (2002) 23(2) *Adelaide Law Review* 195.

restrict cases as best as possible to factual innocence or the non-committal of the act in question to draw international comparisons with U.S findings, two cases were removed from the original 2012 listing, despite the fact that in both instances, the convictions were quashed on appeal.⁵⁴ It is important to note that these cases are considered miscarriages of justice for any time spent in prison that is unjust and unwarranted and it is a clear limitation of applying a strict factual innocence criterion.⁵⁵

The cases were located through secondary sources including academic papers published in criminology and law journals, newspaper articles, books on specific cases, and innocence project and wrongful conviction websites that identified official and potential wrongful convictions in Australia.⁵⁶ The aim of the repository was to capture official cases of wrongful conviction where there is the greatest likelihood that the convicted person did not commit the crime or act in question. Primary sources including law judgments taken from legal databases and Hansard reports were also used to identify and verify the status of identified potential wrongful convictions. After the publication of the original listing of cases in 2012, the author received suggestions for the inclusion of additional cases from legal academics working on wrongful conviction, lawyers and other exonerees. These new cases were researched and verified as to whether they met the criteria for inclusion in the repository. The cases

⁵⁴ The High Court of Australia ruled that Diane Fingleton should not have been charged and convicted with the offence due to legal immunity from prosecution under the Magistrates Act and Queensland Criminal Code: see *Fingleton v R* [2005] 216 ALR 474; The Queensland Court of Appeal set aside Robyn Bella Kina's conviction for killing her husband due to the battered women's syndrome defence and a misunderstanding of communication with her lawyers based on her Aboriginality: see *R v Kina* (Unreported, Queensland Court of Appeal, Fitzgerald P, Davies and McPherson JJA, 29 November 1993).

⁵⁵ The aim of restricting the sample to factual innocence cases was to conform to U.S.-based criterion to allow for international comparisons. However, as discussed by Parkes and Cunliffe (2015) and Roach (in this issue), this factual innocence paradigm is underinclusive and will not capture guilty pleas with valid defences or guilty pleas of innocent individuals; see Debra Parkes and Emma Cunliffe, "Women and Wrongful Convictions: Concepts and Challenges" (2015) 11 *International Journal of Law in Context* 219. This limitation needs to be kept in mind.

⁵⁶ Refer to methodology in, Dioso-Villa, above n 3.

were then extensively reviewed by the author as well as trained researchers assisting with the collection of materials and coding of cases about the nature of the contributing factors that may have led to the wrongful conviction.

The repository includes 71 wrongful convictions across Australia occurring between 1922 and 2015 (see Table 1 at the end of this article). Cases from New South Wales comprised approximately one-third of the sample (29.6 percent), followed by Western Australia (25.4 percent), Victoria (19.7 percent), Queensland (15.5 percent), South Australia (5.6 percent), Northern Territory (2.4 percent), ACT (1.4 percent) and there were no cases found in Tasmania (0 percent) at the time of the collection. Because the cases were identified through secondary sources on wrongful conviction, the types of crimes in the sample were not restricted to violent and serious offences, as is typically the case for this type of research.⁵⁷ Rather, they represented a range of crimes from serious, violent offences to non-serious offences. Over half of the sample included convictions for serious violent offences including murder, rape and rape homicides (55 percent), while the remainder of the sample included serious offences such as manslaughter, attempted murder and aggravated assault causing grievous bodily harm (17 percent), non-violent offences such as fraud and drug related offences (11 percent) and other non-serious offences such as threats of unlawful violence, accessory after the fact, and theft (17 percent).

The sentences for the crimes ranged from a minimum of a non-custodial sentence (or a deferred sentence) to a maximum of life imprisonment and death. Approximately one-quarter of the sample received a sentence of life imprisonment or death for their convicted crimes. The remaining three-quarters of the sample received an average sentence length of 9.5 years for their convicted crimes. None of the individuals in the sample served their full sentences in their entirety before being released. They spent an average of 4.5 years in prison with incarcerated time ranging from 2.5 months in prison to 19 years before their release. Men comprised the majority of wrongfully

⁵⁷ See section on matched comparisons in Part II above.

convicted individuals in the sample (87 percent), while women comprised the remainder (13 percent or 9 women). Indigenous wrongfully convicted individuals comprised 15 percent of the sample.

This repository does not represent the total number of wrongful convictions in Australia from which we can or should necessarily extrapolate a national prevalence rate. From the outset, it is limited by the fact that no jurisdiction in Australia systematically records or collects potential or official cases of wrongful conviction. Consequently, researchers are limited to cases that have garnered some media attention that have exposed potential or official wrongful conviction in the first place.⁵⁸ Therefore, it is arguable that the sample of cases may disproportionately represent cases deemed news or media worthy, such as serious and/or violent offences and cases where there is evidence of gross state or police misconduct or other major procedural infractions (such as forensic error or the exposure of false witness testimony).

Despite the common quality that the cases are news or media worthy, there is little else that is common or representative of the cases. That is, unlike matched comparison studies conducted in the United States that devised estimates on the actual proportion of exonerations for specific crimes (eg. murder sentences), within particular jurisdictions (eg. New York), over a specified or limited time period, this cannot easily be done with the current repository of Australian cases. The cases in the sample include a variety of crimes, across all states and territories, and occur over a broad time period. However, this should not be interpreted as an impasse, as there may be other factors from which to draw matched comparison samples; moreover, the repository could serve as starting point for a systematic review of appellate decisions in which the convictions have been quashed, quashed and acquitted, or the convicted person has been acquitted at retrial. Or, one could attempt to match cases from the existing repository to either a random selection of the same types of cases that span the same time period and jurisdiction where the

⁵⁸ For a description of a similar methodology, see Langdon and Wilson, above n 15; Wilson, above n 15.

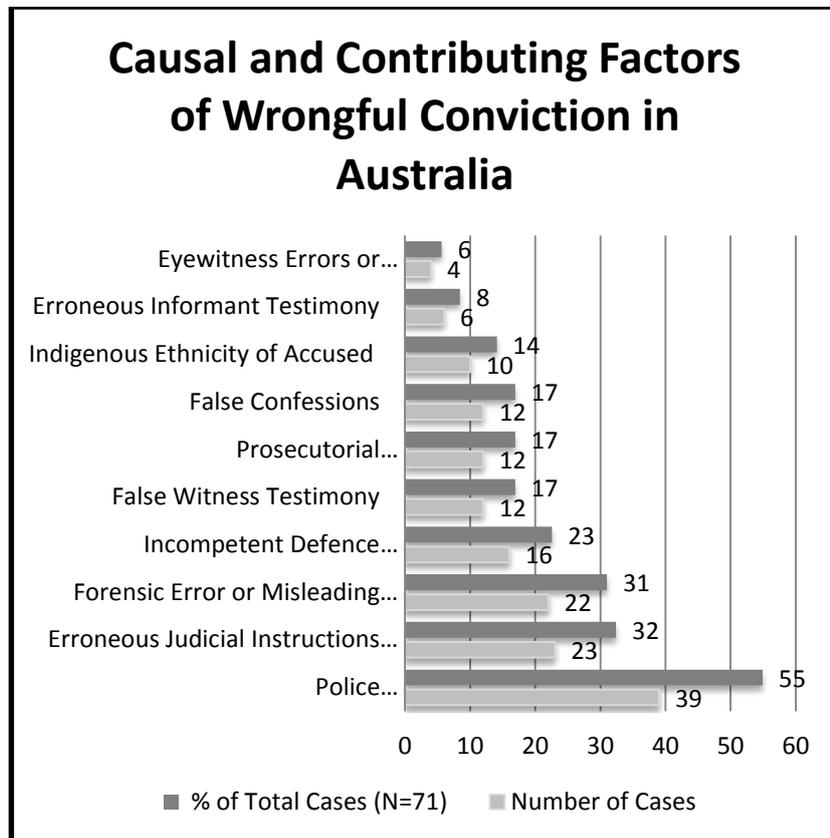
defendant is likely guilty (correct conviction) or where doubt is seriously cast on the guilt of the defendant, though no correction was made on appeal. This would be resource-intensive and time consuming to test for factual innocence or to expand this to more representative cases in all jurisdictions, though it would likely be the best chance at producing prevalence estimates for Australia.⁵⁹

V CAUSAL AND CONTRIBUTING FACTORS OF WRONGFUL CONVICTIONS IN AUSTRALIA

The cases in the repository were coded for the presence of causal or contributing factors that are believed to lead to wrongful conviction as identified and established in the international literature (see Figure 1 below, and listed as “Causal and Contributing Factors” in Table 1 at the end of this article). In interpreting the findings below, it is noteworthy that the identification and designation of these factors is based on the most commonly identified “causes” of wrongful conviction in the literature and is by no means a fixed or exhaustive list of potential factors appearing in Australian wrongful convictions. Additionally, some factors may indeed overlap. The definitions and distribution of the causal and contributing factors in the repository are listed below (see Figure 1 below for the distribution by number of cases and the factors’ distributions as a percent of the total number of cases in the repository).

⁵⁹ The National Registry of Exonerations in the United States has sought cases of factual innocence using a similar method and has identified over 1600 cases of innocence as of October 2015: see Samuel R Gross and Michael Shaffer, *Exonerations in the United States: 1989–2012, a Report by the National Registry of Exonerations* (2012) <http://www.law.umich.edu.libraryproxy.griffith.edu.au/special/exoneration/Documents/exonerations_us_1989_2012_full_report.pdf>.

Figure 1



A *Eyewitness Errors or Misidentification*

Eyewitness errors or misidentification is identified in the international literature as one of the leading causes of wrongful conviction.⁶⁰ It includes eyewitness errors that could have occurred during the police investigation through to witness statements given at trial that were

⁶⁰ See, eg, Borchard, 'Convicting the Innocent', above n 1; Samuel R Gross et al, 'Exonerations in the United States 1989 through 2003' (2005) 95(2) *Journal of Criminal Law and Criminology* 523; Gross and Shaffer, above n 58; <http://www.law.umich.edu/libraryproxy.griffith.edu.au/special/exoneration/Documents/exonerations_us_1989_2012_full_report.pdf>.

found to be erroneous in part or in their identification of the accused. This factor featured in 6 percent of the sample and included highly publicised cases including David Eastman who was erroneously identified by a witness as the man who had purchased the gun used in the murder⁶¹ and Andrew Mallard who fit the description of several eyewitnesses that testified at trial as passing by the shop where the deceased was killed.⁶²

B *Erroneous Informant Testimony*

This category includes any identification made by an untrustworthy inmate or police informant during the investigation. The informant may have also testified erroneously at trial. The issue with this form of source information or court testimony is that it is highly susceptible to influence, as police may unwittingly provide case information that is later incorporated into the informant's testimony and the informants may have a vested interest in cooperating with police.⁶³ This was not a prominent causal or contributing factor in the Australian sample and featured in 8 percent of the cases in the repository. As an example, the Ananda Marga Trio was wrongfully convicted for the terrorist bombings of the Sydney Hilton Hotel in 1978.⁶⁴ The accused were members of a religious sect believed to have bombed the hotel in retaliation for the jailing of their religious leader. The witness testimony by a police informant who had infiltrated the group alleged

⁶¹ See Wilson and Langdon, above n 15, 189; See also Keith Moor, 'The man convicted of murdering top cop Colin Winchester could be freed amid claims the mafia were behind the assassination', *Herald Sun* (online), 11 November 2013 <<http://www.heraldsun.com.au/news/law-order/the-man-convicted-of-murdering-top-cop-colin-winchester-could-be-freed-amid-claims-the-mafia-were-behind-the-assassination/story-fni0ffnk-1226757601749>>.

⁶² See Corruption and Crime Commission, *Report on the Inquiry into Alleged Misconduct by Public Officers in Connection with the Investigation of the Murder of Mrs Pamela Lawrence, the Prosecution and Appeals of Mr Andrew Mark Mallard, and Other Related Matters* (2008), 88 <<http://www.ccc.wa.gov.au/Publications/Reports/Documents/Published%20Reports/2008/Mallard%20Report%20complete.pdf>>.

⁶³ For a discussion of these issues, see Gross and Shaffer, above n 58, 55.

⁶⁴ J James Wood, *Section 475 Inquiry of the NSW Crimes Act into the Conviction of Tim Anderson, Ross Dunn and Paul Alister* (Government Printer, 1985).

that the three men had confessed to the bombing.⁶⁵ After their conviction, the Attorney-General ordered an inquiry into the case and found that the police informant's testimony was erroneous and fabricated.⁶⁶

C *Indigenous Ethnicity of Accused*

The Indigenous ethnicity of the accused was added to the analysis due to the existing research on the differential treatment of Indigenous offenders in the Australian criminal justice system and the corresponding issues that can arise for Indigenous people at the investigation, trial and appeal phases.⁶⁷ As mentioned above, Indigenous accused comprised 15 percent of the total sample of wrongful convictions in Australia and the individuals are noted in Table 1 at the end of this article. In a case involving five Indigenous youth, race played a critical role in the police investigation, which ultimately led to their conviction. A fight had broken out in the middle of the night in which three carloads of white youth had driven to the homes of the two Indigenous families calling out racial slurs and brandishing planks of wood with nails in it intended to assault the families.⁶⁸ Brett and Steven Rotumah and Gary, Ian and Vivian Campbell were members of these targeted families and were on site to respond to the disturbance; one of the elders from their homes notified the police. The police attended the scene, broke up the fight and sent the white youth home, while charging the Rotumahs and Campbells with affray and assault. The police failed to notify the Aboriginal Legal Aid Service as required by New South Wales law governing police powers and responsibilities intended to protect vulnerable populations, such as Indigenous youth.⁶⁹ In their interviews with the youth, the police subsequently elicited confessions from them, which were admitted into evidence at trial and became instrumental in their

⁶⁵ Ibid.

⁶⁶ Ibid; Wilson above n 15.

⁶⁷ See Weathered, above n 1; See also Kent Roach, 'Comparative Reflections on Miscarriages of Justice in Australia and Canada' in this issue.

⁶⁸ See Belinda Kontominas, 'Police unfairly targeted Aborigines in racial brawl, court told', *Sydney Morning Herald*, 12 March 2008, 4.

⁶⁹ See Belinda Kontominas, 'Convictions quashed because police broke rules', *Sydney Morning Herald*, 15 December 2008, 5.

convictions.⁷⁰ The convictions were quashed on appeal based on the non-compliance of the police in handling the Indigenous youth and obtaining confessions that should not have been admitted into evidence.⁷¹

D *False Confessions*

False confessions by the accused can arise out of a number of different circumstances over the course of a police investigation. This category featured in 17 percent of the cases in the repository. For example, the tactics may be as coercive as a suspect giving a false confession due to verbally or physically abusive police behaviours during an interrogation, as was the case in Kelvin Condren's conviction where he alleged that the police physically abused him during an interrogation while he was intoxicated in an attempt to elicit his confession for killing his wife.⁷² He later recanted his confession at trial and denied any involvement in his wife's murder.⁷³ Or false confessions may occur independent of the accused's actions, by police denying the suspect's right to legal counsel, which can result in a false confession or the police writing the confession on behalf of the suspect and submitting this as evidence at trial. Suzanne Hayman was wrongly convicted of conspiracy to import heroin and the chief evidence against her included her unsigned confession later exposed as fabricated by the police to secure her conviction.⁷⁴ Lastly, this category also included two cases where the true perpetrator later confessed to the murders, which became instrumental in the quashing of the accuseds' convictions on appeal. Darryl Beamish and John

⁷⁰ See 'Aborigines claim police flouted laws', *Illawarra Mercury*, 12 March 2008, 19.

⁷¹ *Ibid.*

⁷² See Rachel Dioso-Villa, "'Out of Grace": Inequity in Post-Exoneration Remedies for Wrongful Conviction' (2014) 37 *University of New South Wales Law Journal* 349.

⁷³ See Meagan Dillon, 'Meet the Victorian-born killer dubbed the Northern Territory's own Hannibal Lecter', *Herald Sun* (online), 31 December 2013 <<http://www.heraldsun.com.au/news/law-order/meet-the-victorianborn-killer-dubbed-the-northern-territorys-own-hannibal-lecter/story-fni0ffnk-1226792493288>>.

⁷⁴ See Jane Dunbar, "'Lucky' Kiwi to sue over wrongful jail', *The Australian* (Canberra), 14 October 1998, 2; see Wilson and Langdon, above n 15.

Button were both convicted of murders which Eric Edgar Cooke, responsible for at least four other killings, confessed to before his death by hanging.⁷⁵ The Courts of Appeal in both cases cited in their quashing of the convictions that Cooke had likely committed both murders.⁷⁶

E *Prosecutorial misconduct or overzealousness*

Acts of prosecutorial misconduct or overzealousness in this category included acts where the prosecution withheld vital information from the defence during trial and instances in which the prosecutor exhibited bias during the trial due to personal relationships with police investigating the crime. This occurred in 17 percent of the sample. A notable example is Roseanne Catt who was the victim of malicious prosecution and served 10 years in prison for conspiracy to murder her husband, which a judicial inquiry later found that several of the prosecution's experts testified falsely in an attempt to frame her.⁷⁷ She subsequently successfully sued the New South Wales government for malicious prosecution and received \$2.3 million in compensation.⁷⁸

F *False Witness Testimony*

This category included any false testimony or perjury provided in the courtroom by a witness and false allegations by alleged victims. This occurred in 17 percent of cases in the sample, with several instances of false allegations of rape where victim statements were admitted into evidence that guided the police investigations, which were later retracted or exposed as false, erroneous, or highly questionable on appeal. For example, the conviction of Frederick Arthur Martens

⁷⁵ Mark Russell, 'Appeal after 41 years', *Herald Sun* (Melbourne), 29 June 2002, 17.

⁷⁶ Kathryn Shine, 'Cleared at last after 44 years', *Weekend Australian* (Canberra), 2 April 2005, 1.

⁷⁷ See Simon Thomsen, 'A NSW woman framed for attempting to murder her husband just won \$2.3 million in compensation', *Business Insider*, 24 August 2015 <<http://www.businessinsider.com.au/a-nsw-woman-framed-for-attempting-to-murder-her-husband-just-won-2-3-million-in-compensation-2015-8>>.

⁷⁸ *Ibid.* It was subsequently increased to \$4 million to include interest: see above n 4.

rested on allegations by the victim of assault that were later retracted.⁷⁹ The complainant's retraction along with new evidence discovered in his second appeal cast doubt on the event, which ultimately led to the quashing of his conviction.⁸⁰ The conviction of Kevin Ibbs, labeled the 30-second rapist for failing to stop intercourse when the victim allegedly withdrew her consent,⁸¹ is also a case in which the victim later retracted her statement and confessed that she had orchestrated the event with the intent to charge Ibbs with sexual assault.⁸²

G *Incompetent Defence Representation*

This category included behaviours by defence counsel at trial that could gravely impact the case outcome and contribute to a wrongful conviction. These included the accused's denial of access to legal aid at any point during the investigation or trial, the defence counsel failing to follow up on potential important leads revealed either at the time of the trial or during appeal, or pressuring the accused to plead guilty against their will. Almost one-quarter of the sample involved some form of incompetent or unreliable defence counsel during trial or appeal. For example, Ryan D'Orta-Ekenaike was induced to plead guilty at his committal hearing under the pressure of his barrister and the officer of the Victorian Legal Aid who claimed that he had no defence against the rape charges.⁸³ He subsequently reversed his plea at trial, but it was still relied upon by the prosecutor as an admission of guilt and he was convicted. His conviction was quashed on appeal

⁷⁹ See Michael Wray, 'Pilot sues over false rape case', *The Courier Mail* (Brisbane), 4 February 2010, 8.

⁸⁰ After Marten's conviction, he requested Australian Federal Police files on his case regarding the flight details in which the alleged assault happened to investigate inconsistencies with the complainant's testimony: See Geesche Jacobsen, 'Police accused of hiding evidence in rape case', *Sydney Morning Herald*, 31 January 2011, 4.

⁸¹ See *Ibbs v The Queen* [2001] WASCA 129.

⁸² *Ibid.*

⁸³ See Michael Kirby, 'Of Advocates, Drunks and Other Players: Plain Tales From Australia' (Speech delivered at the Peter Taylor Memorial Lecture, London, 22 March 2011).

on this basis and evidence of the guilty plea was not admitted at retrial and he was acquitted.⁸⁴

H *Forensic Error or Misleading Forensic Evidence*

Forensic error or misleading forensic evidence is one of the leading causes of wrongful convictions in America found to be present in approximately 74 percent of DNA exonerations taken from a study of Innocence Project cases⁸⁵ and in 24 percent of cases in the study based on National Registry of Exoneration cases that included DNA and non-DNA exoneration cases.⁸⁶ In the Australian sample, this category was coded to include behaviours such as forensic experts exaggerating forensic evidence in court, if and when results were falsified or misinterpreted during the investigation or at trial, or when an untested or unreliable forensic technique was used in the analysis. The conviction of Farah Jama for the rape of a woman in a nightclub is a key example of a forensic error that led to a wrongful conviction. In this instance, the prosecution's case rested solely on DNA evidence, since there were no eyewitnesses that could identify Jama, the victim had no memory of the assault or perpetrator, and Jama had an alibi for his whereabouts on the night of the crime.⁸⁷ The Victorian Court of Appeal quashed Jama's conviction due to a "mix up" in the forensic laboratory.⁸⁸ The Victorian Department of Justice then commissioned an inquiry into the circumstances that led to Jama's conviction and it revealed that the same forensic medical officer who collected Jama's sample for an unrelated incident also collected the sample from the rape victim in the case 24 hours later.⁸⁹ Therefore, the cross-contamination of samples could not be ruled out.

⁸⁴ Fergus Shiel, 'Court upholds protection for lawyers: First Edition', *The Age* (Melbourne), 11 March 2005, 6.

⁸⁵ See Garrett, *Convicting the Innocent*, above n 14.

⁸⁶ See Gross and Shaffer, above n 58.

⁸⁷ See Victoria, Inquiry into the Circumstances That Led to the Conviction of Mr Farah Abdulkadir Jama, *Report* (2010).

⁸⁸ Kate Hagan, '15 months' jail a miscarriage of justice: DNA fiasco: rape conviction quashed', *The Age* (Melbourne), 8 December 2009, 1.

⁸⁹ Millanda Rout, 'Freed man Farah Jama angry over rape DNA bungle', *The Australian* (online), 7 December 2009 <<http://www.theaustralian.com.au/news/nation/freed-man-farah-jama-angry-over-rape-dna-bungle/story-e6frg6nf-1225807837386>>.

Another example of faulty forensic evidence is Gordon Wood's conviction for killing his girlfriend. The central question in the case became whether she had jumped off the cliff face to commit suicide or whether she was pushed or thrown intentionally to her death. The prosecution's case relied on forensic experiments that attempted to determine what had to have transpired in order for her body to be found in the particular location and orientation. The forensic expert attempted to simulate the victim's trajectory by having a male police officer with a similar build to the accused throw a female officer or mannequin into a swimming pool.⁹⁰ His results concluded that given the position of the body, it was not possible for the victim to have run and jumped as an act of suicide; rather, she had to have been "spear-thrown" from the cliff by someone. On appeal, the court was presented conflicting evidence about where the body was found and the orientation of her legs and torso that cast doubt on the forensic expert's calculations, and the validity of the experiments conducted at pre-trial and presented in trial was questioned; the appellate court subsequently quashed Wood's conviction.⁹¹

I *Erroneous Judicial Instructions to Jury*

Erroneous judicial direction was added to the list of potential causal or contributing factors of wrongful conviction in Australia due to its repeated occurrence in the sample. It was the second most prominent factor in the dataset appearing in almost one-third of all cases. The nature of these errors were raised on appeal and were case specific that related to various aspects of the trial and the way in which the judge addressed the jury. For example, they related to directing the jury as to the definition of the crime, what aspects of evidence should be

⁹⁰ Graeme Leech, 'Murder by degrees', *The Australian* (Canberra), 30 September 2009, 13.

⁹¹ Louise Hall, 'Trial expert stands firm as judge questions impartiality', *Sun Herald* (Sydney), 26 February 2012, 15.

considered or ignored,⁹² what to consider for their final verdict,⁹³ or failing to outline the issues to consider in the final verdict.⁹⁴ For example, Tomas Klamo was convicted of manslaughter for killing his infant son by shaking him to death. The Supreme Court of Victoria Court of Appeal found that the trial judge erred by repeatedly directing the jury that its task was to unanimously determine the cause of the infant's death before finding a verdict of guilt. Rather the jury should have been instructed that they could not convict unless they unanimously agreed upon which act constituted the crime that killed the infant, as the act may not have involved Klamo.⁹⁵

J *Police Misconduct or Overzealousness*

This category was broadly defined to include acts where police acted overzealously during the investigation in charging someone with insufficient evidence of a crime, overt acts of police misconduct such as verbal and physical acts of coercion of a suspect or witness, guiding or directing witnesses during the investigation, withholding evidence, or the fabrication or planting of false evidence in the suspect's home, vehicle or person. At least one form of police misconduct or overzealousness occurred in more than half of the cases in the Australian sample. As Table 1 at the end of this article indicates, in

⁹² See, eg, the appeal of Salvatore Fazzari, where the Supreme Court of Western Australia found that the trial judge erred by misdirecting the jury on the interpretation of several aspects of the prosecutions case that were found to be prejudicial and wrong: *Martinez v The State of Western Australia* [2007] WASCA 143.

⁹³ See, eg, the case of Tomas Klamo briefly described above: *R v Klamo* [2008] VSCA 75.

⁹⁴ See, eg, Paul Jacob Poduska's case of driving under the influence causing death where the trial judge failed to direct the jury on specific matters surrounding the event to determine whether Poduska acted negligently: see Elissa Hunt, 'Conviction for fatal crash driver quashed', *Herald Sun* (online), 18 August 2008 <<http://www.heraldsun.com.au/news/victoria/crash-driver-cleared-of-deaths/story-e6frf7kx-1111117226841>>. Rather, the trial judge left it up to the jury to decide which factors may have constituted negligence in the case: see Kate Hagan, 'Man acquitted of killing rabbiting friends', *Sydney Morning Herald* (online), 19 August 2008 <<http://www.smh.com.au/national/man-acquitted-of-killing-rabbiting-friends-20080818-3xqm>>; See also *R v Poduska* [2008] VSCA 147.

⁹⁵ *R v Klamo* [2008] VSCA 75.

many instances, several acts took place over the course of an investigation that constituted police misconduct, overzealousness, or tunnel vision where police may not have followed up on potentially important leads during the investigation or they placed undue weight on circumstantial evidence during the investigation that surrounded the suspect. For example, as mentioned above, Roseanne Catt successfully sued the New South Wales government for malicious prosecution. Catt was wrongly convicted of conspiring to commit the murder of her husband. The Detective Sergeant leading the investigation had a history of knowing Roseanne Catt and her husband and was reported to have been friends with the husband and to have had a bias against Roseanne Catt who had previously lodged allegations of his inappropriate behavior when investigating a fire at one of their properties.⁹⁶ Over the course of the appeal, evidence was reported that the police investigator acted on this bias by pressuring witnesses to give false evidence during the investigation and directing them at trial, planting a gun in her bedroom as evidence against her, and there was the probability that he also tampered with the evidence to frame Roseanne Catt in poisoning her husband.⁹⁷

The findings confirm anecdotal references in the Australian literature that there are similar causal factors that contribute to wrongful convictions to that of other international jurisdictions such as the United States.⁹⁸ As Figure 1 above indicates and as detailed in Table 1 at the end of this article, there may be multiple causal or contributing factors present in any given wrongful conviction. The leading causal and contributing factors in wrongful conviction in the sample were issues around police misconduct and forensic evidence with each factor appearing in about one-third of the sample. Erroneous judicial instructions to the jury also featured as a common cause of

⁹⁶ Wendy Bacon, *Thomas had Pathological Hatred for Roseanne, Barrister tells Judge* (19 August 2014) <<http://www.wendybacon.com/2014/brick-by-brick-blacket-builds-becketts-case-but-can-he-build-a-wall/>>.

⁹⁷ Wendy Bacon, *Brick by Brick Blackett Builds a Case for Beckett but can he make a Wall?* (2 September 2014) <<http://www.wendybacon.com/2014/brick-by-brick-blacket-builds-becketts-case-but-can-he-build-a-wall/>>.

⁹⁸ See Weathered, above n 1; Lynne Weathered, 'A Question of Innocence: Facilitating DNA-Based Exonerations in Australia' (2004) 9 *Deakin Law Review*.

wrongful conviction in the sample, though this factor was not identified in the international literature as a causal or contributing factor of wrongful conviction. Interestingly, one of the leading established factors of wrongful conviction in the international literature, particularly the United States, was the occurrence of eyewitness errors or misidentifications that featured in as high as three-quarters of the cases in several studies.⁹⁹ The reverse was true in the Australian sample with it occurring in 4 percent of cases.

At the outset, it should be noted that a limitation of not having a national repository or the systematic recording and collection of wrongful convictions across jurisdictions is that all materials obtained for the dataset came from publicly accessible resources (such as news media outlets, legal databases, Hansard reports, academic articles and books). In many ways, the cases and associated causes and contributing factors of wrongful conviction are products of the material available in the analysis. That is to say that access to trial transcripts and case files that include police records, witness testimony and expert reports would provide an added depth to the analysis and could lead to the identification of different or additional factors associated with wrongful conviction in Australia.

There is also an inherent hesitation in referring to the factors identified in the sample as causal ones that produce wrongful convictions, as they are commonly referred to in the American literature. This reflects the fact that in the Australian context, such claims are based on a small, non-representative sample of cases. Also, there is little accompanying information about the context and interaction of the identified factors, beyond their absence or presence in a given case. In fact, some scholars have turned toward a more integrated understanding of how and why errors occur by treating the criminal justice system as an organisational system of interrelated parts.¹⁰⁰ These system theorists argue that a system built of individual,

⁹⁹ See Michael J Saks and Jonathan J Koehler, 'The Coming Paradigm Shift in Forensic Identification Science' (2005) 309 *Science*; Garrett, above n 12. Note that 43 percent was noted in Gross and Shaffer, above n 58.

¹⁰⁰ See James Doyle, 'An Etiology of Wrongful Convictions: Error, Safety, and Forward-Looking Accountability in Criminal Justice' in Marvin Zalman and

but interrelated parts, can experience errors at any point.¹⁰¹ These errors can lead to additional errors further down the track of the system that may compound to eventually result in a breakdown.¹⁰² For example, in a hypothetical case, an eyewitness misidentification can occur early in a police investigation that can influence the direction in which the police pursue potentially important leads and discredit others. This may influence the police to use coercive tactics to elicit a suspect's confession or create undue pressure on other witnesses or informants in support of their theory. The evidence produced in the police investigation is then passed on to the prosecution to build the case against the accused. The prosecution may focus their arguments on circumstantial evidence, may withhold vital information that does not support their theory of the crime, or they may direct opening and closing arguments and questioning of witnesses according to their belief of the case. These problems can be compounded by erroneous judicial directions to the jury as to what aspects of the case or evidence to consider in determining their verdict, which can cumulatively result in the conviction of an innocent person. While this hypothetical case is used to demonstrate how errors and actions at different points may result in a wrongful conviction, several cases listed in the repository display similar points and possible characteristics. The retrospective analysis of known wrongful convictions as unexpected system breakdowns and outcomes can serve as an opportunity to investigate how and why these conditions may arise in the system and what actions or events may be critical to preventing future errors.¹⁰³ The

Julia Carrano (eds), *Wrongful Conviction and Criminal Justice Reform: Making Justice* (Routledge, 2014); James M Doyle, 'Learning from Error in American Criminal Justice' (2010) 100(1) *Journal of Criminal Law and Criminology* 109; See also Erik Luna, 'System failure' (2005) 42(4) (2005 Fall) *American Criminal Law Review* 1201; John P Van Gigch, *Applied General Systems Theory* (Harper & Row, 2nd ed, 1978).

¹⁰¹ See generally Sidney Dekker, *Drift into Failure: From Hunting Down Broken Components to Understanding Complex Systems* (Ashgate, 2011). For applications to wrongful convictions: see Luna, above n 99; see also Doyle, 'Learning from Error', above n 99.

¹⁰² See Charles Perrow, 'Accidents in High-Risk Systems' (1994) 1 *Technology Studies* 1; Charles Perrow, *Normal Accidents: Living with High-Risk Technologies* (Princeton University Press, 1999); Dekker, above n 100; James T Reason, *Managing the Risks of Organizational Accidents* (Ashgate, 1997).

¹⁰³ See John Doyle, 'Learning from Error in the Criminal Justice System: Sentinel Event Reviews' in *Mending Justice: Sentinel Event Reviews* (National Institute of Justice, 2014).

current repository could serve such a function by providing the cases necessary for examination.

VI CONCLUSION

There is a need for systematic and empirical research on the occurrence and prevalence of wrongful conviction in Australia. Currently, all jurisdictions lack any systematic recording and collection of data on successful appeals that can identify potential wrongful conviction in need of further investigation. The current repository of 71 cases of known wrongful convictions in Australia is offered as a starting point for further research to enable international comparisons. In this paper, potential causal and contributing factors were identified in the aggregate of the Australian cases that included many of the same causal factors established in the international literature and the addition of other factors specific to the Australian context including erroneous judicial directions and the Indigenous ethnicity of the accused. Rather than limiting our purview of research to estimating the prevalence of wrongful conviction in Australia and its potential causes, it would advance the field to view these occurrences as the result of actions and events within a complex system with different stages and parts. By doing so, we can attempt to understand the interrelationships and interactions between different actors (such as police investigators, expert witnesses, prosecution, defence counsel and judges) at different stages of the criminal justice system (from police investigation to trial and appeal) that may have ultimately led to a wrongful conviction.

Table 1 *Known wrongful convictions in Australia (between 1922 and 2015)*

Accused	State	Charge(s)	Year Convicted/ Exonerated	Sentence/ Time spent in Prison	Case Outcome	Causal and Contributing Factors
ALISTER, Paul	NSW	Conspiracy and attempted murder	1979/ 1985 (pardoned)/ 1991 (quashed)	16 years/ 7 years	Pardoned Quashed Acquittal entered	Unreliable informant testimony
ANDERSON, Tim	NSW	Conspiracy and attempted murder	1979/ 1985 (pardoned)/ 1991 (quashed)	16 years/7 years	Pardoned Quashed Acquittal entered	Unreliable informant testimony
ANGEL, Jeannie (Indigenous)	WA	Murder	1989/1991	Life imprisonment/ 2.5 years	Quashed	Police misconduct Overzealous police Poor police investigation
BEAMISH, Darryl	WA	Murder	1961/2005	Capital punishment/15 years	Quashed	Overzealous prosecution Overzealous police Police misconduct Confession by other Inadequate defence
BUI, Hong	VIC	Murder	2006/2008	11 years/2 years	Quashed	Erroneous judicial instructions Police tunnel vision
BUTTON, Frank (Indigenous)	QLD	Rape	2000/2001	7 years/10 months	Quashed	Eyewitness misidentification Poor forensic investigation Police misconduct Overzealous prosecution
BUTTON, John	WA	Manslaughter	1963/2002	10 years/5 years	Quashed	False confession Overzealous police Police misconduct Confession by other Inadequate defence

Accused	State	Charge(s)	Year Convicted/ Exonerated	Sentence/ Time spent in Prison	Case Outcome	Causal and Contributing Factors
CAMPBELL, Gary (Indigenous)	NSW	Affray	2007/2008	- / -	Quashed	Inadequate defence Police tunnel vision False confession
CAMPBELL, Ian (Indigenous)	NSW	Affray	2007/2008	- / -	Quashed	Inadequate defence Police tunnel vision False confession
CAMPBELL, Vivian (Indigenous)	NSW	Affray	2007/2008	- / -	Quashed	Inadequate defence Police tunnel vision False confession
CATT, Roseanne	NSW	Malicious wounding and conspiracy to commit murder*	1991/2005	12 years and 3 months/ 10 years	Quashed	Perjury by witness Police misconduct Overzealous police Overzealous prosecution Erroneous judicial instructions
CARROLL, Raymond John	QLD	Murder	1985/ -	- / -	Quashed, Acquittal entered	Misleading forensic evidence Forensic error
CHAMBERLAIN, Lindy	NT	Murder	1982/1988	Life imprison- ment with hard labour/4 years	Quashed, Acquittal entered	Forensic error Overzealous police Police tunnel vision Overzealous prosecution Erroneous judicial instructions
CHAMBERLAIN, Michael	NT	Accessory after the fact	1982/1987	Deferred sentence/ N/A	Quashed, Acquittal entered	Forensic error Overzealous police Police tunnel vision Overzealous prosecution Erroneous judicial instructions

Accused	State	Charge(s)	Year Convicted/ Exonerated	Sentence/ Time spent in Prison	Case Outcome	Causal and Contributing Factors
CHRISTIE, Rory Kirk	WA	Murder	2003/2005	10 years/ 3 years	Quashed Acquitted at retrial	Forensic error Overzealous police Erroneous judicial instructions
CONDREN, Kelvin (Indigenous)	WA	Murder	1984/1990	Life imprison- ment/ 7 years	DPP withdrew charges	False confession Improper interrogation Police misconduct
DUNN, Ross	NSW	Conspiracy and attempted murder	1979/ 1985 (pardoned)/ 1991 (quashed)	16 years	Pardoned Quashed Acquittal entered	Unreliable informant testimony
D'ORTA- EKENAIKE, Ryan	NSW	Rape	1996/1997	3 years/ 7 months	Quashed Acquitted on retrial	Erroneous judicial instructions Pled guilty against will
EASTERDAY, Clark	WA	Fraud	1993/2003	3 years/ 1.5 years	Quashed	Prosecution non- disclosure Erroneous judicial instructions
ETTRIDGE, David	QLD	Election fraud	2003/2003	3 years/ 2.5 months	Quashed	False witness testimony Erroneous judicial instructions
EASTMAN, David	ACT	Murder	1989/2014	Life imprison- ment/ 19 years	Quashed	Forensic error Police misconduct Erroneous eyewitness Inadequate defence
FAZZARI, Salvatore	WA	Murder	2005/2007	Life imprison- ment/ 3 years	Quashed Acquittal entered	Misleading forensic evidence Police tunnel vision Erroneous judicial instruction
FOSTER, Steven	NSW	Arson	1990/ -	- / -	Quashed	False confession Police misconduct

Accused	State	Charge(s)	Year Convicted/ Exonerated	Sentence/ Time spent in Prison	Case Outcome	Causal and Contributing Factors
GEESING, Raymond John	SA	Abduction and murder	1983/1985	Life imprison- ment/ 15 years	Quashed	Unreliable informant testimony
GILHAM, Jeffrey	NSW	Murder (2 counts)	2009/2012	Life imprison- ment/ 2 years	Quashed Acquittal entered	Forensic error Erroneous judicial instruction
GREENSILL, Josephine	VIC	Indecent assault of children under 10 (9 counts)	2010/2012	5 years/ 2.5 years	Quashed Acquittal entered	False witness testimony Unreliable informant testimony
HANSON, Pauline	QLD	Election Fraud	2003/2003	3 years/ 2.5 months	Quashed	False witness testimony Erroneous judicial instructions
HAYMAN, Suezanne	NSW	Conspiracy to import heroin	1987/1988	- /3.5 years	Quashed	False confession Police misconduct
HYTCH, Robert	QLD	Murder	1999/2008	- /9 years	Quashed Acquitted on retrial	Police tunnel vision
IBBS, Kevin	WA	Rape	1987/2001	4 years / 6 months	Quashed	False witness testimony
IRELAND, Dean	WA	Fraud	1993/2003	3 years	Quashed	Prosecution non- disclosure Erroneous judicial instructions
IRELAND, Len	WA	Fraud	1993/2003	3 years/ 1.5 years	Quashed	Prosecution non- disclosure Erroneous judicial instructions
IRVING, Terry (Indigenous)	WA	Armed robbery	1993/1998	8 years/ 4.5 years	Quashed	Eyewitness misidentific- ation Inadequate defence
JAMA, Farah Abdulkadir	VIC	Rape	2006/2009	6 years/ 15 months	Quashed Acquittal entered	Forensic error Police misconduct

Accused	State	Charge(s)	Year Convicted/ Exonerated	Sentence/ Time spent in Prison	Case Outcome	Causal and Contributing Factors
JENSON, Douglas	VIC	Murder	2004/2011	16 years/ 7 years	Quashed Acquitted at retrial	Police misconduct Prosecutorial misconduct Evidence erroneously admitted to trial
KEENAN, Francis Robert	QLD	Grievous bodily harm with intent and assault	2007/2007	Life imprison- ment/ 9 months	Quashed Acquittal entered	Erroneous judicial instructions
KELLY, Patrick Desmond	VIC	Offence against Crimes Act 1914 for unlawfully disclosing a document	Unknown (offence in 2004)	Non- custodial sentence/ N/A (length unknown)	Quashed Acquittal entered	Inadequate defence
KLAMO, Tomas	VIC	Manslaughter	2007/2008	5 years/ 2 years	Quashed Acquittal entered	Forensic error Erroneous judicial instructions
LANDINI, Henry	NSW	Drugs possession	1983/2001	15 years/ 5 years	Quashed	Police misconduct Overzealous police
MALLARD, Andrew	WA	Murder	1995/2006	Life imprison- ment/ 11 years	Quashed	False confession Prosecution non- disclosure Eyewitness error Improper interrogation Police misconduct Inadequate defence
MANLEY, Jonathan	NSW	Murder	1993/1994	12.5 years/ 1 year	Quashed	Erroneous expert evidence Inadequate defence
MARTENS, Fredrick Arthur	QLD	Rape	2006/2009	5.5 years/ 2.75 years	Quashed on second appeal	False victim allegations/tes timony Police misconduct

Accused	State	Charge(s)	Year Convicted/ Exonerated	Sentence/ Time spent in Prison	Case Outcome	Causal and Contributing Factors
MARTINEZ, Jose	WA	Murder	2005/2007	Life imprison- ment/ 3 years	Quashed Acquittal entered	Misleading forensic evidence Police tunnel vision Erroneous judicial instruction
MCCLEOD- LINDSAY, Alexander	NSW	Attempted murder	1965/1990	18 years/ 9 years	Pardoned	Misleading forensic evidence
MCDERMOTT, Frederick Lincoln	NSW	Murder	1947/2012	Death, commut- ed to Life imprison- ment/ 5 years	Quashed Acquittal entered	Police misconduct Misleading forensic evidence False witness testimony Overzealous police
MICKELBERG, Peter	WA	Theft	1982/2004	14 years/ 6 years	Quashed	Police misconduct Overzealous police Inadequate defence
MICKELBERG, Ray	WA	Theft	1982/2004	20 years/ 8 years	Quashed	Police misconduct Overzealous police Inadequate defence
MRAZ, Gigula	NSW	Murder and rape	1955/1956	- / -	Quashed Acquitted on retrial	Erroneous judicial instructions
NARKLE, Vincent (Indigenous)	WA	Deprivation of liberty and sexual assault	1993/2006	5 years/ 19 months	Quashed	Prosecution non- disclosure Overzealous police Police misconduct
PEREIRAS, Carlos	WA	Murder	2005/2007	Life imprison- ment/ 3 years	Quashed Acquittal entered	Misleading forensic evidence Police tunnel vision Erroneous judicial instruction

Accused	State	Charge(s)	Year Convicted/ Exonerated	Sentence/ Time spent in Prison	Case Outcome	Causal and Contributing Factors
PERRY, Emily	SA	Attempted murder	1981/1982	15 years/ 1 year	Quashed Charges with- drawn	Overzealous police Poor forensic investigation Prosecutorial misconduct
PODUSKA, Paul Jacob	VIC	Driving under the influence causing death	2007/2008	35 years/ 9 months (approx)	Quashed	Erroneous judicial instructions
RENDELL, Douglas Harry	NSW	Murder	1980/ 1989 (pardoned)/ 1997 (quashed)	Life imprison- ment/ 8 years	Pardoned Quashed	Police misconduct Forensic error
ROSS, Colin Campbell	VIC	Murder and rape	1922/2008	Capital punish- ment/ 115 days/ executed	Pardoned post- humously	Forensic error False witness testimony Unreliable informant testimony
ROTUMAH, Brett (Indigenous)	NSW	Affray	2007/2008	- / -	Quashed	Inadequate defence Police tunnel vision False confession
ROTUMAH, Steven (Indigenous)	NSW	Affray and assault occasioning actual bodily harm	2007/2008	- / -	Quashed	Inadequate defence Police tunnel vision False confession
SCHAFFER, Colleen Joy	QLD	Murder	1987/ -	- / -	Quashed	Police misconduct Overzealous police
SIEGFRIED POHL, Johann Ernst	NSW	Murder	1973/1992	Life imprison- ment/ 10 years	Pardoned	Forensic error
SLOAN, Robert	VIC	Drug trafficking	2001/2001	4 years and 4 months/ 5 months	Quashed	Police misconduct Police tunnel vision
SPLATT, Edward	SA	Murder	1978/1984	Life imprison- ment/ 6.5 years	Pardoned Quashed	Poor forensic investigation Police misconduct
STAFFORD, Graham	QLD	Murder	1992/2009	Life imprison- ment/ 15 years	Quashed, Acquitted on retrial	Poor forensic investigation
STEGMAN, Geoffrey Robert	QLD	Aggravated assault causing GBH	1993/1993	- / -	Quashed	Erroneous judicial instructions

Accused	State	Charge(s)	Year Convicted/ Exonerated	Sentence/ Time spent in Prison	Case Outcome	Causal and Contributing Factors
STEVENS, Laurie	QLD	Murder	2003/2009	- / 3 years (approx.)	Quashed, Acquitted on retrial	Erroneous judicial instructions
STUART, Rupert Max (Indigenous)*	SA	Murder and Rape	1959/1973	Death, commuted to life imprisonment/ 14 years	Unofficial	Improper interrogation False confession
SZITOVSKY, Leslie Christopher	VIC	Murder	2007/2009	18 years/ 2 years	Quashed Acquitted on retrial	Undue weight to circumstantial evidence
TAHCHE, Robert	VIC	Rape	1991/1995	16 years/ 3 years	Quashed	False victim allegations
THAIDAY, Patrick Dominic	QLD	Rape	2008/2009	8 years/ 5 months (approx)	Quashed	False victim testimony
THOMAS, Joseph Terrence	VIC	Terrorism	2006/2008	5 years/ 10 months (approx)	Quashed Acquitted on retrial	Police misconduct Inadequate defence False witness testimony
TRAN, Hoang Quang	VIC	Murder	2006/2008	11 years/ 2 years	Quashed	Erroneous judicial instructions Police tunnel vision
TRAN, Long Thanh	VIC	Murder	2006/2008	11 years/ 2 years	Quashed	Erroneous judicial instructions Police tunnel vision
WOOD, Gordon	NSW	Murder	2008/2012	17 years/ 4 years	Quashed	Forensic error

**Rupert Max Stuart is believed to be factually innocent, though no court of law has overturned his conviction. His death sentence was commuted and he died in 2014.*