

## LEGAL STUDIES

### **Criminal Justice Issue: Compensation for Wrongful Conviction**

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#### **A Brief Outline of This Justice Issue:**

The Australian criminal justice system is regarded as one of the most equitable in the world and we rely on its role to maintain justice and social order in society. However, as much as we may trust in the institutions and decisions of the criminal justice system, the truth is that justice is not always served. One issue which has raised concerns in recent years is that of wrongful convictions, and whether those wrongfully convicted should receive compensation for the miscarriage of justice they have been dealt.

There are no definite statistics on the rate of wrongful convictions in Australia, although figures are believed to be similar to rates in the US and the UK, where wrongful conviction rates are estimated to lie anywhere between 0.5% and 5% of all criminal cases. Due to the nature and causes of wrongful conviction, the collection of reliable data has proven to be a difficult task, however, many countries including England, the United States and Canada have introduced new measures to correct this issue and compensate victims of wrongful conviction. Australia, which shares aspects of its legal system with many of these countries, has been criticised for not doing enough to meet the needs of the wrongfully convicted.

#### **Opposing Views, Recent & Planned Changes:**

Victims of wrongful conviction in Australia do not have any statutory or common law rights to receive compensation for their ordeals, except in the ACT. Under the Human Rights Act 2004 (ACT), an individual wrongly convicted of a criminal offence may seek compensation, under the conditions that they were convicted by the final decision of a court, they suffered punishment because of the conviction, and that their conviction was reversed due to a miscarriage of justice.

Although the ACT is the only jurisdiction to introduce such legislation, state and territory governments can choose to award an ex gratia payment to individuals wrongfully convicted. This means a monetary payment given 'out of grace', rather than under legal obligation. Governments are often opposed to providing compensation to those wrongfully convicted, as payments often lie in the millions, and can involve years of very costly legal process. It is also thought that officially introducing legal compensation for those wrongfully convicted would 'open the floodgates' to millions of dollars in payments which would financially drain state governments.

In June 1997, the then NSW leader of the opposition John Hannaford introduced the Criminal Appeal Amendment Bill, with the aim of creating a Criminal Cases Review Commission to investigate possible miscarriages of justice and wrongful conviction, and provide compensation to those wrongfully convicted. However, the Bill lapsed in the Legislative Assembly.

#### **Evaluation in Terms of Achieving Justice:**

The effects of wrongful conviction can extend far beyond financial loss and deprivation of liberty. Many individuals may experience emotional trauma, and can even develop illnesses like Post-Traumatic Stress Disorder. It is the role of our criminal justice system to uphold fairness, protect the innocent and punish those who create danger in society. These principles are not upheld every time someone is wrongfully convicted.

More measures must be undertaken and legislation established by state governments to ensure justice is served, and those falsely convicted receive compensation for the wrong done to them under the law.

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