

SUGGESTED figure we all use for consistency – 7%

(Tabular paper to Miscarriages of Justice symposium, Adelaide 24-25 Nov 2017)

Rate of WRONGFUL CONVICTIONS in Australia ...for serious offences (murder, rape, gross assault), after all 'normal' appeals exhausted					
WHEN	WHO	HEADLINE FIGURE	WHAT	Basis for finding/comment...	HOW
2017: ESTIMATE for AUSTRALIA	From studies by numerous Australian and US academics and Civil Liberties Australia ¹	7% derived from UK comparison	For major cases (murder, rape, serious assault, etc)	On the premise that the Australian legal system (laws, courts, police, DPPs, etc) is virtually identical to that of UK	From data, reports and articles based on 20-plus years of UK experience by UK Criminal Cases Review Commission
			For 'minor' cases in lower & magistrates courts, %age may be higher, possibly 10% , but no-one knows	Higher figure likely as delivery of 'justice' is quicker and less rigorous, with less skilled police, lawyers, etc, in lower courts globally	CCRC is a UK statutory body referring cases to superior appeal courts, in near-identical legal system to Australia's
UK FIGURES: Actual and estimated, reported in the 2016 CCRC Annual Report	Criminal Cases Review Commission ² : (Statutory Body for England, Wales & NI)	<u>Actual:</u> CCRC referred 632 cases to appeal courts over 20 years: 418 won	CCRC referred to the courts about 7% of <u>valid</u> prisoner requests it received under UK law, CCRC CEO says	<u>Premise:</u> After 20 years reviewing, the UK CCRC now knows more than any one appeal court about errors in UK criminal cases. Its statistics/estimates are the most accurate possible, valid comparatively for Australia	7% figure from CCRC Annual Report 2015-16, p20. In late 2017, CCRC has handled more than 20,000 prisoner requests for review, about 10,000 valid under UK law
2000-2017 as at May 2017: Appeal Courts in England, Wales, NI	<u>Rulings</u> by superior UK Appeal Courts on 632 referrals	67% (418 of 632) actually won in court after CCRC referral	CCRC believes <u>appeal</u> judges are wrong in 'significant' percentage of cases put by CCRC	<i>COMMENT: The CCRC's estimate is the only reliable figure, derived from more than 10,000 actual cases reviewed, by a central review system, adequately funded, available anywhere in the world</i>	<i>CCRC figures indicate it is likely UK courts make 'new' mistakes in reviewing wrongful convictions in 1/3rd of new appeals. Not surprising: 'same' judges are likely to make 'same' mistakes, just as in Australia</i>
USA FIGURES 2012 Post-Conviction ³	John Roman et al, Urban Institute:	8% finding	8% finding If sexual assault cases ONLY analysed	NB: More DNA samples were preserved in sexual assault cases; figure is 5% if murder cases included	Actual DNA tests on 634 'lost' and 're-discovered' Virginia archive samples (collected 1973-1987)
2007 Calculated, by a 'different' method	Several ⁴	10% estimate	Up to 10% , different method	Based on statistical model	Using indirect measures

PUTTING the Australian wrongful conviction rate in perspective:

One 'TRAIN or bus CRASH' every 3 months: Based on actual UK cases and UK prisoner figures (roughly double the Australian prison population), the 7% estimate means about 300 people now serving time in Australian jails for major crimes are innocent. The legal system convicts them – wrongly – at the rate of about 4 people every 3 months, about 16 or so a year. If States suffered train or bus crash deaths at the rate of 4 every 3 months, every year, the rail or bus system would be closed down until the cause(s) were identified and safety-integrity-quality of the system improved. – comment by Bill Rowlings, CEO of **CLA** Civil Liberties Australia Inc. A0404
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Note 1: The 7% CCRC observation in the UK applies to major murder, rape and serious assault cases, when a convicted prisoner has exhausted all normal appeal court processes but is in jail, still claiming innocence, and takes his/her case to CCRC as a last resort. The CCRC is a 'UK' statutory body (Scotland has its own CCRC).

Note 2: 'Major' cases have, in general, the best police-DPPs-judges-etc allocated to them in 'superior' courts. The error rate is likely to be higher in lower courts with people of lesser experience-competence involved, that is in about 90%-plus of cases in the criminal justice system in the UK, and in Australia. The wrongful conviction rate for that 90%, "lower end" of the justice system is anyone's guess. Based on the above findings for major crimes, **it may be 10% or more**; in some areas, higher.

References:

1. 3-year study by Civil Liberties Australia of books, articles and websites by Australian and world academics. For quick comparison, UK (85,000) has roughly double the number of prisoners as Australia (40,000). The percentage valid appeal/success rate of prisoners should be similar in Australia to the UK...EXCEPT THAT Australia does not have a CCRC.
2. <https://ccrc.gov.uk/case-statistics/> 31 May 2017. CCRC Annual Report 2015-16, p20: <https://ccrc.gov.uk/publications/corporate-publications/>
3. <http://www.urban.org/research/publication/post-conviction-dna-testing-and-wrongful-conviction> Detailed study/analysis by the Urban Institute, a reputable Washington DC think-tank, of the results after 634 approximately random, "discovered*" samples of material held in court-decided sexual assault and murder cases rediscovered in the Commonwealth (ie, State) of Virginia were tested using modern forensic science methods. The study was funded by a contract from the US National Institute of Justice, part of the US Department of Justice. * The samples had been archived and 'forgotten'.
4. 'Several researchers have developed a clever indirect measure of the frequency of false convictions: Surveys of judges who presided over criminal trials reveal that sometimes these judges disagree on the correct verdict with the juries that actually decide the cases. When that happens, one side or the other must be wrong, and sometimes it will be a jury that convicted the defendant. Using data on such disagreements...researchers have constructed statistical models that indicate that up to 10% of criminal convictions in jury trials are erroneous (Baldwin and McConville, 1979; Gastwirth and Sinclair, 1998; Spencer, 2007)' ... Prof Gross, Samuel R., How Many False Convictions are There? How Many Exonerations are There? (February 26, 2013 SSRN: <https://ssrn.com/abstract=2225420> Gross is Professor of Law, U. Michigan, and Editor, National Registry of Exonerations.