

The Hon Vickie Chapman
Attorney-General, Deputy Premier, responsible for Justice Reform
Parliament House
ADELAIDE 5000 SA

By email: AttorneyGeneral@sa.gov.au & bragg@parliament.sa.gov.au

Dear Attorney-General

Civil Liberties Australia is very encouraged by your personal commitment to reform, as expressed on your website and by your actions since becoming a Minister. We note appreciatively that your website says:

‘She is passionate about making positive changes in lives of every day South Australians through law reform.’

Buoyed by your commitment, and encouraged by your public statements earlier this year about continuing uncertainty and unreliability of evidence (see below), we write to ask you to hold a Royal Commission/public inquiry into the administration of justice in SA. We made a similar request in 2016 (see attached) to the previous SA Government, but they did not appear to be as committed to law reform for the State as you and your Government have made it clear that you are.

The reasons that a Royal Commission (or similar independent public inquiry) is needed in SA remain the same as in 2016: they are contained in the following draft terms of reference:

- matters surrounding the Keogh and other questionable legal cases*, including the non-charging of possible murderers, resulting from findings and evidence provided by Forensic Science SA and its predecessors;
- forensic science examinations, findings and evidence given in courts, tribunals, etc by Dr Colin Manock and state forensic science staff from 1968 to the present (including cases interstate where the SA forensic science services undertook examinations for external bodies, such as the NT Government and its agencies, the Australian Federal Police, etc);
- actions, and inactions, re the above, by SA Directors of Public Prosecutions, Solicitors-General of SA, and Attorneys-General of SA involved in handling the complaints and petitions for mercy made by Henry Keogh and others in the period from 1968 to now;
- actions, and inactions of the Medical Board of South Australia and the Medical Professional Conduct Tribunal relevant to Dr Manock, other relevant cases, and any other relevant inquiries conducted between 1968 and the present;
- the past and present ability or otherwise of professional bodies in general in South Australia, such as (but not only) those in forensic science, medicine and law, to adequately monitor, supervise and discipline their professions and their members to protect the public, including their boards’ timely ability to prevent members continuing to operate in the profession if evidence or findings adverse as to propriety, public safety or confidence in the legal, medical, justice and other systems of society arise;
- any other associated matters.

Civil Liberties Australia, legal professionals and academics, as well as public commentators believe that a question mark will hang over the quality and integrity of the legal/justice system in SA until the above matters are considered, earlier mistakes and failures of the

Background:

The Government of South Australia needs to restore faith in the state's justice system by holding a Royal Commission. Cases in the SA Supreme Court have already documented extensive failings of the forensic pathology system in SA. Innocent people have been jailed, some apparently for decades: as importantly, it is possible that some murderers remain at large. The problem is not only faulty forensic work: failures in the legal/criminal justice system, which flowed from the forensic mistakes, have not been addressed or remedied.

Citizens' confidence has been severely shaken by the outcomes of trials, appeals, tribunal hearings and the like surrounding the professional activities of Dr Colin Manock as head of the state's forensic pathology facility for more than 30 years. Concerned citizens and leading lawyers have identified significant governance questions surrounding how the legal, medical and other executive bodies in South Australia, including the Parliament, have permitted the state's system of justice to deteriorate. Nearly two decades after Dr Manock's retirement, the State has not undertaken a robust investigation of what went wrong across the system, with a view to taking formal remedial action. In fact, as lately as January 2016, the Director of Public Prosecutions appeared ready to rely on evidence from Dr Manock to continue an unjust trial.

1975 - The State of South Australia gave sworn evidence to say that Dr Manock was not properly qualified to certify cause of death;

1981 - The High Court determined that Dr Manock's evidence was not fit to be taken into account and that he was not an expert;

1995 - The Coroner of SA determined that Dr Manock was incompetent and dishonest;

2004 – Members of the Medical Board of South Australia stated that Dr Manock was incompetent and failed to comply with standards laid down in 1908;

2004 – The report to the Solicitor-General by the SA Government's most senior pathology expert said that Dr Manock's evidence in the Keogh case was wrong – there existed no evidence of criminal assault. It was another decade before Keogh was declared innocent.

Appeals before the courts in 2016 will assert that Dr Manock was never qualified as an expert, and therefore his evidence in cases in which he appeared was not admissible under the laws of SA, yet it was accepted for decades. He also is recorded as having given worrying evidence in a number of important cases, notably the alleged battered baby cases in which people may have escaped proper police examination and possible charges.

With the current appeals, the public will want to know how the State of SA and the legal – medical-parliamentary system allowed Dr Manock to help secure over 400 criminal convictions, and preside over the non-charging of other possible criminals, as well as to conduct autopsies in 10,000 cases, when he was not properly qualified.

For the confidence of the citizens of SA, it is important that the systemic failures in state governance methods, which allowed errors and mistakes in association with Dr Manock, be completely and transparently analysed, and learned from. A Royal Commission will ensure the people of South Australia that the State Government is firmly committed to the rule of law.

system identified, including but not only those of Dr Manock. and any necessary changes are implemented. We note that you appear to be of a similar opinion, given your comments in a radio interview in mid-2018:

*Vickie Chapman: There are two issues. One is this question of having an inquiry as to what happened. I think it is very clear from the Court of Criminal Appeal exactly what happened. Dr Manock's evidence as an expert was relied upon. **It was completely unreliable, in fact manifestly so**, for the purposes of making it simply unsustainable to have a conviction be maintained. Clearly, this was a person who for whatever reason had been appointed, you know, decades before who was discredited and dismissed and his evidence wholly, you know, rejected in that way.*

*The real question then is, well look, **how many other cases** in which he's given an expert opinion as to a cause of death or circumstances surrounding it, that might come to the surface? Well, in short, **we don't know the answer to that.** (T)hey're not always just in cases where there might be an alleged murder scene **but there are a number of baby cases, for example**, where reports were given by (D)r Manock. I can recall one where there was a decision of a child, an infant, ostensibly dying of pneumonia but then had massive bruising over the child's body. **And you start to wonder about the reliability of the evidence given.** Now, to my knowledge there are no other known cases of which there is any flow on, overturning of a decision, that's resulted from that evidence, or compensation pending. **But, we can't rule it out, obviously.** We're talking about a huge number of cases... **(Emphasis added)***

– July 2018 ABC Radio Adelaide: Drive program with Narelle Graham, 12 mins, Attorney-General Vickie Chapman and Dr Bob Moles interview. Program transcript from 1:01.13 to 1:13:30 <http://netk.net.au/Keogh/Keogh63.pdf>

We propose that you appoint a person or people as Commissioner(s) of a public inquiry. We also propose that, as well as one or more judicial/legal appointees, that a non-lawyer of civil liberties/human rights background be appointed. Preferably, appointees would come from outside SA.

We look forward to your positive response, and the announcement of such a Royal Commission.

We would suggest you might care to add to our proposed draft terms of reference that there is now, after finalisation of the Keogh case, the opportunity to calculate the cost in cash terms to the State, to the people caught up in the Keogh case (Keogh and family, Cheney family, etc), and others. CLA is developing a methodology for such calculations to produce realistic estimates of what a miscarriage of justice costs, and so that valid comparisons can be made across jurisdictions.

In passing, we congratulate the SA Government then led by your predecessors, for passing the 'Right To Appeal' law in 2013 which enabled the Keogh case to be reconsidered. CLA has been instrumental in seeing that legislation 'mirrored' in Tasmania, and we are actively working on a similar mirroring of your state's fine example in future in Victoria, Queensland, WA and the ACT.

Yours Truly,

Dr Kristine Klugman OAM

ATTACHED: Copy of 2016 letter to Premier Weatherill

Australia Day 2019



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The Hon. Jay Weatherill, MP, Premier of SA
Parliament House
ADELAIDE SA 500

Dear Premier

Following the nolle prosequi re Henry Keogh entered by the Director of Public Prosecutions in relation to the Cheney death in 1994, Civil Liberties Australia asks you, as Premier, to hold a Royal Commission/public inquiry into the administration of justice in SA, covering, inter alia:

- matters surrounding the Keogh and other questionable legal cases*, including the non-charging of possible murderers, resulting from findings and evidence provided by Forensic Science SA and its predecessors;
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- the past and present ability or otherwise of professional bodies in general in South Australia, such as (but not only) those in forensic science, medicine and law, to adequately monitor, supervise and discipline their professions and their members to protect the public, including their boards' timely ability to prevent members continuing to operate in the profession if evidence or findings adverse as to propriety, public safety or confidence in the legal, medical, justice and other systems of society arise;
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CLA believes there will be lessons for other jurisdictions, and suggests the SA Government invites other states and territories to send observers to the Royal Commission/Inquiry.

The conduct of Dr Manock was extraordinary over many years. As importantly though, the failure of the justice system – judges, political and legal office holders, the various professional associations – to deal with the situation is the major worry for the quality of justice in South Australia now and into the future, and for justice in Australia more generally.

** including, but not limited to, those of Van Beelen, Bromley, Szach and three babies who died in what may have been non-accidental injury cases.*

Yours sincerely,

Dr Kristine Klugman
President

Tuesday 26 January 2016

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