

The Hon Vickie Chapman MP



**Government
of South Australia**

19AGO0198

15 February 2019

Dr Kristine Klugman OAM
Civil Liberties Australia

By email: secretary@cla.asn.au

**Deputy Premier
Attorney-General**

45 Pirie Street
Adelaide SA 5000

GPO Box 464
Adelaide SA 5001
DX 336

Tel 08 8207 1723
Fax 08 8207 1736

Dear Dr Klugman

Request to establish Royal Commission

I write in response to your email dated 26 January 2019 seeking the establishment of a Royal Commission or public inquiry into the administration of justice in South Australia.

Any concerns arising from examinations, findings or evidence given by staff employed by Forensic Science South Australia or its predecessors (including Dr Colin Manock), or regarding the conduct of previous or current Directors of Public Prosecutions, Solicitors-General or Attorneys-General will be appropriately dealt with on a case-by-case basis as and when they may arise.

Yours sincerely



**VICKIE CHAPMAN MP
DEPUTY PREMIER
ATTORNEY-GENERAL**

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

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