

## 6% Wrongful Convictions estimate (Tabular conference paper presentation format, updated February 2021)



Rate of <b>WRONGFUL CONVICTIONS</b> in Australia and NZ...for serious offences (murder, rape, gross assault), after all 'normal' appeals exhausted, where prisoner maintains innocence					
WHEN	WHO	HEADLINE FIGURE	WHAT	Basis for finding/comment...	HOW
<b>2019: ESTIMATE for AUSTRALIA and for NZ</b>	From studies by numerous academics, analysed by Civil Liberties Australia <sup>1</sup>	<b>6 %</b> derived mainly from UK comparison and US studies (at March 2020)	For <b>major</b> cases (murder, rape, serious assault, etc) where prisoners still in jail continue to claim innocence	On the premise that the Australian and NZ legal system (laws, courts, police, DPPs, etc) is virtually identical to that of UK, and quite similar to that of the USA. CCRC is a UK statutory body referring wrongful conviction claims to superior appeal courts, in a near-identical legal system to that of Australia and NZ.	From data, reports and articles based on 22-plus years of UK experience by UK Criminal Cases Review Commission. <b>7%</b> was the estimate of innocence for claims made through the UK CCRC processes in 2016 CCRC's CEO report. The 2019 figure is <b>5.2%</b> .
		8 –10% ...or more?	For ' <b>minor</b> ' cases in <b>lower &amp; magistrates</b> courts, %age may be higher	Higher error %age likely: 'justice' is quicker, less rigorous, with less skilled police, lawyers, etc, in lower courts.	
<b>UK FIGURES:</b> Actual and estimated: <b>7%</b> figure reported in the <b>2016 CCRC Annual Report</b>	Criminal Cases Review Commission <sup>2</sup> : (Statutory Body for England, Wales & Northern Ireland)	<b>5.2% actual as at 2019:</b> CCRC referred 664 cases to appeal courts over 22 yrs; 657 heard; 441 appeals allowed (67% success rate of referred cases)	657 is the number the CCRC believes innocent. CCRC believes <b>about 7%</b> of <u>valid</u> prisoner claims it receives involve wrongful convictions under UK law – CCRC CEO 2016 Ann Rpt	<b>Premise:</b> After 22 years, the UK <b>CCRC now knows more than any one appeal court</b> about errors in UK criminal cases. Its 5-to-7% estimates (depending on year) are the most accurate possible (and are valid comparatively for virtually identical Australia and NZ legal systems).	<b>7% figure</b> from CCRC Annual Report 2015-16, p20. On 1 Sept 2019, CCRC had received 25,256 prisoner requests for review, about 12,600 of them valid requests under UK law, producing a 5.2% figure of successful appeals to the CCRC in 2019.
<b>1997-2019</b> as at Sept 2019 : Final decisions of Appeal Courts in England, Wales, NI	<b>Rulings</b> by superior UK Appeal Courts on 657 referrals	67% (441 of 657) actually won in court after referral by the CCRC	CCRC believes <b>appeal</b> judges are wrong in ' <b>significant</b> ' %age of cases put by CCRC: no reason to think Australia and NZ appeal judges are not in error similarly	<i>COMMENT: The CCRC's estimate is most reliable figure, from about 12,600 actual cases reviewed, by a central review system, adequately funded, available anywhere in the British law world</i>	<i>CCRC figures indicate it is likely UK courts make 'new' mistakes in reviewing wrongful convictions in 1/3<sup>rd</sup> of new appeals. Not surprising: 'same' judges are likely to make 'same' mistakes, as in Australia &amp; NZ</i>
<b>USA FIGURES 2012</b> Post-Conviction <sup>3</sup>	John Roman et al, Urban Institute <sup>3</sup> :	<b>8% finding</b>	8% finding If sexual assault cases ONLY analysed	NB: More DNA samples were preserved in sexual assault cases; figure is <b>5%</b> if murder cases included	<b>Actual DNA tests</b> on 634 'lost' and 're-discovered' Virginia archive samples (collected 1973-1987)
<b>USA: 2007</b> Calculated, by 'different' method	Several <sup>4</sup>	<b>10%</b> estimate	Up to <b>10%</b> , different method	Based on statistical model	Using indirect measures v 20210206 (Next update: June 2021)

## What does 6% mean for people, wrongfully convicted, in Australian jails now?

For the UK, it would mean about 66\*\*\* people in jail wrongfully convicted each year: appealing, awaiting help from the CCRC, awaiting a new appeal, etc. For Australia, with half the jail population of the UK, it would be about 33 people and for NZ (1/8<sup>th</sup> of the UK jail population) about 8. But there has never been a CCRC in Australia. The number of wrongfully convicted prisoners has been accumulating without benefit of CCRC correction, and would be several times that number at present. How many times? At least 10 times (average number of sentence years for major crime): that is, 300-plus people in Australia, about 80 in NZ (until at least 2021 in NZ).

**“If there was a plane or train crash, and 300 people died, or even 80 people, there would be a major inquiry. Yet it is likely that some 300 people now serving lengthy sentences in Australian jails for major crimes are innocent. Based on the UK figures, legal systems convict them – wrongly – at the rate of at least **1 every 2-3 weeks in Australia**, and about 1 every 8-9 weeks in NZ. If states and nations suffered regular major transport system failures at these rates year after year, the transport systems would be closed down until the cause(s) were identified and safety-integrity-quality of the system improved. But the legal system goes on crashing repeatedly, and no-one does anything about it.”** – comment by Bill Rowlings, CEO of Civil Liberties Australia Inc. A04043 Email: [secretary \[at\] cla.asn.au](mailto:secretary[at]cla.asn.au) – Web: [www.cla.asn.au](http://www.cla.asn.au)

The 6% CCRC observation in the UK applies (mainly) to major murder, rape and serious assault (‘violent’) cases, when a convicted prisoner has exhausted all normal appeals but is in jail, still claiming innocence, who takes the case to CCRC as a last resort. The CCRC is a ‘UK’ statutory body (Scotland has its own CCRC). The NZ CCRC began on 1 July 2020.

‘Major’ cases are, in general, allocated the best police-DPPs-judges-etc in ‘superior’ courts. The error rate is likely higher in lower courts with people of lesser experience-competence involved, that is in about 90% of cases in the criminal justice system in the UK, Australia, NZ and the USA. 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.** (3900 people in Australia!, 900 in NZ).

\*\*\* Roughly calculating the WCs in the UK: about 80,000 prisoners, 1/3<sup>rd</sup> ‘violent’ crimes 26,666, 5% continue to claim innocence 1,333, 6% of those are innocent = about 66.

1. 6-year study by CLA of books, articles and websites. For quick comparison, UK (83,000) has roughly double the number of prisoners as Australia (43,000) and eight times that of NZ (10,000). The percentages for valid appeal/success rate of prisoners should be similar in Australia and NZ to the UK...except that Australia alone (updated 2021) does not have a CCRC to correct ongoing errors, so the wrongfully convicted remain accumulating in jail without recourse to CCRC appeal.
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 random, “discovered”\*\*\* samples of material held in court-decided sexual assault and murder cases. They were “rediscovered” in the Commonwealth (ie, State) of Virginia and 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 DNA sample material 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. (*Please report corrections/updates/comments to [secretary\[at\]cla.asn.au](mailto:secretary[at]cla.asn.au)*)