



GRIFFITH JOURNAL OF
LAW & HUMAN DIGNITY



GRIFFITH JOURNAL OF LAW & HUMAN DIGNITY

Editor-in-Chief

Lisa Neubert

Executive Editors

Danyon Jacobs

Dillon Mahly

Samantha Raey

Editors

Stuart Brown

Tara Byrne

Elizabeth Danaher

Ana-Catarina De Sousa

Lenett Hillman

Dylan Johnson

Iva Markova

Olivia Morgan-Day

Samantha Reay

Natasha Robbemand

Consulting Executive Editor

Dr Allan Ardill

Volume 7 Issue 2
2019

Published in December 2019, Gold Coast, Australia by the *Griffith Journal of Law & Human Dignity*

ISSN: 2203-3114

CONTENTS

BEN WHITE & LINDY WILLMOTT	<i>A MODEL VOLUNTARY ASSISTED DYING BILL</i>	1
ANNETTE GREENHOW & KIM WEINERT	<i>DIVERSITY, EQUITY AND INCLUSION (OR EXCLUSION) IN SPORT: A REVIEW OF THE CASTER SEMENYA CASE</i>	48
REVEL POINTON & DR JUSTINE BELL-JAMES	<i>THE RIGHT TO A HEALTHY ENVIRONMENT IN AUSTRALIA</i>	75
SIMON LEVETT	<i>PROTECTING SOURCES OF EMBEDDED JOURNALISTS</i>	95
KATHRYN E. VAN DOORE & REBECCA NHEP	<i>ORPHANAGE TRAFFICKING, MODERN SLAVERY AND THE AUSTRALIAN RESPONSE</i>	114
DR BRUCE BAER ARNOLD & DR WENDY BONYTHON	<i>THE INDIGNITY OF ABSTRACTION: DATAMINING AND AUTONOMY IN THE AGE OF DIRECT-TO-CONSUMER GENOMICS</i>	139
GEORGINA DIMOPOULOS	<i>'DIVORCE WITH DIGNITY' AS A JUSTIFICATION FOR PUBLICATION RESTRICTIONS ON PROCEEDINGS UNDER THE FAMILY LAW ACT 1975 (CTH) IN AN ERA OF LITIGANT SELF-PUBLICATION</i>	161
MICHEIL PATON & PHOEBE TAPLEY	<i>DIGNITY AND THE FUTURE OF FAMILY LAW</i>	196
LAURA ENSINGER	<i>ABANDONING THE INNOCENT: RECOMMENDATIONS FOR THE LONG- TERM HOLISTIC SUPPORT OF EXONEREES</i>	222
DR SARAH MOULDS	<i>MAKING THE INVISIBLE VISIBLE AGAIN: PATHWAYS FOR LEGAL RECOGNITION OF SEX AND GENDER DIVERSITY IN AUSTRALIAN LAW</i>	245

ABANDONING THE INNOCENT: RECOMMENDATIONS FOR THE LONG-TERM HOLISTIC SUPPORT OF EXONEREES

LAURA ENSINGER*

This article discusses some of the key issues surrounding Australia's current approach to supporting exonerees after exoneration. It outlines the lack of holistic support available in Australia. The article makes recommendations to address the current short fallings of holistic support services available to victims of wrongful conviction in Australia.

CONTENTS

I	INTRODUCTION	223
II	RESEARCH AND METHODOLOGY.....	224
	A <i>John Button</i>	225
	B <i>Henry Keogh</i>	225
	C <i>Lindy Chamberlain</i>	226
	D <i>Deanna MacLellan</i>	226
III	DATA, ANALYSIS, DISCUSSION AND RECOMMENDATIONS	227
	A <i>Access to Individualised Mental Health Support Services</i>	228
	B <i>The Implementation of Peer Support Networks</i>	231
	C <i>Transitional Services for Exonerees to Assist with Successful Reintegration Back Into Society</i>	234
IV	CONCLUSION	237

* Laura Ensinger is a Griffith University law student on the Gold Coast and is in her final year. Laura continues to advocate for exonerees, and hopes to work alongside individuals to implement a national support network for exonerees in the near future. Sincere thanks to the interviewees; John Button, Henry Keogh, Lindy Chamberlain and Deanna Maclellan, for without them this article would not have been possible. Further thanks to Phillipa England, Joel Almond and Samantha Evans.

V ANNEXURE 1 – INTERVIEW QUESTIONS	239
--	-----

I INTRODUCTION

Imagine being convicted for a crime you did not commit,¹ forced to serve a sentence that belongs to someone else. The system that was meant to protect you has failed. If you are one of the fortunate, you may have a family member waiting for you upon release. Many do not. Every day you continue to endure ongoing trauma — you struggle to sleep, eat, and gain employment or housing. You are left unsupported, and the system that inflicted this burden on you has failed you once again.

Exonerees are frequently isolated by their unique and individualised experience. No one can understand the distinct trauma they continue to experience daily. Individuals are faced with the presumption that exoneration alleviates the trauma that has been inflicted, but this is not the case. Exonerees are expected to revert back to their lives before incarceration without assistance or support. There is already a significant amount of research that currently addresses the known causal factors of wrongful conviction, difficulties exonerees face gaining exoneration, and the requirement for exonerees to be compensated. However, there is insufficient research available domestic to Australia that address the availability of support and services offered to exonerees after exoneration. It is acknowledged these areas of research are paramount to exonerees, however this article will focus exclusively on holistic support or lack thereof, and the effects that such shortcomings have on exonerees.

This article proposes the following recommendations to address the support requirements of victims of wrongful conviction:

1. Access to individualised mental health support services;
2. A national peer support network service; and

¹ Lynne Weathered, 'Reflections on the Role of Innocence Organisations in Australia' (2015) 17(2) *Flinders Law Journal* 515, 525.

3. Transitional services for exonerees to assist with successful reintegration back into society.

This article presents the views and evidence of four individuals' experiences in relation to wrongful conviction in Australia. The data obtained from the interviews is based on the personal experiences of the interviewees in relation to proposed recommendations for transitional support services, ongoing mental health services and the role of peer support groups. It will assess the current avenues of support available domestically used to support exonerees and will compare international approaches. It will analyse Australia's current support avenues by examining the personal experiences of the four Australian's affected by wrongful conviction.

II RESEARCH AND METHODOLOGY

The article seeks to provide feedback from exonerees on the article's proposed recommendations. Fixed open-ended questions were prepared in order to obtain the data required for the article. The interview questions were adapted from a similar study,² undertaken in 2013 by Irazola.³ This study examined the victim experiences of exonerees. The structure of the questions were formulated under the following headings:

- (a) Background information;
- (b) Impact;
- (c) Access to information; and
- (d) Exonerees views of the articles proposed recommendations.

Each question was posed to the interviewees in an open-ended manner to encourage each participant to explore areas in which they wished to provide extended answers. In addition to the fixed questions, the interviewees were encouraged to engage more broadly in the conversation, thus allowing participants to explore their views and experiences in line with accepted qualitative case study interviewing methods.⁴

² Annexure 1.

³ Seri Irazola et al, 'Study of Victim Experiences of Wrongful Conviction' (Final Report 244084, September 2013).

⁴ Raymond Opdenakker, 'Advantages and Disadvantages of Four Interview Techniques in Qualitative Research' (2006) 7(4) *Forum: Qualitative Social Research* 11; Stacy Jacob and S. Paige Furgerson, 'Writing Interview Protocols and Conducting Interviews: Tips for Students New to the Field of Qualitative Research' (2012) 17(42) *The Qualitative Report* 1; Irazola (n 3).

The interview method used to obtain the data was email correspondence, allowing for a greater reach of interviewees rather than being limited to geographical location by face-to-face interviews. The interviewees were individually selected by undertaking research of well-known Australian cases of wrongful conviction and recruited by personal invitation. This method provided the article with rich, qualitative data — albeit from a small group of respondents.

The article examines interviews undertaken with John Button,⁵ Henry Keogh,⁶ Lindy Chamberlain,⁷ and Deanna MacLellan. This approach seeks to highlight the interviewees' personal experiences of the support available for exonerees within Australia.

A John Button

Button was incarcerated for 19 years after he was wrongfully convicted of the manslaughter of his girlfriend, Rosemary Anderson. Button was accused of causing the death of Rosemary after evidence was found that his car had sustained damage, allegedly consistent with killing Rosemary. Button falsely confessed to causing Rosemary's death due to overwhelming pressure and abuse from the interviewing officers. In addition to this confession, a contributing factor was the incorrect findings of expert evidence that the damage on Button's car was consistent with an accident that would have caused the death of Rosemary. In 2000, Button appealed his conviction, which was later overturned in 2002. The conviction was overturned largely due to new expert evidence that found the damage to his car was incorrect and was inconsistent to the injuries Rosemary had suffered. Button is currently an active advocate for exonerees, establishing the Perth chapter of the Innocence Project at Edith Cowan University, as well as appearing in TV segments,⁸ and documentaries.⁹ Button answered all interview questions and provided additional feedback in regard to the recommendation of the peer support network.

B Henry Keogh

⁵ *Button v The Queen* [2002] WASCA 35.

⁶ *R v Keogh (No 2)* (2014) 121 SASR 307.

⁷ *Chamberlain v R* (1983) 153 CLR 514; *Chamberlain v R* (1983) ALR 493; *Chamberlain v R (No 2)* (1984) 153 CLR 521; and *Inquest into the death of Azaria Chantel Loren Chamberlain* [2012] NTMA 020.

⁸ 'Wrongfully Convicted', *SBS Insight* (SBS, 2019); 'Murder He Wrote', *Australian Story* (ABC, 2002).

⁹ *Ibid.*

Keogh was wrongfully convicted and served 20 years for the murder of his fiancée Anna, due to evidence that he held several insurance policies against her. However, it was submitted by Keogh that the multiple policies were in place to prevent lapses. There were also significant issues surrounding expert evidence submitted at the trial and contamination of the crime scene. It was also found that Anna's body was released for cremation the same day her death was considered a murder, leaving no avenue for review of the original autopsy. After serving a significant amount of his sentence, Keogh was released on parole before successfully gaining exoneration in 2014. Since his exoneration, Keogh has been heavily involved in advocacy projects for the wrongfully convicted,¹⁰ also appearing on an SBS Insight segment in 2019.¹¹ Keogh answered all interview questions and provided additional feedback in regard to the recommendation of the peer support network. He also made further suggestions regarding a need for independent domestic research of wrongful conviction occurrences.

C Lindy Chamberlain

Chamberlain is arguably one of the most high-profile Australian cases of wrongful conviction. Chamberlain was wrongfully convicted of murdering her baby Azealia and profusely asserted her innocence, claiming a dingo had taken the baby from their campsite at Uluru. Chamberlain has faced immense public scrutiny since baby Azaria's death. She spent three years in prison and was later released when pieces of Azaria's clothing were found. There were also significant issues surrounding the handling of her case and incorrect forensic evidence. Since her exoneration, Chamberlain has continued to fight for proper recognition of how baby Azaria was killed. In 2010, she petitioned the coroner to amend the final report to reflect that Azaria's cause of death was due to a dingo. She was successful, and in 2012 the coroner's final report was amended. Chamberlain did not answer the fixed questions. Instead, she provided a statement that she allowed to be implemented into the data to reflect her contrasting opinion.

D Deanna MacLellan

This interviewee is not an exoneree, but a family member directly affected by wrongful conviction. MacLellan was sought as an interviewee to illustrate the needs of family

¹⁰ 'Wrongfully Convicted' (n 8).

¹¹ *Ibid.*

members who are adversely affected by a lack of support for exonerees in Australia. MacLellan's father was wrongfully accused and convicted of sexually assaulting a younger family member. He was convicted based on purely circumstantial evidence and the testimony of an allegedly disgruntled family member. He was later acquitted of all charges upon appeal due to insufficient evidence when the family member's testimony was revoked, and was permitted to retain his residency. MacLellan's interview highlighted that her family faced compounding issues regarding her father's exportation due to the possible revocation of his visa for the criminal charges previously held against him. MacLellan continues to be an advocate for those who have been affected by wrongful conviction, particularly through a Facebook page where she seeks to educate others on the impact that convictions can have on family members. MacLellan answered all interview questions but did not provide additional data outside the fixed questions provided.

III DATA, ANALYSIS, DISCUSSION AND RECOMMENDATIONS

After exoneration, exonerees face a magnitude of hurdles. These often include limited mental health support, homelessness, unemployment and isolation. Currently, in Australia, there are limited organisations that specifically assist exonerees. A report prepared by the United Kingdom organisation 'Justice', highlighted the complex situation exonerees face,¹² stating that '[e]xonerees are an anomaly in the criminal justice system, with no state department responsible for them upon release, as they should never have been imprisoned in the first place'.¹³ There is a lack of research analysing the support currently offered to exonerees. One organisation that has attempted to address this concern is the Innocence Project. The organisation initially started in the United States, however it is now an internationally recognised advocate. It has played a fundamental role in raising global awareness of wrongful convictions. To date, it has assisted with the exoneration of '367 people in the United States ... by DNA testing, including 21 who served time on death row, and 162 real perpetrators have been identified'.¹⁴ In addition

¹² Justice, *Supporting Exonerees: Ensuring accessible, consistent and continuing support* (Report, 2018).

¹³ Ibid 8.

¹⁴ 'Exonerate', *The Innocence Project* (Web Page, 2019) <<https://www.innocenceproject.org/dna-exonerations-in-the-united-states/>>.

to exoneration cases, the project also provides much needed support for exonerees by helping individuals to rebuild their lives with informal counselling and support services.

A similar approach has been implemented in Australia, with a chapter of the Innocence Project located on the Gold Coast with Griffith University. The Griffith University Innocence Project currently provides assistance to individuals seeking exoneration through the retesting of DNA evidence. Unfortunately, the Australian chapter does not provide additional support that is critically needed, such as peer networking or support services. These kinds of domestic advocacy projects are quite limited in support in comparison to a number of United States chapters. Whilst Australia's implementation of such advocacy projects is arguably a positive step, there is an urgent requirement to address all aspects of support required for exonerees rather than just compensation or exoneration. In Australia, the primary focus of advocacy organisations is compensation or exoneration. The data obtained from the interviews was supportive of this finding. It found that all four of the interviewees did not have any access to domestic organisations who provided any kind of holistic support.

A Access to Individualised Mental Health Support Services

During incarceration, exonerees experience severe isolation from family members and their support networks. They are also at an increased risk of permanent psychological injuries such as Post Traumatic Stress Disorder, anxiety and depression.¹⁵ While incarcerated, individuals have an increased risk of significant mental health issues that are likely to adversely affect their long-term physical and emotional wellbeing. There are currently no specialised mental health services within Australia that specifically deal with treating exonerees. Therefore, there is an urgent need to implement ongoing domestic mental health support services.

As well as an increased risk of psychological injury, exonerees face prolonged trauma which is likely to extend beyond the initial incarceration period. A study undertaken by

¹⁵ Christing Kregg, 'Right to Council: Mental Health Approaches to Support the Exonerated' [2016] *Advocates Forum* 31; see also Seri Irazola et al, 'Study of Victim Experiences of Wrongful Conviction' (Final Report No 244084, September 2013); Leslie Scott, 'It Never, Ever Ends: The Psychological Impact of Wrongful Conviction' (2010) 5(2) *American University Criminal Law Brief* 10.

Grounds oversaw the post-exoneration psychiatric care of 18 American exonerees.¹⁶ Grounds found that exonerees had a significant increased risk of psychological harm compared to regular inmates who were incarcerated.¹⁷ The psychological harm was found to continue long after individuals had been exonerated. Grounds argued that regular support services would not be sufficient to treat the ongoing trauma of exonerees.¹⁸ This is due to the unique trauma that exonerees experience. Further research in this area by Grounds also found the trauma experienced was similar to the suffering endured by prisoners in prisoner-of-war camps.¹⁹ He asserted the traumatic experiences of exonerees was so unique it required customised treatment plans, dependent on each exonerees individual circumstances and needs.²⁰ This finding is also supported by Professor Haney, who specialises in psychology. Haney highlighted that the trauma exonerees suffered was so unique, it was classified as an 'irrational form of suffering'.²¹ He further categorised this kind of trauma as suffering that had 'no justification or meaning', which often resulted in victims suffering permanent injuries to their psychological health.²²

Grounds and Haney's findings are further supported by a 2018 study of exonerees in the United Kingdom.²³ This study focused on the mental health of exonerees from before their arrest, to two years after exoneration. Similarly, it found the trauma caused by wrongful convictions did not end after an individual was exonerated.²⁴ The findings were also analogous in that exonerees required specialist individualised treatment to specifically address the lost years in prison. It is therefore essential to implement the proposed recommended mental health support services, in order to provide sufficient support to exonerees. Additionally, mental health support services must be tailored to each exonerees' individual personal mental health needs.

¹⁶ Adrian Grounds, 'Understanding the Effects of Wrongful Imprisonment' (2005) 32(1) *Crime and Justice* 1.

¹⁷ *Ibid* 15–6.

¹⁸ *Ibid* 43–4.

¹⁹ *Ibid* 41–2; see also Scott (n 15) 13–7.

²⁰ *Ibid* 44.

²¹ Interview by Frontline with Craig Haney, Psychology Professor, University of California Santa Cruz, in Santa Cruz, Cal (December 10, 2002)

<<https://www.pbs.org/wgbh/pages/frontline/shows/burden/interviews/haney.html>>; see also Scott (n 15) 16.

²² *Ibid*.

²³ *Justice* (n 12); see also Scott (n 15) 16.

²⁴ *Justice* (n 12) 7.

The data obtained from the interviews support the recommendation for long term, individualised mental health support services for exonerees. This data found that three out of the four interviewees found current mental health services were inadequate in assisting them with their own individualised needs. One interviewee, Button stated 'psychiatric help was not of much help as many had not dealt with wrongful convictions and could only assume that it was similar to PTSD, when in fact it is much worse'. The data collected from the interviews further supported the findings highlighted in Grounds study.²⁵ The data found that three out of the four interviewees suffered from ongoing mental health concerns due to their wrongful conviction. One example of this was Keogh's personal experience with his mental health, which highlighted how individualised each exonerees trauma is:

There is no standard method for staving off a full and frank depressive episode. What works on one occasion is not guaranteed to work the next or, indeed, ever again. I casted about desperately in the hope of juggling even just a temporary remedy if not a magic bullet. Sometimes I did. However, when I didn't have luck finding any kind of a remedy, I'd go into my default position; which was a 'siege mentality on steroids. My emotional pain was too intense to articulate. I didn't want help – no one could help anyway. And the last thing I wanted was sympathy — from anyone.

Chamberlain's account also reflected an individualised approach for mental health support. This interviewee provided a contrasting opinion that outlined not all exonerees require support services. Chamberlain found she did not require ongoing support, her approach to address her trauma was to not categorise herself as a 'victim'. Chamberlain described her approach as 'a personal choice as to whether I would be a victim or not. I chose to not let them do this to me and continue to choose so. I took back for myself, my head space and freedom by not perpetuating internally what they had started externally'. She further stated that she recognised many exonerees require considerable assistance and that there was a need to address those needs. However, she noted that 'her personality is such that she did not require resources beyond what she could provide for herself'.

²⁵ Grounds (n 16).

During incarceration, exonerees are often faced with the compounding trauma of losing family members through death or purely from isolation. The data from the interviews found two of the four interviewees suffered from additional emotional trauma due to the death of a family member while incarcerated. One significant example of this was MacLellan and her personal experience with her father's wrongful conviction. She highlighted how, during the period her father was wrongfully incarcerated, she experienced significant emotional and psychological trauma. During her father's incarceration, her uncle committed suicide as a result of his brothers' wrongful conviction. As a result, MacLellan endured ongoing periods of severe depression and anxiety, which led to two suicide attempts:

It became so bad to a point where I did not want to leave the house most days, because of this fear, it got to the point where I did not want to live anymore, as my trust issues, fear and anger for the world all became too much for me to handle. Any kind of emotional support would have been greatly appreciated. But we received nothing.

There is an urgent need to implement ongoing mental health support services for exonerees domestically. Presently, there are no services within Australia that specifically support exonerees. The research and data analysed from the interviews supports this finding, and further outlines the serious need to implement the recommended individualised mental health support services for exonerees. The research further indicates it is likely exonerees will experience prolonged and aggravated psychological damage without the required individualised mental health support services.

B *The Implementation of Peer Support Networks*

The experiences exonerees face are so unique, they often find the support available is unhelpful. This issue was examined by a study undertaken by Konvisser and Werry.²⁶ The study examined a group of 70 exonerees and their involvement in advocacy for wrongful conviction through education, reform, and policy changes.²⁷ A causal link was established between each exonerees rehabilitation and their participation in advocacy and

²⁶ Zieva Dauber Konvisser and Ashley Werry, 'Exoneree Engagement in Policy Reform Work: An Exploratory Study of the Innocence Movement Policy Reform Process' (2017) 33(1) *Journal of Contemporary Criminal Justice* 43, 50.

²⁷ *Ibid.*

supporting others. It concluded that exonerees benefitted from involvement in advocacy projects with other exonerees. This finding was also explored by Rebecca Brown from the New York chapter of the Innocence Project. Brown highlighted the significance of exonerees advocating for others:

Many exonerees have expressed to me that they want to feel like they are now a part of changing the larger system. Exonerees are our best advocates for innocence reform and so obviously we are always looking for opportunities for them to educate the public about wrongful conviction. They really are the human face of the problem [they] are in the best position to describe the unique horror of a wrongful conviction and what it feels like to bring home to lawmakers or other policy makers the reality of this tragedy. They might not be able to speak to all the scientific research that informs the basis for our reform recommendations, but nobody can speak about what it feels like better than they can.²⁸

One approach to address the shortfalls of targeted support services for exonerees would be to implement a peer support network. Presently, there is no network or organisation that provides a platform or service where exonerees can meet, converse and support one another. This is despite of the supporting research that shows the positive impact advocacy has on exonerees mental health and well-being.²⁹

The data obtained from the interviews found that three out of four of the interviewees agreed that some form of peer support network after exoneration would have been beneficial to their mental health. One interviewee, Button, highlighted that chapters of the American Innocence Project had already implemented an email-based support service and noted that 'it surprisingly seems to have worked'. This recommendation seeks to implement a support service that would see individuals supporting each other due to their own unique experiences with wrongful convictions. It has been implemented in several American chapters of the Innocence Project. Exonerees are heavily involved in ongoing advocacy projects, policy reform conversations and peer support networks throughout the United States. Button agreed with introducing a similar peer support

²⁸ Ibid.

²⁹ Ibid.

network domestically and stated the 'proposed recommendations were right on track'. He also argued that 'there were likely a large number of cases where the accused may not have had justice and is just looking for someone to listen to them'. This finding was also consistent with Mr Henry Keogh's response. However, MacLellan argued the importance of a peer support group and how it was fundamental for exonerees on their road to rehabilitation and recovery. She argued for the mandatory introduction of a peer support network, highlighting that 'there needs to be programs in place to help relieve the anxiety that is left to rot within these innocent victims'.

One issue that may arise with this recommendation may be the financial costs associated with the service. However, the financial costs to provide this kind of service would arguably be minimal. In order to mitigate any significant costs required to implement a peer support network, the support service could be provided online through a networking platform. This approach would potentially increase exposure to exonerees by not limiting the service to specific locations. In the data obtained from the interviews, feedback was sought from the interviewees regarding whether a starting point for a peer support network could be an online support platform. This proposal could be facilitated by a social media network group such as Facebook, where exonerees could converse and support each other online. Similarly, this approach is often implemented by people who seek support from others who share the same experience such as sexual assault victims and mothers with post-natal depression.³⁰ In an age of online networking and globalisation, the importance of online support networks should not be overlooked. The data obtained from the interviews found that three out of the four interviewees agreed that an online peer support network would be a beneficial starting point. Button highlighted his personal views on this recommendation:

Reflecting back on my own personal journey, there where years of trying to get people to listen to me. When I think back on those hard times, I would have loved to have someone to speak to that understood what I was going through - a means to move forward. I think a Facebook page would be the way to go, however one of the difficulties I am concerned

³⁰ Bethany Lerman, 'Teen Depression Groups on Facebook: A Content Analysis' (2017) 32(6) *Journal of Adolescent Research* 719; Ruth Webber and Rosetta Moors, 'Engaging in Cyberspace: Seeking Help for Sexual Assault' (2015) 20(1) *Child & Family Social Work* 40; César Filipa, Patrício Costa, Alexandra Oliveria and Anne Marie Fontaine, "'To Suffer in Paradis": Feelings Mothers Share on Portuguese Facebook Sites' (2018) 9(1) *Frontiers in Psychology* 1.

with is in getting the details out to victims. I would be happy to be involved with something like this.

There is an overwhelming need to implement a national peer support network for exonerees domestically. Therefore, upon reflection of the data obtained by the interviews and international studies undertaken by Grounds,³¹ Konvisser and Werry,³² a national peer support network for exonerees should be implemented immediately in Australia. It would be more beneficial to exonerees if this kind of rehabilitation and support service was not provided by a government agency. This conclusion was based on the overall distrust held by the interviewees in a system that has already failed them. Therefore, it would likely be more beneficial for exonerees for this avenue of support was to be provided by a private organisation or advocacy project.

C Transitional Services for Exonerees to Assist with Successful Reintegration Back Into Society

After exoneration, exonerees frequently struggle to find secure employment and long-term housing. This is further aggravated by the absence of referrals to corresponding services or case workers. Exonerees are often left institutionalised, having become accustomed to having no control over their personal choices for the duration of their incarceration.³³ It is therefore critical to implement domestic transitional services for exonerees. These support services should be initiated prior to an exonerees release from prison to mitigate the risk of homelessness. This recommendation is also supported by the study undertaken by Grounds in the United Kingdom. In Grounds' findings, he argued it was necessary to implement transitional support prior to an exonerees release in order to prevent further psychological harm.³⁴

In the research undertaken from the interviews, the data showed there was an absence of available transitional services for exonerees within Australia. An international approach seeking to address this issue is the United Kingdom's *Citizens' Advice Bureau*

³¹ Grounds (n 16).

³² Konvisser and Werry (n 26).

³³ Scott (n 15); John Wilson, *A Perpetual Battle of the Mind* (Web Page, 31 October 2002) <<https://www.pbs.org/wgbh/pages/frontline/shows/burden/cameras/memo.html>>.

³⁴ Grounds (n 16) 43–44.

Miscarriages of Justice Support Service ('CABMOJSS').³⁵ The organisation was founded around the idea that 'stable, appropriate accommodation is required to help maximise and secure the benefits of other related support services for exonerees'.³⁶ It currently provides assistance to 30 exonerees annually, by aiding individuals with resettlement and housing.³⁷ In 2012, CABMOJSS assisted 164 exonerees with housing solutions.³⁸ Fortunately, there are no time limits for applications. However, before receiving support, individuals must be exonerated or cleared from any wrong doings. It could be argued that one downfall to this approach is the difficulty individuals who have not yet been exonerated may face accessing support. Australia does not currently have any transitional services for exonerees, therefore it is critical that an approach similar to CABMOJSS is integrated and adopted in order to assist exonerees with reintegration.

This recommendation is supported by the data obtained from the interviews: two out of the four interviewees identified they were not provided any kind of transitional support such as income support, employment, housing assistance or reintegration services. Furthermore, three out of the four interviewees agreed that transitional services should have been provided to them upon exoneration. The one exception to this finding was Keogh, however he noted he was only offered transitional support because he was released on parole before later being exonerated. Keogh detailed his experience further, highlighting the difficulties he endured despite having access to limited parolee support:

I was released on parole not as an exoneree, so the parole board found me a job, so I had a weekly wage. However, my social life was non-existent, as all my friends had married and moved on with their lives and I didn't fit in society anymore. This led to a severe depression that has continued to be with me ever since.

In order to address this shortfall, it is necessary to implement readily available transitional services domestically. These services should seek to provide exonerees with short-term and long-term accommodation solutions and support, in order to mitigate the potential further re-traumatisation of individuals. It is critical the support focuses on

³⁵ 'How We Work', *Commonweal Housing* (Web Page)

<<https://www.commonwealhousing.org.uk/about-us/how-we-work>> (*Commonweal Housing*).

³⁶ Rebecca Dillion, 'Miscarriages of Justice', *Commonweal Housing* (Web Page, 13 February 2012)

<<https://www.commonwealhousing.org.uk/miscarriages-of-justice-2>>.

³⁷ *Commonweal Housing* (n 35).

³⁸ *Ibid.*

assisting exonerees to overcome hurdles accessing income, housing support, and employment services. This is often a difficult area for exonerees to navigate after release. One example of the complications exonerees face, was the financial difficulties *Keogh* experienced:

I was released with only the funds I had managed to save from 20 years of prison wages. I got nothing from Centrelink because of my new partner's superannuation assets which were continually eroded by the costs of my treatment; medical, surgical, dental, optical, hearing aids and health insurance. Furthermore, my opportunities to obtain work as a 60-year old were extremely limited. What work I did find was compromised by having to attend court for countless direction hearings and conferences with my legal team.

Most of the interviewees experienced frustration with the lack of support that is presently available in Australia. One interviewee, MacLellan, spoke about her personal frustration with the availability of transitional services currently available for exonerees:

It is simply unjust to expect these people to walk out of such an environment and continue their everyday duties, work, pay taxes, continue payments of bills, mortgages and to pick up where they left off in society, it is unrealistic, unreasonable and morally wrong.

Another example was illustrated by Keogh's experience following his release:

I fell into a no-man's land. Corrections were no longer responsible for me. Centrelink were less than helpful –they were more interested in giving my partner a financial enema than informing me how they could be of any assistance with my re-entering society after more than 20 years.

Due to the lack of available services, the data obtained from the interviews found most of the interviewees relied heavily on ongoing support from their families and support networks. However, it is important to note not all individuals are afforded this support. Additional international studies show that many exonerees face expulsion from their support networks due to the belief they are not innocent.³⁹ By analysing the findings of the interviews, it is evident the State and Federal governments have failed to take any

³⁹ Grounds (n 16).

responsibility for supporting exonerees with no available support services. Consequently, both the State and Federal governments should seek to implement transitional support services. Exonerees that are left unsupported and unassisted upon release have an increased likelihood of re-traumatisation and adverse long-term psychological consequences. Therefore, the recommendation to implement transition support services for exonerees is essential and must be made readily available, and effortless to access and navigate.

IV CONCLUSION

The current available support in Australia for exonerees is insufficient to address the ongoing trauma which individuals continue to endure. By failing to address the ongoing needs of exonerees, the State and Federal governments have turned a blind eye to the lifelong consequences that wrongful convictions inflict on individuals. Therefore, the recommendations outlined in this article should be implemented to provide sufficient future support for exonerees. There is currently no support available within Australia that sufficiently addresses exonerees holistic needs after exoneration. Consequently, there is a critical requirement to implement the proposed recommendations. The recommendations outlined in this article seek to support exonerees with the trauma they continue to experience. The data obtained from the interviews found there was significant support for the proposed recommendations from the exonerees themselves.

Therefore, it is argued that exonerees desperately require re-integration programs and mental health services in order to mitigate the lifelong psychological conditions many are faced with. Furthermore, specialist services must be made available to provide the individualised treatment exonerees require. In addition to this, support services should be implemented prior to exoneration, by extending support services to families to reintegrate exonerees back into society and the family home. Australian advocacy organisations who work alongside the wrongfully convicted require significant national funding, in order to expand their services to include holistic support. This article recommends Australian advocacy projects implement a support network of wrongfully convicted individuals, who meet regularly and encourage other exonerees to work alongside advocacy projects. The proposed recommendations are a starting point for meeting the holistic support needs of exonerees. The individual needs of each exoneree

requires long-term support and assistance that should be reviewed frequently. Australia currently fails to provide any kind of short term or long-term holistic support for exonerees. The recommendations outlined in this article, if implemented, would provide exonerees with the steppingstones required to re-establish their lives and address the trauma they continue to endure daily.

V ANNEXURE 1 – INTERVIEW QUESTIONS ⁴⁰**BACKGROUND INFORMATION**

1. Please provide any relevant background information on your own personal experience with wrongful conviction;
 - (a) The facts of the events and case
 - (b) How long was your incarcerated period?

2. Can you describe when and how (who and what form) you first heard or learnt about the possibility of being exonerated?
 - (a) Was this approach helpful
 - (b) Please describe what wasn't helpful
 - (c) Were there any ways the notification could be improved?
 - (d) What initial reaction did you and your family have when first learning about the possibility of exoneration?
 - (e) Were you provided information on the exoneration process?
 - (f) Was there information or services that you did not receive that would have been helpful?

3. Did your case receive media attention?
 - (a) What impact did the media coverage have on you and your family?

IMPACT

4. What, impact was there on you and your family after the incarceration period
 - (a) Physical
 - (b) Financial
 - (c) Social
 - (d) Emotional
 - (e) Spiritual
 - (f) Other

⁴⁰ Please note the interview questions were implemented and adapted by using the approach and study materials by Sera Irazola, et al in 'Study of Victim Experiences of Wrongful Conviction' (Final report 244084, September 2013).

ACCESS TO INFORMATION

5. Were you able to access all the information you felt you needed after being released from prison?
 - (a) If yes, please describe

6. Were there any circumstances that were made worse for you or your family member due to a lack of available information, support or support services?

7. Did you receive information and/or services following the incarceration period? If yes, what services did you receive
 - (a) compensation claim assistance
 - (b) court accompaniment
 - (c) crisis intervention
 - (d) information/referrals
 - (e) legal and/or criminal justice system advocacy
 - (f) legal services
 - (g) safety planning
 - (h) short-term/long-term counselling
 - (i) transportation assistance
 - (j) victim compensation
 - (k) victim impact statement assistance
 - (l) counselling services
 - (m) group therapy
 - (n) support groups

8. Was there information that you did not receive that would have been helpful? If yes, please describe

ACCESS TO SERVICES

9. Were you able to access all the services you felt you needed after being released from prison?
 - If yes, please describe

10. Did you receive information about available services following the incarceration period? If yes, what services did you receive
- (a) compensation claim assistance
 - (b) court accompaniment
 - (c) crisis intervention
 - (d) information/referrals
 - (e) legal and/or criminal justice system advocacy
 - (f) legal services
 - (g) safety planning
 - (h) short-term/long-term counselling
 - (i) transportation assistance
 - (j) victim compensation
 - (k) victim impact statement assistance
 - (l) counselling services
 - (m) group therapy
 - (n) support groups
 - (o) accommodation support
11. Were there any services that you did not receive that would have been helpful? If yes, please describe.

YOUR VIEWS

12. What are your personal views on the articles proposed recommendations to holistically supporting victims of wrongful conviction?
- (a) Informal support groups run by advocates/ victims
 - (i) What are your recommendations for this suggestion?
 - (ii) Who should provide this?
 - (iii) If they government does not support victims, who should?
 - (b) Interim short-term housing centres after incarceration for victims to assist with reintegrating into society
 - (i) What are your recommendations for this suggestion?
 - (ii) Who should provide this?

- (iii) If they government does not support victims, who should?
- (c) Support information publications distributed to prisoners whilst they are still incarcerated
- (i) What are your recommendations for this suggestion?
 - (ii) Who should provide this?
 - (iii) If they government does not support victims, who should?
- (d) Implementation of a government funded individualised psychological support for victims upon release
- (i) What are your recommendations for this suggestion?
 - (ii) Who should provide this?
 - (iii) If they government does not support victims, who should?
- (e) Packages for victims that contain necessities upon release (clothing, mobile phone, bus pass, food vouchers, gift cards to purchase essential items).
- (i) What are your recommendations for this suggestion?
 - (ii) Who should provide this?
 - (iii) If they government does not support victims, who should?
- (f) The implementation of a national database of wrongful conviction cases
- (i) What are your recommendations for this suggestion?
 - (ii) Who should provide this?
 - (iii) If they government does not support victims, who should?
13. Any other recommendations, opinions or information from your own personal experience issues the article should be address?

REFERENCE LIST

A Articles/Books/Reports

Filipa, César, Patrício Costa, Alexandra Oliveria and Anne Marie Fontaine, “‘To Suffer in Paradis’: Feelings Mothers Share on Portuguese Facebook Sites’ (2018) 9(1) *Frontiers in Psychology* 1

Grounds, Adrian, ‘Understanding the Effects of Wrongful Imprisonment’ (2005) 32(1) *Crime and Justice* 1

Irazola, Seri, Erin Williamson, Julie Stricker and Emily Niedzwiecki, Emily, *Study of Victim Experiences of Wrongful Conviction* (Final Report No 244084, September 2013)

Jacob, Stacy and Furgerson, S. Paige, ‘Writing Interview Protocols and Conducting Interviews: Tips for Students New to the Field of Qualitative Research’ (2012) 17(42) *The Qualitative Report* 1

Justice, *Supporting Exonerees: Ensuring accessible, consistent and continuing support* (Report, 2018)

Konvisser, Zieva Dauber, and Ashley Werry, ‘Exoneree Engagement in Policy Reform Work: An Exploratory Study of the Innocence Movement Policy Reform Process’ (2017) 33(1) *Journal of Contemporary Criminal Justice* 43

Kregg, Christing ‘Right to Council: Mental Health Approaches to Support the Exonerated’ [2016] *Advocates Forum* 31

Lerman, Bethany ‘Teen Depression Groups on Facebook: A Content Analysis’ (2017) 32(6) *Journal of Adolescent Research* 719

Opdenakker, Raymond, ‘Advantages and Disadvantages of Four Interview Techniques in Qualitative Research’ (2006) 7(4) *Forum: Qualitative Social Research* 11

Scott, Leslie, ‘It Never, Ever Ends: The Psychological Impact of Wrongful Conviction’ (2010) 5(2) *American University Criminal Law Brief* 10

Weathered, Lynne, ‘Reflections on the Role of Innocence Organisations in Australia’ (2015) 17(2) *Flinders Law Journal* 515

Webber, Ruth and Rosetta Moors, 'Engaging in Cyberspace: Seeking Help for Sexual Assault' (2015) 20(1) *Child & Family Social Work* 40

B Cases

Button v The Queen [2002] WASCA 35

Chamberlain v R (1983) 153 CLR 514

Chamberlain v R (1983) 46 ALR 493

Chamberlain v R (No 2) (1984) 153 CLR 521

Inquest into the death of Azaria Chantel Loren Chamberlain [2012] NTMC 020

R v Keogh (No 2) (2014) 121 SASR 307

C Other

'Exonerate', *The Innocence Project* (Web Page, 2019)

<<https://www.innocenceproject.org/dna-exonerations-in-the-united-states/>>

Dillion, Rebecca, 'Miscarriages of Justice', *Innocence Project* (Web Page, 13 February 2012) <<https://www.commonwealhousing.org.uk/miscarriages-of-justice-2>>

'How we work', *Commonweal Housing* (Web Page)

<<https://www.commonwealhousing.org.uk/about-us/how-we-work>>

Interview by Frontline with Craig Haney, Psychology Professor, University of California Santa Cruz, in Santa Cruz, Cal (December 10, 2002)

<<https://www.pbs.org/wgbh/pages/frontline/shows/burden/interviews/haney.html>>

'Murder He Wrote', *Australian Story* (ABC, 2002)

SBS Insight (SBS, 2019)

Wilson, John *A Perpetual Battle of the Mind* (Web Page, 31 October 2002)

<<https://www.pbs.org/wgbh/pages/frontline/shows/burden/cameras/memo.html>>