Keogh case inspires legal reform

IN an Australian first, a new statutory right to appeal was passed by the Legislative Council yesterday. Jeremy Roberts analyses the origins of the reform.

SCRATCH a little deeper and the DNA of the Government’s Statutory Amendment (Appeals) Bill 2012 belongs to one man – Henry Keogh.

Keogh was convicted of murdering his fiancée, Adelaide lawyer Anna Jane Cheney, in 1994 and has been trying to clear his name ever since, pointing to serious questions over the forensic evidence used to convict him.

It is certain that Keogh will be among the first prisoners to ask for an appeal under the new Act. Others thought to be ready to appeal again are David Szach, Edward Splatt and Derek Bromley.

Opposition deputy leader Vickie Chapman commented in the Bill’s lower house debate on February 7, referring to Keogh’s case:

“Sometimes very important cases do throw light on deficiencies in our system and for that reason need to be reviewed alone,” Chapman said.

But the emergence of the Bill is woven with irony because it was the Labor Government who for four years sat on Keogh’s petitions for mercy in the mid-2000s only to refuse it – using the confidential advice of then-Solicitor General Chris Kourakis as justification.

Now the Labor Government is facilitating Keogh’s appeal with passage of this Bill – and who may then decide on the merits of Keogh’s case but none other than Chris Kourakis, now Chief Justice of South Australia.

The irony has everything to do with change at the top of the Government – new premier Jay Weatherill and new Attorney-General John Rau.

But it’s perhaps not surprising that Weatherill and Rau are not shouting about the reform from the rooftops.

In fact, more plaudits for the Bill are coming from interstate legal figures than from legal and political figures in South Australia – Michael Kirby and Nick Cowdery both see South Australia making a historic and positive step that other states may follow.

This strange silence from Adelaide’s legal community relates to the role the Keogh saga and his legal supporters have played in the past decade in bringing about the conditions for the Bill to be drafted.

While the Bill is defensible on the merits – and Rau defends it with alacrity – the Keogh case shouts controversy and most of Adelaide’s legal community just don’t want to talk about it. Bring up the likes of Bob Moles and his regular activist sound bites on Seven’s Today Tonight and the conversation quickly turns rancid.

Keogh soon used up his one appeal right following his conviction in 1995.

However when fresh evidence began to emerge over the state’s forensic evidence presented at Keogh’s trial that suggested key points of prosecution evidence were wrong and evidence that would have helped the defence not presented at all, Keogh had no right to a further appeal.

Over 12 years and four petitions Keogh fully availed himself of the one option he had as a convicted murderer out of appeal rights – a petition for mercy to the South Australian Governor.

The Mike Rann Labor Government refused all of Keogh’s petitions.

Atkinson sat on one petition for more than three years, during which time he made his feelings clear enough, denouncing Keogh and his team for their legal and media activities as further traumatising Anna Jane’s family, with whom he said he was in regular contact.

Atkinson is now Speaker but his view of Keogh does not appear to have moderated.

Atkinson appears confident that the Supreme Court will not consider Keogh’s case.

“The Supreme Court isn’t going to allow an appeal just because a murderer can command vast amounts of money and media attention in an obsessive pursuit of further court action,” said Atkinson.

He said there was no merit to Keogh’s concerns about his conviction.

“I absolutely know it not to exist (merit in the case) … because I read all the material supplied to me very carefully (the Solicitor General’s opinion and petition material from Keogh).”

As Keogh’s legal moves and petitions failed he continued to serve out his minimum 26-year sentence in some of South Australia’s toughest prisons. In the 19 years since his conviction his three daughters have grown from small children into independent adults.

Crucially, legal activists and academics attached to his case turned to a more general legal redress – examining the lack of appeal rights for all prisoners in his position.

A breakthrough of sorts came with the 2010 publication of Forensic Investigations and Miscarriages of Justice, co-authored by Bibi Sangha of Flinders University Law School and Bob Moles, a former legal academic and law activist (they are also married).

Ten years earlier it was Sangha and Moles who cut their teeth on the subject of questionable forensic evidence in preparing several of Keogh’s failed petitions for mercy and publishing two previous books on the topic.


Rau was happy to step up and meet expectations with the current Bill – which is expected to pass with bipartisan support.

Speaking in Parliament last month Rau compared the reform to the old system.

“It is very important … to bear in mind that the present process for people who have been convicted and exhausted their appeal rights is very, very mysterious. It is mysterious because what happens is that they are languishing in gaol, they have no right of appeal … It is all happening behind closed doors…” Rau told Parliament on February 7.

By comparison the new Bill provided that “marvellous disinfectant of sunshine”.

Rau didn’t mention Keogh but could easily have been speaking about him.