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George Pell verdict: Victorian justice system is the biggest loser as convictions quashed

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The Victorian justice system is the biggest loser from the High Court's resounding vindication of Cardinal George Pell. After Victoria's courts attempted to silence the world's media over the cardinal's conviction, it is now clear to all that the conviction itself should never have happened.

This state's criminal justice system has tarnished the international reputation of Australian justice. The Pell conviction is a scandal that will rank alongside the outrageous jailing of Lindy Chamberlain for the murder of her baby – who was actually taken by a dingo.

Just like the Chamberlain case, the Pell disaster will inevitably find its way into a movie that will do no favours for a justice system that led to the jailing of a sick, old cardinal after years of frenzy that has been found to have no basis in law.

Fundamental error

Two of the most senior judges in Victoria – Chief Justice Anne Ferguson and Court of Appeal president Chris Maxwell – have been shown to have made a fundamental error; the reliability of the state's jury system has been left in doubt; and the wisdom of the police in effectively advertising for complaints about the cardinal has also been called into question.

It does not end there. Pell's tormentors in the media will need to re-examine the way they

engaged in a campaign of character assassination against an innocent man.

The Victorian government cannot escape the fallout from this affair. The community frenzy against the cardinal strengthens the argument that Victoria should join NSW by allowing high-profile criminal matters to be heard by a judge alone – without the assistance of a jury.

In NSW, Eddie Obeid and former state minister Ian Macdonald are facing criminal charges before a judge alone precisely because of the history of media-led frenzy against them. Yet no such mechanism is available in Victoria.

Evidence kept from jury

Even worse is the fact that Victorian legislation meant the Pell jury was denied the full story about the main complainant who claimed to have been assaulted by the cardinal.

Critically important relevant evidence was kept from the jury by virtue of legislation that was put in place with the clear intention of protecting those who claim to be victims of sexual assault.

The Pell jury was never told that the complainant had a history of psychological problems that required treatment. Nor were they told that Pell's legal team was rebuffed in court – in the absence of the jury – when they attempted to gain access to records showing the extent of this man's psychological problems.

That episode is outlined in the special leave application that was filed in the High Court by Pell's legal team – led by Brett Walker SC. During the trial, it would have been a contempt of court for anyone to reveal this incident.

That application, which is a public document on file with the High Court, says "the applicant (Pell) could not tell the jury that the complainant had had psychological treatment and the applicant had been denied the ability to obtain records of it".

It says Pell "was not permitted to ask questions about or subpoena the complainant's psychological history".

Need for reform

After Tuesday's unanimous decision by the High Court, the state government needs to reconsider whether it has set the balance in sexual assault cases in a way that ensures more juries will be misled. This is the effect of section 32D of the Evidence (Miscellaneous Provisions) Act, which should be reconsidered as a matter of urgency.

Reforming this provision does not mean turning back the clock to the days when women in sexual assault cases were effectively put on trial for their sexual history. But after the Pell fiasco, Victoria would be wise to consider adjusting the balance to ensure future juries are given all relevant evidence.

The case for reform is compelling when it is considered that the Court of Appeal majority actually stated that the complainant was a witness of truth who was not a fantasist. How such a finding could be made without access to the psychological evidence will puzzle future generations of law students.

The unanimous decision of the nation's highest court is the best of all possible outcomes. It leaves no room for any doubt about the cardinal's innocence.

This case was always about reasonable doubt. The cardinal did not need to prove his innocence. All his legal team needed to do was show that there was a reasonable doubt about the prosecution's allegations.

Instead, it is clear that the Pell jury and the Court of Appeal majority decided this case by placing too much emphasis on their partly informed assessment that the complainant was a witness of truth and was not a fantasist. That is not the way criminal justice works.

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