

Barnett cutbacks threaten forensic reforms

21/02/2009

By Bret Christian

Justice John McKechnie's scathing criticism of a "catastrophic" string of errors in a Perth murder case this week echoed problems identified by a British expert brought to WA to review the Claremont serial killings.

Valiant efforts by WA police to fix problems identified by Professor David Barclay have been set back by new government spending cuts.

Last month the cuts halted the building of a new forensic science centre, a combined faculty where physical exhibits were to be tested.

Justice McKechnie delayed a murder trial after a police bungle with getting clothing tested and late delivery of prosecution documents to the defence meant that the defendants could not get a fair trial.

The judge said police claims that systems had changed since blunders in other high-profile murder cases were "little more than public relations spin".

Back in 2005 forensic scientist Professor Barclay was brought to Perth to review the Claremont murder cases and later to report on forensic procedures in WA.

He found much to criticise. In a 2006 interview, he likened problems with WA justice to problems in South Wales in the 1990s, when nine people were wrongfully imprisoned for crimes they did not commit.

"That happened in the UK and it's happening now in the United States and it may be happening in Western Australia because the police investigative techniques used to rely on identification evidence and confession evidence and writing things up in notebooks and so on," he said.

British courts now want physical proof to corroborate confession and witness evidence, especially after the infamous Guildford Four and Birmingham Six cases.

"The courts don't like that any more, they tend to rely on physical evidence," Professor Barclay said.

"There are opportunities to inadvertently or deliberately manufacture confession evidence, to put words in people's mouths and sometimes that's really quite innocent on the part of the police.

"I think what's happening in Western Australia is you're just catching up.

"I think Western Australia is making particular strides, efforts to close that gap, to learn from the lessons that we went through in the UK, the pain that we went through in having to move our systems to an integrated and physical evidence-based approach."

The strongest new weapon against crime, DNA testing, has been embraced by the WA police, but our courts have not reached the stage where witness testimony is not accepted unless there is physical evidence to back it up.

DNA has proved something shocking about justice systems around the world - the most trusted evidence is also the most unreliable.

Witness testimony has been proved again and again to be wrong when measured against accurate DNA testing, especially in rape and murder cases.

In the United States, where hundreds of people waiting to be executed on Death Row were exonerated by later DNA tests, more than 60% had originally been convicted by mistaken eyewitness evidence.

Multiple studies have shown that memory is extremely unreliable and subject to tampering, especially when there are multiple interviews of the witnesses.

The process of trying to remember conspires to contaminate the memory.

But juries love eyewitness evidence. It grabs attention and sympathy. Without a witness, juries convict only one-sixth of the time. Studies have shown they might acquit due to sympathy, or if the crime is especially gruesome, convict on the flimsiest evidence.

The studies have also shown that witnesses who deliver their evidence with the greatest confidence and force can be catastrophically wrong.

But apart from "repressed memory" cases, no judge in an Australian court has ever allowed a jury to hear expert scientific evidence on the unreliability of eyewitness testimony.

The two main laboratories that prepare physical evidence for court cases, Path West and the Chemistry Centre, will continue to operate independently despite criticism of the set-up by Professor Barclay.

He said that although individual scientists working in the facilities were thoroughly professional, they worked in isolation from each other and from investigating police.

This approach was abandoned in the UK after it was found that crimes were best solved by working from the start with the scientists, whose trained analytical minds often contributed to decipher non-scientific aspects of crimes.

It was for that reason that the new Joint Forensic Centre was about to be built, but it has fallen victim to the Barnett government's budget cutbacks.

However, good progress was being made before the cutback, resulting in more arrests made more quickly.

Last May, 29 extra forensic officers were appointed.

The backlog of DNA tests for serious crime such as murder, rape and large drug seizures, has been reduced from 51 cases to 37 in the past year.

In "volume crime", such as burglary, stealing and minor assaults, backlogs have been reduced from 465 to 132.

Turnaround times are two to three weeks. For serious crimes, the time depends on the trial date.

"This has resulted in the swift arrest of many recidivist and prolific offenders over the past eight months," said a spokesman for Police Commissioner Karl O'Callaghan.

Fingerprint turnaround has been reduced to 72 hours from three weeks.