

MEDIA RELEASE

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TASMANIA LAW REFORM INSTITUTE



UNIVERSITY
OF TASMANIA

ATTENTION: Chiefs of Staff, News Directors

Today the Tasmania Law Reform Institute released its Final Report No 6: **The Forfeiture Rule**.

This report recommends introducing a Forfeiture Act in Tasmania.

The forfeiture rule is based on the principle that a person should not benefit from their wrongful conduct. The effect of the rule is that a killer cannot inherit from their victim, either by will or intestacy. The inheritance is forfeited and passes to the next beneficiary. The forfeiture rule is part of the common law. There has been much academic and judicial debate about whether the forfeiture rule should be applied inflexibly to all unlawful killings. It is argued that in some cases, for example those where the killing is in response to severe domestic violence by the deceased, public policy does not necessarily require that the killer be disinherited.

The United Kingdom, Australian Capital Territory and New South Wales have introduced Forfeiture Acts, granting courts the discretion to modify the effects of the forfeiture rule in cases of unlawful killings. The types of cases where courts have made exceptions to the forfeiture rule (at common law) or modified the effect of the rule (under one of the Forfeiture Acts) include suicide pacts, where the offender suffers from diminished responsibility, and cases where the offender has been subjected to ongoing domestic violence and the killing forms part of and is in response to that violence.

This report recommends the introduction of a Forfeiture Act in Tasmania to assist executors and administrators in distributing estates to which the forfeiture rule applies or may apply. It is recommended that the proposed Act would provide –

- That the forfeiture rule applies to whenever a beneficiary has been convicted of unlawful killing (e.g. murder, manslaughter or causing death by dangerous driving).
- That an ‘interested person’ may also apply for an order from the Supreme Court as to whether the rule applies where there is no conviction for unlawful killing.
- The term ‘interested person’ would be defined broadly to include people such as the killer, other beneficiaries or a person claiming through the killer.
- That where the forfeiture rule applies (including in cases of murder) an ‘interested person’ may apply to court for an order modifying the effect of the rule.
- That upon application the Court may make an order modifying the effect of the forfeiture rule if it is satisfied that justice requires the effect of the rule to be modified. In determining whether justice requires the effect of the rule to be modified, the Court is to have regard to matters such as the conduct of the killer and the deceased person, any findings of fact by the sentencing judge and the mental state of the killer.

The topic of this law reform project was proposed by Benedict Bartl.

FURTHER INFORMATION/INTERVIEWS: Professor Kate Warner 6226 2067

The Report can be downloaded from www.law.utas.edu.au/reform/
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