

MEDIA RELEASE



UNIVERSITY
OF TASMANIA

EMBARGO: Tuesday 16 December 2003, 10 am

ATTENTION: Chiefs of Staff, News Editors ...

TASMANIA LAW REFORM INSTITUTE

Today the Tasmania Law Reform Institute released its Issues Paper No. 5:

The Forfeiture Rule

This issues paper discusses reforming the law in relation to the forfeiture rule 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. 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 Issues Paper suggests that Tasmania should also introduce a Forfeiture Act, allowing for the effect of the rule to be modified in appropriate cases. The appropriate model for such legislation is discussed, and consideration is given to details such as:

- What matters should the court consider in deciding whether to modify the effect of the rule?
- Should a person be entitled to apply for a modification order in cases of murder?
- Who should be able to apply for a modification order?
- What types of property interests should the legislation extend to?

The topic of this law reform project was proposed by Ben Bartl, a law student.

The Institute invites responses to this Issues Paper in writing by 27 February 2004. Following consideration of all responses it is intended that a final report will be published, containing recommendations to the Attorney-General.

The Issues Paper can be downloaded from the Institute's web page at:

<http://www.law.utas.edu.au/reform/>

or a copy of the Issues Paper can be sent to any group or person, contact:

address: Tasmania Law Reform Institute
Private Bag 89,
Hobart, TAS 7001

email: law.reform@utas.edu.au

telephone (03) 62262069

fax: (03) 62267623

FURTHER INFORMATION/INTERVIEWS:

Professor Kate Warner 6226 2067

Information Released By:

**The Media Liaison Office, University of Tasmania.
Tel.: 6226 2124 / Fax.: 6226 2018 / Mobile: 0417 517 291
Email: Media.Office@utas.edu.au**