

The Forfeiture Rule
Submission by Women's Legal Service (Tas) Inc.

INTRODUCTION

Thank you for providing us with the opportunity to make comment on the draft Forfeiture Rules.

The Women's Legal Service is a non-profit organisation funded solely by the Commonwealth Attorney-General's Department.

It was established in May 1996 and was launched in June 1996. It presently has a staff structure of a senior solicitor / manager and two more solicitors.

As a community legal centre specialising in women's issues, most of our work is focussed around issues of relationship breakdowns, separations, children and property matters and domestic violence. However, as a statewide service for Tasmanian women, we do provide advice on most matters of law.

The Women's Legal Service is primarily targeted to provide access to legal advice and the legal system, to women who cannot afford legal assistance and who do not qualify for legal aid. In addition to the provision of legal advice, casework and information, the service delivers a range of community legal education sessions to individual and organisations.

As we have provided women with advice on matters including the question of the Forfeiture Rule, we believe that we are able to provide you with comments on the propositions contained in the Issues Paper.

The Women's Legal Service (Tas) agrees with the general proposition that a person should not benefit from their wrongful conduct. Therefore, a person who is found guilty of the unlawful killing of another should not benefit from that person's estate.

We, however, disagree with the statement in by Meagher JA *Troja v Troja* (1994) 33 NSWLR 269 at 299 that "the law as laid down...is that all felonious killings are contrary to public policy and hence one would assume, unconscionable. Indeed there is something a trifle comic in the spectacle of...sorting killings into conscionable and unconscionable.." We support the enacting of legislation to allow for a flexible application of the forfeiture rule.

The criminal justice system has long recognised that in some unlawful killings the perpetrator is less culpable than in others. A person who is convicted of murder is found by the court itself to have intended the death of the victim. A conviction for manslaughter indicates that for some reason the offender has a diminished responsibility for the death of that person. To introduce flexibility into the application of the Forfeiture Rule, therefore, is not allowing judges to determine whether a killing is 'unconscionable', it is merely requiring them to consider the application of the rule based upon a prior finding as to the culpability of that offender.

In specific terms, the Women's Legal Service is concerned about the application of the Forfeiture Rule on women who kill violent partners. A woman who intended to kill a violent partner to escape this abuse is often found to have diminished responsibility for the homicide.

The operation of the Forfeiture Rule in such circumstances is contrary to public policy. A Domestic Violence survivor does not kill her violent partner for material benefit. Such a killing is the culmination of serious abuse, to protect her and any children she may have from serious injury or death.

For instance we refer to the case of Heather Osland who experienced 13 years of ongoing physical, sexual and psychological abuse from her husband. This included constant pushing and slapping, being dragged by the hair or ears, full force punches to her face and body, repeated vaginal, oral and anal rapes. Frank had

control over all activities, and she was forced to ask permission to eat, to shower, to walk from one room to another. He prevented her from speaking to their four children, and she was forced to watch him abuse the children and their pets. Their four children were also subject to continuous violence.

Heather made many attempts to leave her violent husband - she sought assistance from the police on many occasions and took refuge with friends and neighbours. The police response was not adequate, and Frank Osland was never charged with any of the assaults. When Heather and the children tried to leave, Frank's violence escalated and when Frank ordered David to leave the house, on threat of death, David and Heather killed Frank to protect themselves.

Heather and her children lived in constant fear for their lives for 13 years, and endured horrifying violence at the hands of Frank Osland. Heather and David killed Frank Osland to protect their own lives.

Heather Osland represents no threat to society, and killed her abusive and violent husband to protect herself and her children.

We acknowledge this is an extreme and well known case, but we would not support the application of the Forfeiture Rule in a case like Heather Osland.

Domestic Violence often includes an element of financial control. Perpetrators will often deny a woman any interest in property or even control over her own financial affairs.

As such to deny such a woman benefit from her partner's estate is to perpetrate a serious injustice. In effect this rule is condemning certain women to rely on the welfare system, which would seem to be more harmful to society than allowing her benefit from her husband's estate. We also support allowing these women to access any pensions or other benefits they would otherwise be entitled to.

The Women's Legal Service would therefore encourage the further recognition of the effect of differing moral culpability in the application of the Forfeiture Rule in relation to women who have killed abusive partners.

The Women's Legal Service appreciates the opportunity to comment on this important issue. We hope that our submission will assist you in lobbying for legislative change. We welcome further enquiry and consultation on this matter and we are available to attend any forums or discussions into this matter.