

8 May 2014

Victoria Law Reform Commission
GPO Box 4637
Melbourne Vic 3001

To Whom it May Concern,

Submission to the Victoria Law Reform Commission review of the Forfeiture Rule

The Bendigo based Loddon Campaspe Community Legal Centre is a generalist community legal centre providing legal assistance to disadvantaged and vulnerable people in central Victoria. Approximately half of the casework conducted by LCCLC relates to family violence, predominantly for women that have been the victim of family violence and seek the protection of intervention orders.

LCCLC wishes to respond to the inquiry into the forfeiture rule on the limited issue of its present inconsistency with community views and other legislative provisions pertaining to unlawful killings that occur within the context of family violence.

As observed at paragraph 3.42 in the Consultation report:

“The law in Victoria recognizes that unlawful killings which take place in the context of family violence may differ from other types of homicides. The Crimes (Homicide) Act 2005 (Vic) provides for an alternative verdict to murder in Victoria to apply to these situations. While defensive homicide is currently under review by the Department of Justice, the original intention of the law combined with s 9AH Crimes Act 1958 (Vic) recognises that homicides occurring in the context of ongoing family violence fall within a special category of homicides. Nevertheless, if a person kills their abuser in response to ongoing family violence where that response does not amount to self-defence, the forfeiture rule applies.”

This inconsistency is patently unjust and should be remedied, whether by providing judicial discretion in considering the applicability of the forfeiture rule or by codifying the rule and providing an appropriate exception. Of those two approaches, we believe that codification and providing an exception is the most certain path and most likely to achieve consistency in Victoria, albeit at the cost of inconsistency with other Australian jurisdictions that provide for the exercise of judicial discretion in such cases.

Whether by exercise of judicial discretion or application of a codified provision, the exception should apply to a wide variety of claims or proceedings including by way of survivorship or as a beneficiary under a will or under intestacy, through a family maintenance claim or any other claim in law or equity against the estate of the deceased (for example where an equitable contribution had been made to an asset of an estate but no other cause of action may be open to the claimant).

As to the scope of an exception under a codified approach, or grounds on which an application for judicial discretion to the existing rule may be exercised, we believe that it should apply to those convicted of murders perpetrated within the context of family violence, where the charge of defensive

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homicide would now be available. This is contrary to the view of the Commission at 3.13 regarding the exclusion of murder, however the merit of this limited and retrospective exception would be to protect victims of family violence who have been found guilty of murder before the commencement of the defensive homicide provisions, and were thus unable to avail themselves of its protection. This may only pertain to a limited number of cases but we believe it would be unjust to exclude such victims from the benefit of any change to the forfeiture rule because of the time of the offence.

The exception should be broad enough so as not to exclude murders committed in the context of family violence before the commencement of the defensive homicide provisions. The exception could provide that in such (albeit limited) circumstances, a Court may consider all of the circumstances of the death **at the time of administration of an estate.**

The exception should also be sufficiently broad to provide a level of protection to a victim of family violence who may be found responsible (on the balance of probabilities) for causing a death but has never been prosecuted in relation to the death or found not-guilty of the relevant offence.

Thank you for the opportunity to provide this limited response to the Inquiry.

Yours Sincerely,