



Commission for Children
and Young People

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Lindy Smith
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Review of the Forfeiture Rule

Dear Ms Smith,

I understand that the Victorian Law Reform Commission (VLRC) has been asked to review the common law rule of forfeiture, and the circumstances in which it should not be appropriate for a person who has killed another to benefit from that death, including by way of survivorship or as a beneficiary under a will or under intestacy rules. Whilst this is not an area that the Commission is regularly involved with, it has come to my notice that there are specific instances where there are concerns about forfeiture in relation to the deaths of children. Consistent with our focus on promoting the rights of children, particularly the most vulnerable children, the Commission is proposing that the VLRC examine how rules of forfeiture might apply in relation to the estates of children whose deaths are connected to abuse or neglect by a parent. It is in this context that the issue of forfeiture has arisen when the child has received compensation which forms an asset. These situations may not fit neatly within your terms of reference and I do not intend to make a full submission covering the many issues raised in your consultation paper. I would simply like to raise some specific concerns for your consideration.

The particular situation that the Commission has encountered relates to concerns being raised about a child sustaining very serious injury as a result of abuse or neglect, allegedly by a parent. In such a case, the child may receive a crimes compensation payment (without a criminal conviction), which is held in trust, by perhaps the Supreme Court or State Trustees generally. If the child then dies, effectively as a result of the injury, the crimes compensation funds would then normally be distributed to the parent, who may be the alleged offender.

One of the issues in this process is that the child dies intestate (without a will), as he/she is unlikely to have capacity to make a will or express their own wishes. In addition, the child may have been removed from the care of his/her parents and placed under the guardianship of the Department of Human Services (DHS) and/or have been cared for by foster, permanent or kinship carers, and had little contact with his/her parents prior to their death.

To avoid a situation where a parent who may have been responsible for a child's injury is able to inherit any compensation paid on behalf of the child, we propose that special processes be established ensuring the equitable distribution of any funds remaining at the time of the death of the child. Processes should perhaps be put in place to ensure that the person who is administering the money is aware of relevant provisions under the *Wills Act 1997*, which enable a will to be made on behalf of a child who lacks capacity. In this scenario, a court authorized will would be made on behalf of the child. The

Commission would encourage consideration as to whether a body other than the Supreme Court may be more accessible, particularly for relatively small estates, to undertake this function. Consideration could also be given as to whether the trustee of the estate or another person should be able to apply to the court for the making of the will (for example, DHS as the guardian of the child).

Another option might be to enable the body which awarded the compensation, at the time of making the award, to direct how any funds remaining upon the death of the child should be distributed. Such a direction would be overridden by any valid will the child was later able to make. The body which made the award of compensation would have access to the information pertaining to the nature of the injuries and have capacity to determine what would be most just and equitable in the circumstances.

Whilst this is quite a specialized, complex area and there will not be many children who fall within this category, there is a high degree of moral and ethical concern that parents who have allegedly caused life threatening injuries to their child should not benefit financially in the longer term, in the event of that child's death.

The Commission would welcome any further discussion or clarification of the issues raised [REDACTED]

Yours sincerely

[REDACTED]

Bernie Geary OAM
Principal Commissioner