



VICTORIA POLICE RESPONSE TO VLRC REVIEW OF THE FORFEITURE RULE

On 4th March 2014, Victoria Police was invited (via email) by the Victorian Law Reform Commission (VLRC) to make a submission in relation to their review of the Forfeiture Rule.

Position Statement

Victoria Police supports formal legislated recognition that no person should benefit from their criminal conduct.

The underlying principle of the forfeiture rule recognises that an offender should not be able to access the estate of the deceased in recognition of the seriousness of their criminal conduct. This includes being able to fund a defence using the finances or assets of the deceased person, or to use their resources in a manner that rewards the criminal act. Victoria Police supports this principle in recognition that homicide is often the ultimate act of violation, and no person should profit or benefit financially from its commission.

Implementation

A proposal for implementing a new scheme is provided below, in recognition that the laws will necessarily be applied across a range of homicide incidents and circumstances, and that it would be challenging to legislate for all variables.

Family violence, culpable driving, organised crime-related deaths, and numerous other categories of homicide, all occur in varying circumstances and with different causal factors. They share a common denominator in the principles outlined above, and it would be challenging to reflect the complexities of each in legislation. A system of forfeiture applied equally to all homicide incidents would perhaps be most appropriate.

It is suggested that consideration be given to a two-tiered system of application for the forfeiture reform. This would cover:

- The initial period following a death whereby an immediate freeze on assets occurs; and
- The period post-conviction (if relevant), upon which a final decision about the guilt of the accused will determine their access to the deceased estate.

Initial period following death

An initial freeze of assets post-death ensures that the deceased estate is not inappropriately administered or utilised to benefit the accused.

It should be recognised however that in some instances, the need to access the estate of the deceased may be immediately necessary to maintain dependents or reasonable payments. For example, in a situation of a family violence-related homicide, a surviving parent /accused or another interested party may need to continue to pay ongoing school fees and associated costs for children.

These needs that are not in any way related to the criminal justice proceedings, and which enable life to continue as normal for other parties, should reasonably be accessible. This may also extend to mortgage repayments, rent, or other life necessities normally paid from the estate of the deceased and which are required to ensure the wellbeing of children or other dependents.

To facilitate this, it is suggested that a system of immediate freeze with a process of exemption applications be implemented. Accused persons would be able to apply for an exemption against the initial freeze, for specific purposes outlined in legislation. For example, an application could be made that school fees be paid from the deceased estate, or be administered by a nominated third party for purposes relating to child wellbeing.

Post-conviction

Similarly, a system of applications for exemption could apply post conviction, with a broader range of considerations regarding the ongoing administration of funds to occur. Where a person is acquitted, decisions regarding the execution of the deceased will would occur as normal to determine access of the accused.

Where the accused is convicted, considerations about eligibility to seek exemption might include:

- Degree of homicide offence (e.g. murder, manslaughter etc)
- Relationship prior to the offence (e.g. were the parties married, separated, etc)
- Public interest
- Any interactions with the Prisoner Compensation Quarantine Fund

It may be that victim impact statements or input from other family members and interested parties could be considered when reviewing applications for exemption.

Factors for consideration

- Managing unsolved offences and when to lift a freeze.
 - Some matters remain unresolved for extended periods of time or are never solved.
 - In these circumstances, what is a reasonable period of time to maintain a freeze?
- Whether a person with a mental impairment should be exempted from forfeiture reforms
 - It is suggested that the same exemption process would apply.
- Importantly, Victoria Police would have limited/no capacity to be involved in the administration of forfeiture provisions or arbitrate disputes regarding the deceased estate.

Family Violence

The retributive function of the forfeiture rule will have specific consequences for those impacted by family violence.

Implementing the rule as a deterrent to killing for economic gain will generally not apply in cases where family violence has been the cause of the homicide. These comments focus on where a victim of family violence is involved in the homicide of the abusive partner. Where a perpetrator of family violence has been the killer the exception should not apply.

Victoria Police believes that there should be a general application/prohibition on profiting from one's crime. Formally legislated recognition of this prohibition would be beneficial and appropriate. There should be a reverse onus for a killer to establish why the forfeiture rule should not be applied to them. It is also recommended that there be a consideration of family violence as an exception that can distinguish the continued operation of the rule.

Potential Issues

The issues that are identified as particularly relevant to be determined if this exception comes into operation:

- **The quantum of violence experienced that precipitated the homicide**
 - Whether the exception should only be granted in circumstances where a killer has previously sought assistance of police from violence experienced by them from the victim.

- **Whether self defence would be enough to preclude the exception for family violence**
 - New Zealand Act indicates that this exception (where the forfeiture rule will not apply where self defence is proven) satisfies in instances of family violence and homicide.

- **Potential for abuse/issues of provocation to resurface**
 - If family violence is legislated as a way to avoid the application of the forfeiture rule there is potential for the exception to be misapplied or have unintended consequences. Provocation as a defence is no longer applicable in this jurisdiction but it should be addressed as a potential factor that could result in misuse of the family violence exception.

- **Where prosecution does not occur**
 - Timing in relation to the application of the forfeiture rule is relevant for family violence where there are often children who may not inherit from the death of one parent, perpetrated by the other parent.