



### **Submission - Forfeiture Rule Consultation Paper**

The Commission should be generally aware, if not already, of the application of the *Confiscation Act 1997*, specifically, the power of the Director of Public Prosecutions ('DPP') and Victoria Police to restrain an offender's property for victims' compensation or restitution purposes under the *Sentencing Act 1991* (see Part 2 of the *Confiscation Act 1997* and Part 4 of the *Sentencing Act 1991*). This is because an offender's interest in property may still end up being restrained to satisfy victims' compensation orders (for pain and suffering of family members of the deceased) even though the offender might not ultimately be disinherited because of the nature of the killing; hence, the outcome for the offender, from a property perspective, may still be the same once victims seek compensation and enforce it against the offender's property. Further, if the offender uses their jointly owned property in connection with the killing, their interest in that property may also be subject to a forfeiture application and confiscated to the State following conviction. Forfeiture of property in these circumstances is, however, uncommon and subject to a court's broad discretion weighing up factors such as hardship and the nexus between the offence and property use.

An amendment to Part 4 of the *Sentencing Act 1991* and possibly to the *Confiscation Act 1997* may warrant consideration as part of a review of options 1 and 3 if it is considered that certain killings, such as an assisted suicide, should not fall within the scope of those Acts, similarly to how a mental impairment outcome is specifically exempted - see paragraph 3.77 of the Paper. With mental impairment verdicts, a victim of crime cannot pursue compensation under the *Sentencing Act 1991*, nor can property be restrained or forfeited under the *Confiscation Act 1997* due to the absence of a relevant conviction.

An option that clarifies the scope of the rule or which codifies it would provide greater certainty to police and the DPP when identifying the offender's entitlements for possible restraint. At the moment, when an offender jointly owns real property with the victim and inherits it pursuant to survivorship laws, it's unclear as to the extent of the offender's interest in that property given the uncertainty surrounding the application of the forfeiture rule. The current practical approach is to restrain the entire property and then deal with offender and beneficiaries' property claims later on.

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