

  
1 May 2014

The Hon. Phillip Cummins  
Chair, Victorian Law Reform Commission  
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Dear Mr Cummins



— **Review of the Forfeiture Rule**

Victoria Legal Aid (VLA) welcomes the opportunity to contribute to the review of the common law rule of forfeiture.

VLA has significant specialist expertise in representing people with mental impairment, as one in six of our clients has a mental illness or disability. Clients with mental impairment constitute a priority client group for VLA, due to their inherent vulnerability and overrepresentation in the criminal justice system. Whilst VLA does not provide representation for people in civil forfeiture proceedings, we recognise a need to advocate for the continued protection of the rights of this priority client group.

VLA considers that there should continue to be an absolute exception to the forfeiture rule for those who have been found not guilty of a killing by reason of mental impairment. The policy reasons underpinning the common law position should not be displaced and people who fall into this category should not be disentitled from inheriting property where it has been determined that they did not know the act was wrong, or did not understand the nature and quality of the act which caused the death of another. This is particularly so given the burden of proof which attaches to the criminal proceeding and the consequences of such a finding.

Whilst acknowledging the competing interests of other parties in claiming benefit from a deceased estate in this context, VLA is of the view that this should not be a basis for removing existing protections from a special category of persons which the criminal and civil law treat differently in a variety of ways in recognition of their vulnerability.

If you would like to discuss any of the above matters further, please contact Gabriela Pulczynski, Senior Policy & Strategic Projects Officer to discuss   


Yours faithfully 

  
**HELEN FATOUROS** Director, Criminal Law Services