Queensland Law Society

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Our ref (VK-SLC)

The Hon. Yvette D'Ath
Attorney-General and Minister for Justice
Minister for Training and Skills
Attorney General's Department
GPO Box 149
BRISBANE QLD 4001

By email: attorney@ministerial.qld.gov.au

Dear Attorney

RE: REVIEW OF THE FORFEITURE RULE IN QUEENSLAND

We write to you with the view of initiating a review of the forfeiture rule in Queensland.

As you know, the forfeiture rule prohibits a person who is convicted of unlawful killing of another, forfeits any right to take property to which they would otherwise be entitled upon the death of the person for whose death they are responsible.

In Queensland, the rule covers convictions for both murder and manslaughter, and also extends to assisted suicide (see *The Public Trustee of Queensland v The Public Trustee of Queensland* [2014] QSC 47).

The UK, NSW and the ACT have each enacted legislation which allows the Court, in appropriate cases, to modify the operation of the forfeiture rule where the circumstances of the case justifies it.[1]

Atkinson J has indicated in two cases that it would be useful for Queensland to consider similar legislation. In *Pike v Pike* [2015] QSC 134 (see attached), her Honour said (at [25]):

> *In my view, it would also be useful for the legislature to consider legislation consistent with the* Forfeiture Acts *to which I have referred in the United Kingdom, New South Wales and the Australian Capital Territory. As I held in* Re Nicholson*:*

[1] See *Forfeiture Act* 1870 (UK), *Forfeiture Act* 1982 (UK), *Forfeiture Act* 1991 (ACT), *Forfeiture Act* 1995 (NSW)

> *"The forfeiture rule may be applied strictly unless modified by statute as has been the case in New South Wales and the Australian Capital Territory in the* Forfeiture Act *1995 and the* Forfeiture Act *1991 respectively which are based on the United Kingdom* Forfeiture Act *1982."*

In *The Public Trustee of Queensland v The Public Trustee of Queensland* de Jersey CJ said (at [13] and [19]-[20]):

> *The whole purpose of the forfeiture legislation in New South Wales and the Australian Capital Territory was to ameliorate what was perceived to be harshness in the otherwise necessary rigid application of the forfeiture rule (see* In the Estate of the Late Fiona Ellen Fitter & The Forfeiture Act 1995; Public Trustee of New South Wales v Fitter & Ors *[2005] NSWSC 1188 at para 42 and* Nay v Iskov *[2012] NSWSC 598 at para 10).*
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> ...
>
> *In this State, the law is clear. A person who assists the suicide of someone else cannot act as that person's executor, or take an interest in his or her estate. The court has no discretion to modify the application of that rule. Saying nothing as to the facts of this case, I observe that it is irrelevant that the offender may have been motivated to ease suffering or to have acted at the request of the deceased.*
>
> *If there is to be any change in that arena, it is a matter of high public policy appropriate for consideration by the legislature, not determination by the courts. I should say that I am not to be taken to be inviting any such legislative consideration.*

The Society considers that similar legislation to that of NSW, ACT and/or the UK should be considered in Queensland.

A second, related issue, relates to the law in relation to the disposal of a deceased's body in the context of the forfeiture rule.

In *Pike* Atkinson J referred to the Queensland Law Reform Commission's *Review of the Law in Relation to the Final Disposal of a Dead Body*[2], a report that "dealt with the difficult question of the right to dispose of the body of a deceased person. It pointed out that often, the person who would, under the common law, have the highest right to dispose of the deceased's body may well be a person who has been criminally responsible for that person's death and recommended legislative reform to deal with that unhappy situation."

The report considers whether a person charged with the murder or manslaughter of a deceased person should be unable to exercise the right to dispose of the person's body.

The Society suggests that consideration should also be given to whether such a provision should be enacted in Queensland.

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[2] Report Number 69, December 2011

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Senior Policy Solicitor, Vanessa Krulin on 07 3842 5872 or v.krulin@qls.com.au.

Yours faithfully

Christopher Coyne
Vice President