

1991

AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

FORFEITURE BILL 1991

EXPLANATORY MEMORANDUM

Circulated by authority of the Attorney General

Mr Terry Connolly MLA

FORFEITURE BILL 1991

OUTLINE

This Bill will modify the common-law rule which prevents a person who has unlawfully killed another from benefiting from the estate of that other person, and will provide a mechanism for the relief of persons who have unlawfully killed another. Application may be made to the Supreme Court for an order modifying the effect of the rule of public policy - known as the forfeiture rule - which operates to prevent persons who have unlawfully killed others from benefiting from that killing. If the court is satisfied from all the relevant circumstances that the justice of the case requires the effect of the rule to be modified, the court will be able to so order.

Nothing in the Bill affects the application of the forfeiture rule to persons who stand convicted of murder.

FINANCIAL IMPACT STATEMENT

The Bill will have no effect on government income or expenditure.

NOTES ON CLAUSES

Clause 1 : Short Title

This clause cites the short title of the Act.

Clause 2 : Interpretation

Clause 2 provides for certain matters of interpretation:

. Subclause 2(1) defines the words 'property' and 'will' in the context of the Bill. It also defines the phrase 'forfeiture rule' for the purposes of the Bill.

. Subclause 2(2) extends the meaning of an unlawful killing, for the purposes of the Bill.

. Subclause 2(3) extends the meaning of a person who has unlawfully killed another, for the purposes of the Bill.

Clause 3 : Power of Supreme Court to modify forfeiture rule

Clause 3 deals with the general power of the Supreme Court to modify the forfeiture rule, and with the orders which may be made:

. Subclause 3(1) provides that where a person (the 'offender') has unlawfully killed another, an application may be made to the court for an order modifying the effect of the forfeiture rule, which would otherwise prevent the offender from obtaining an interest in the property of the deceased.

. Subclause 3(2) provides that the court may make an order which modifies the effect of the forfeiture rule where it is satisfied that, having regard to certain matters, the justice of the case requires the effect of the rule to be modified.

. Subclause 3(3) provides that the court may make an order under subclause 3(2) in respect of any interest in property which the offender may otherwise have acquired in consequence of the deceased's death. The subclause also provides for the ways in which such an order may modify the effect of the forfeiture rule in respect of any one, or more, interests in property affected by the rule.

. Subclause 3(4) makes it clear that on the making of an order under subclause 3(2), the forfeiture rule is to have effect for all purposes, subject to the modifications which may have been made by the order.

Subclause 3(5) provides that if there has been a conviction for an unlawful killing, the application for an order to modify the effect of the forfeiture rule must be made within three months after the day on which the offender is convicted of the offence.

Clause 4: Exclusion of murderers

Clause 4 provides that nothing in the Bill is intended to affect the application of the forfeiture rule to those persons who stand convicted of murder.

Clause 5: Application of orders

Clause 5 deals with the application of orders made under subclause 3(2):

Subclause 5(1) provides that an order modifying the effect of the forfeiture rule may be made whether the unlawful killing occurred before or after the commencement of the Act.

Subclause 5(2) provides that interests in property which have been acquired as a result of the operation of the forfeiture rule, and before the commencement of this Act, shall not be the subject of orders under subclause 3(2).