



New South Wales

Forfeiture Act 1995 No 65

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Forfeiture Act 1995 No 65

Act No 65, 1995

An Act to provide relief for persons guilty of unlawful killing, and other persons, from forfeiture of benefits; and for related purposes. [Assented to 12 December 1995]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the Forfeiture Act 1995.

2 Commencement

This Act commences on a day to be appointed by proclamation.

3 Definitions

In this Act:

benefit includes any interest in property and any entitlement under the *Family Provision Act 1982*.

deceased person means a person who is unlawfully killed.

forfeiture modification order means an order made under section 4.

forfeiture rule means the unwritten rule of public policy that in certain circumstances precludes a person who has unlawfully killed another person from acquiring a benefit in consequence of the killing.

interested person means any of the following persons:

- (a) an offender,
- (b) the executor or administrator of the estate of a deceased person,
- (c) a beneficiary under the will of a deceased person or a person who is entitled to any estate or interest on the intestacy of a deceased person,
- (d) a person claiming through an offender,
- (e) any other person who has a special interest in the outcome of an application for a forfeiture modification order.

offender means a person who has unlawfully killed another person.

unlawful killing means:

- (a) any homicide committed in the State that is an offence, and
- (b) any homicide that would be an offence if committed within the State,

and includes aiding, abetting, counselling or procuring such a homicide and unlawfully aiding, abetting, counselling or procuring a suicide.

4 Application of Act

- (1) This Act applies to the following:
 - (a) an unlawful killing whether occurring within or outside the State,
 - (b) property:
 - (i) located within the State, or
 - (ii) located outside the State, but only to the extent to which courts of the State have jurisdiction to make orders concerning the property.
- (2) This Act does not apply to the following:
 - (a) an unlawful killing committed in the State that constitutes murder,
 - (b) an unlawful killing that would constitute murder if committed in the State.

5 Power of Supreme Court to modify effect of forfeiture rule

- (1) If a person has unlawfully killed another person and is thereby precluded by the forfeiture rule from obtaining a benefit, any interested person may make an application to the Supreme Court for an order modifying the effect of the rule.
- (2) On any such application, the Court may make an order modifying the effect of the forfeiture rule if it is satisfied that justice requires the effect of the rule to be modified.
- (3) In determining whether justice requires the effect of the rule to be modified, the Court is to have regard to the following matters:
 - (a) the conduct of the offender,
 - (b) the conduct of the deceased person,
 - (c) the effect of the application of the rule on the offender or any other person,
 - (d) such other matters as appear to the Court to be material.

6 Forfeiture modification orders may be moulded to suit circumstances

- (1) The Supreme Court may make a forfeiture modification order in such terms and subject to such conditions as the Court thinks fit.
- (2) For example, the Court may modify the effect of the forfeiture rule in relation to property:
 - (a) in the case of more than one interest in the same property (for instance, a joint tenancy) affected by the rule—by excluding the operation of the rule in relation to any or all of the interests, and
 - (b) in the case of an offender who has an interest in real property (such as a family home) and personal property affected by the rule—by excluding the application of the rule in relation to all the property or some of the property.
- (3) If the Court makes a forfeiture modification order, the forfeiture rule is to have effect for all purposes (including purposes relating to anything done before the order was made) subject to modifications made by the order.

7 Time for applications for forfeiture modification orders

- (1) Unless the Supreme Court gives leave for a late application to be made under subsection (2), an application for a forfeiture modification order must be made:
 - (a) if the forfeiture rule operates immediately on the death of a deceased person to prevent the offender from obtaining the benefit concerned—within 12 months from the date of the death of the deceased person, or
 - (b) if the forfeiture rule subsequently prevents the offender from obtaining the benefit—within 12 months from the date on which the forfeiture rule operates to preclude the offender from obtaining the benefit.
- (2) The Court may give leave for a late application if:
 - (a) the offender concerned is pardoned by the Governor after the expiration of the relevant period, or
 - (b) the offender's conviction is quashed or set aside by a court after the expiration of the relevant period and there are no further avenues of appeal available in respect of the decision to quash or set aside the conviction, or

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- (c) the fact that the offender committed the unlawful killing is discovered after the expiration of the relevant period, or
 - (d) the Court considers it just in all the circumstances to give leave.

8 Revocation and variation of forfeiture modification orders

- (1) If the Supreme Court has made a forfeiture modification order, an interested person may make an application to the Court for the revocation or variation of the order if
 - (a) the offender concerned is pardoned by the Governor after the making of the order, or
 - (b) the offender's conviction is quashed or set aside by a court after the making of the order and there are no further avenues of appeal available in respect of the decision to quash or set aside the conviction, or
 - (c) in all other cases—if the Court considers it just in all the circumstances to give leave for such an application to be made.
- (2) On any such application, the Court may revoke or vary the forfeiture modification order concerned.
- (3) The provisions of sections 5 (2) and (3) and 6 (1) and (2) apply to the determination of any such application in the same way as they apply to the making of a forfeiture modification order. In determining whether to revoke or vary the forfeiture modification order, the Court is also to have regard to the effect on the offender and other persons of any such revocation or variation.
- (4) If a forfeiture modification order is revoked or varied, the forfeiture rule is to have effect for all purposes (including purposes relating to anything done before the order was revoked or varied):
 - (a) in the case of a revocation—subject to the terms on which the Court revokes the order, and
 - (b) in the case of a variation—subject to modifications made by the varied order.

9 Transitional provisions

- (1) A forfeiture modification order may be made in respect of
 - (a) an unlawful killing occurring before or after the commencement of this Act, or
 - (b) the application of the forfeiture rule in proceedings commenced but not determined before the commencement of this Act.
- (2) A forfeiture modification order is not to be made modifying the effect of the forfeiture rule in respect of any interest in property that, in consequence of the rule, has been acquired before the commencement of this Act by a person other than the offender or a person claiming through the offender.
- (3) However, nothing in this Act affects any determination of a court concerning the application of the forfeiture rule in any proceedings that was made before the commencement of this Act.

10 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

[Minister's second reading speech made in—
Legislative Council on 25 October 1995
Legislative Assembly on 21 November 1995]