

17 February 2003

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Re: The Forfeiture Rule

Thank you for sending me the issues paper. I have to confess that I have never previously had to turn my mind to this rule but after reading the issues paper I think that there is a very strong case for enacting legislation to modify its effect in an appropriate case,

As the New South Wales Act, s5(3) includes "such other matters as appear to the Court to be material," it is probably a good idea to list the matters referred to by Mummery J and Dillon, although I have some reservations about the latter's reference to "whether there has been appropriate behaviour on the part of the offender." Quite what that means is difficult to ascertain as the offender has just been convicted of a serious crime.

There are some difficulties with respect to murder. As a matter of principle, I think that the community regard the sanctity of human life above all and would be opposed to the forfeiture rule being abolished in such cases. The difficulty principally arises out of the Code, s157(1)(c) which makes culpable homicide murder if the offender knew or ought to have known that his or her unlawful act or omission would be likely to cause death even if he or she had no wish to cause death. There may be cases within that provision that would attract the amelioration of the forfeiture rule but neither the trial judge nor the judge hearing an application under the Forfeiture Act would know if the jury convicted on that basis or some other basis provided for by s157(1).

There are many who think it is high time that this provision was removed from s 157(1) so that murder was confined to a crime of specific intent.

I strongly support the NSW position that interested persons as defined, should be entitled to make an application for modification of the effect of the forfeiture rule.

The only other comment I wish to make is to support a wide definition of benefit and not limit the Act to property. Thus, if the wife of a Supreme Court is convicted of the manslaughter of her husband she would be entitled to apply for an order that the rule be modified to enable her to receive the judges pension!

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