

Succession (Homicide) Bill 2006

13 June 2006

Attorney-General

Succession (Homicide) Bill 2006

Our Ref: ATT395/10

1. I have considered the Succession (Homicide) Bill 2006 and conclude that it is not inconsistent with the New Zealand Bill of Rights Act ("BORA").

General comments

2. The Bill seeks to codify the law that precludes a person who unlawfully kills another person from benefiting as a result of the death, whether from the victim's estate, or from other property arrangements (clause 3.)
3. The effect of clause 13, together with clauses 7 to 12, is that any person convicted of a homicide in New Zealand will be disentitled from claiming from the victim's estate or from other property arrangements.
4. This raises the issue as to whether or not section 26(2) of the BORA is engaged. Section 26(2) provides that "no one who has been ... convicted of ... an offence shall be ... punished for it again".
5. In our view section 26 of the BORA is not engaged as it is referable only to criminal penalties: *Daniels v Thompson* [1988] 3 NZLR 22 per Henry J at pp33-34; see also Thomas J at pp57-58. Section 26(2) does not prohibit the imposition of civil penalties or sanctions that impact adversely for the same conduct that constituted the criminal offending: *Harder v Director of Land Transport Safety* (1998) 5 HRNZ 343 at p347.
6. In our view the regime contained in the Bill is civil rather than criminal. Indeed it is questionable whether the provisions could be considered to amount to a civil penalty or 'punishment'. The purpose is not to (re)punish offenders. Rather the provisions prevent persons from profiting from their own wrongdoing.
7. Even if s26(2) of the BORA was engaged, the provisions are a justifiable limitation upon the right.
8. I also note that clause 15 of the Bill enables a court to make a determination as to whether a person would be guilty of homicide if they had been prosecuted in New Zealand. Clause 15(2)(b) provides that a person who alleges that another person is guilty of homicide for the purposes of the Act must satisfy the court of that fact on

the balance of probabilities. Clause 15(2)(c) provides that a person who alleges that he or she is not guilty of the homicide for the purposes of the Act by reason of insanity must satisfy the Court of that fact on the balance of probabilities. These provisions are limited to determinations of whether a person is guilty of homicide for the purposes of the Act. In my view proceedings under the Act are civil and do not engage the rights in s25 of the BORA (including the right to be presumed innocent).

Joanna Davidson
Crown Counsel

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