

# **Succession (Homicide) Bill**

Government Bill

As reported from the Justice and Electoral Committee

## **Commentary**

### **Recommendation**

The Justice and Electoral Committee has examined the Succession (Homicide) Bill and recommends that it be passed with the amendments shown.

### **Introduction**

This bill codifies the law that precludes a person who unlawfully kills another person from benefiting from the death of that person. This includes benefit from proceeds from the victim's estate, or from any non-probate assets.

This commentary covers all the amendments we recommend to the bill and outlines the main issues we considered.

### **Joint tenancies**

We recommend that clause 8 be amended so that the killing of one joint tenant by another joint tenant in circumstances amounting to homicide will be treated as converting the joint tenancy into a tenancy in common. This will ensure that a spouse or partner who kills cannot reclaim a joint tenancy interest under the Property (Relationships) Act 1976. The original clause might have allowed a joint tenant who killed his or her spouse or partner and therefore lost his or her interest in the joint tenancy, to reclaim that interest under the Property (Relationships) Act. The same would not apply to other killers (for example, if the killer and victim were siblings), which is

anomalous. We consider that this inconsistency needs to be addressed, and that under no circumstance should a killer be able to claim more than the share of a joint tenancy to which they are entitled under this bill.

### **Restriction of claims**

The bill provides that a killer who has a valid claim against the estate of a victim is entitled to make an application in respect of that claim under the Law Reform (Testamentary Promises) Act 1949. However, the bill may not allow such an application to be made where a testamentary promise is expressly provided for in a victim's will. We recommend that clause 10 be amended to address this inconsistency. This would ensure that a killer would not be deprived of the benefits of a prior testamentary promise made by the victim for services provided by the killer, regardless of the content of the victim's will.

We considered this amendment in detail as it initially caused members some consternation. However, we recognise that the purpose of the bill is to ensure that a person should not profit from the act of killing, and therefore we consider that killers under the bill should be deprived only of rights that they gained by virtue of the act of killing, and not of other pre-existing rights, not directly related to the act of killing. We consider that any promised payment for services provided by the killer to the victim constitutes an existing interest and not an additional benefit from the victim's death.

In making this recommendation, we acknowledge that any claim for benefits from a prior testamentary promise made by a victim to a killer is subject to judicial discretion, which we consider will safeguard against potential serious injustice.

We recommend that the words "more immediate" be removed from clauses 10 and 11. This amendment clarifies that it is not intended that funds or property to which a killer is entitled be withheld from the killer until the time of the victim's expected natural death. We consider that withholding funds or property until the time of the victim's expected natural death would be impractical.

### **Applications by victim's estate under the Property (Relationships) Act 1976**

We recommend that clause 11A be inserted to ensure that a victim's estate is not prevented from bringing proceedings against the killer

under the Property (Relationships) Act 1976. This would allow the estate easier access to the Court to prevent the killer from retaining a greater interest in property than he or she is entitled to under that Act. The law has been uncertain as to whether the victim's estate may have access to the Court in order to prevent the killer retaining more than his or her permitted share under that Act. We consider that this is contrary to the intention of the bill and could cause serious injustice to the victim's estate.

### **Caveat against dealing with land**

We recommend minor changes to clause 12 (which relates to caveats against dealings with land that the victim and the killer own as joint tenants). We recommend that clause 12(1) include reference to the victim's estate or interests in order to reflect that the caveat is in respect of property owned by the victim and the killer as joint tenants. We also recommend amendments to clause 12(2) and clause 12(4) to correct drafting errors.

### **Evidence if no criminal prosecution in New Zealand**

We recommend that clause 15 (which establishes the process for proving whether a person is guilty of homicide for the purposes of the bill) be extended to apply to cases where a person who is alleged to be guilty of homicide has been prosecuted in New Zealand in respect of that homicide but has been acquitted other than on the grounds of insanity or the prosecution has been stayed or withdrawn. The bill, as introduced, does not expressly provide for such cases and we consider that it would benefit from a clarifying provision.

### **Te Ture Whenua Maori Act 1993**

We considered the effect of the bill on succession to Maori Land under Te Ture Whenua Maori Act 1993. We are satisfied that Maori land succession under that Act would not be unduly affected by this bill.

### **Simultaneous Deaths Act 1958**

We considered the relationship between the bill and the Simultaneous Deaths Act 1958. We are satisfied that, for the purposes of the bill, if a killer and victim died simultaneously, the killer would be treated as predeceasing the victim.

## **Appendix**

### **Committee process**

The Succession (Homicide) Bill was referred to the Justice and Electoral Committee on 10 October 2006. The closing date for submissions was 27 November 2006. We received and considered seven submissions from interested groups and individuals. We heard one submission. We received advice from the Ministry of Justice.

### **Committee membership**

Lynne Pillay (Chairperson)

Christopher Finlayson (Deputy Chairperson)

Chris Auchinvole (from 6 December 2006)

Charles Chauvel (from 21 February 2007)

Russell Fairbrother (until 21 February 2007)

Hone Harawira (from 13 December 2006) (non-voting member)

Ann Hartley

Nándor Tánczos

Nicky Wagner

Dr Richard Worth (until 6 December 2006)

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

**Struck out (unanimous)**

<b>▬</b> Subject to this Act, <b>▬</b>	Text struck out unanimously
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**New (unanimous)**

<b>▬</b> Subject to this Act, <b>▬</b>	Text inserted unanimously
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*(Subject to this Act,)* Words struck out unanimously

Subject to this Act, Words inserted unanimously

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*Hon Clayton Cosgrove*

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Government Bill

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**The Parliament of New Zealand enacts as follows:**

- 1 Title**  
This Act is the Succession (Homicide) Act **2006**.
- 2 Commencement**  
This Act comes into force on the day that is 1 month after the date on which this Act receives the Royal assent. 5

**Part 1**  
**Preliminary provisions**

- 3 Purpose**  
The purpose of this Act is to codify the law that prevents a person (the **killer**) who kills another person (the **victim**) by committing homicide from benefiting as a result of the victim's death from— 10
- (a) the victim's estate; or  
(b) any other property arrangement. 15
- 4 Interpretation**
- (1) In this Act, unless the context otherwise requires,—
- assisted suicide**—
- (a) means the killing of a person by another person directly or indirectly if, immediately before death the deceased asked the other person to help them to commit suicide; but 20
- (b) does not include a killing where the deceased formed the wish to commit suicide, or resolved to commit suicide, or acted on that wish or resolve, as a consequence of any form of persuasion by the other person 25
- homicide** means the killing of a person or a child who has not become a person, by another person, intentionally or recklessly by any means that would be an offence under New Zealand law, whether done in New Zealand or elsewhere, but does not include— 30
- (a) a killing caused by negligent act or omission; or  
(b) infanticide under section 178 of the Crimes Act 1961; or  
(c) a killing of a person by another in pursuance of a suicide pact; or 35

(d) an assisted suicide

**killer** means a person who kills a person or a child who has not become a person in any manner and in any circumstances that the person is guilty, either alone or with another person or persons, of the homicide of the person or child who has not become a person or would be so guilty if the killing had been done in New Zealand 5

**non-probate assets**, in relation to any victim, means all property passing on the death of the victim because of any of the following transactions: 10

- (a) a nomination as defined in section 68A of the Administration Act 1969:
- (b) gifts that the victim made in contemplation of death:
- (c) trusts settled by the victim that were revocable by the victim in his or her lifetime: 15
- (d) beneficial powers of appointment that were exercisable by the victim in his or her lifetime:
- (e) joint tenancies held by the victim and any other person

**person** means a human being

**property** means everything that is capable of being owned, whether it is real or personal property, and whether it is tangible or intangible property, and includes any estate or interest in property 20

**suicide pact** has the meaning given in section 180(3) of the Crimes Act 1961 25

**victim** means a person, or a child that has not become a person, who is killed by a killer

**will** includes a codicil.

- (2) For the purposes of this Act, an unborn child becomes a person in the circumstances described in section 159 of the Crimes Act 1961. 30

## 5 Effect and application

- (1) This Act replaces the rules of law, equity, and public policy that prevent a killer from receiving, becoming entitled to, or claiming interests in property as a result of the death of the killer's victim. 35
- (2) This Act applies to interests in and claims against property resulting from the death of a victim after the commencement of this Act, but does not affect—



- (a) any interest in or claim against property that is the subject of a proceeding commenced before the commencement of this Act, whether or not judgment has been delivered in that proceeding or an appeal against judgment was commenced before that time; or 5
- (b) any interest in property a person (other than a killer) acquired for value; or
- (c) the entitlement of any person under a contract.
- (3) **Subsection (2)** overrides **subsection (1)**.
- 6 Act binds the Crown** 10  
This Act binds the Crown.

## Part 2

### Effect of homicide on rights of succession

#### *Disentitlements of killers to property*

- 7 Disentitlement of killers under will or intestacy** 15
- (1) A killer is not entitled to any interest in property arising under a will of the killer's victim.
- (2) A killer is not entitled to any interest in property arising on the intestacy, or partial intestacy, of the killer's victim.
- (3) Subject to any express testamentary direction to the contrary, any interest in property that a killer is not entitled to under **subsection (1)** or **subsection (2)** is to pass or be distributed as if the killer had died before the killer's victim. 20

#### New (unanimous)

- (4) **Subsections (1) and (3)** are subject to **section 10(2A)** to **(4)**.

- 8 Disentitlement of killer to victim's non-probate assets** 25
- (1) A killer is not entitled to any property interest in any non-probate assets of the killer's victim which, but for this subsection, would have passed to the killer on the death of the victim.
- (2) Any property interest that a killer is not entitled to under **subsection (1)** is to pass or be distributed as if the killer had died before the victim. 30

**New (unanimous)**

(3) Despite **subsection (2)**, property that is owned in joint tenancy by the victim, the victim’s killer, and any other person (if any) devolves at the death of the victim as if the property were owned by each of them as tenants in common in equal shares.

**9 Disentitlement to apply under Family Protection Act 1955** 5

A killer is not entitled to apply under the Family Protection Act 1955 for provision out of the estate of the killer’s victim.

**10 Restriction of killer’s claims as to matrimonial property, testamentary promises, and restitution** 10

(1) A killer who has a valid claim against the estate of a victim of the killer under the Matrimonial Property Act 1963 or the Property (Relationships) Act 1976 or a valid claim for restitution for economic benefits conferred on the killer’s victim is entitled in respect of that claim only to a benefit calculated in accordance with **subsection (2)**. 15

(2) The benefit referred to in **subsection (1)** must be calculated to ensure that—

(a) the killer is not deprived of the benefit to which the killer is entitled for the services or other economic benefits he or she provided to the killer’s victim; but 20

(b) the killer’s benefit is not made more certain(, *more immediate*,) or more valuable as a result of the death of the killer’s victim.

**New (unanimous)**

(2A) A killer who is not entitled under **section 7** to any interest in property arising under a will of the killer’s victim— 25

(a) may make an application under the Law Reform (Testamentary Promises) Act 1949 in respect of the victim’s estate; and

(b) must be treated for the purposes of that application as if the victim had failed to make testamentary provision for the killer. 30

- (3) A killer who has a valid claim against the estate of a victim of the killer under the Law Reform (Testamentary Promises) Act 1949 is entitled in respect of that claim only to a benefit calculated in accordance with **subsection (4)**.
- (4) The benefit referred to in **subsection (3)** must be calculated to ensure that the killer's benefit is no more certain(*, more immediate,*) or more valuable than the killer would have been entitled to if the victim of the killer had continued to live for the period reasonably expected before the victim was killed. 5
- 11 Disentitlement of killer to enhanced benefits generally** 10
- (1) This section applies only in respect of property of a victim that is not—
- (a) within the victim's estate; or
- (b) a non-probate asset of the victim.
- (2) A killer whose interest in or claim against property to which this section applies is affected by the death of the killer's victim is not entitled to any more certain(*, more immediate,*) or more valuable interest in the property as a result of the death of the victim than the killer would otherwise have been entitled to. 15
- (3) Without limiting **subsection (2)**, a killer is not entitled to benefit in respect of any property to which this section applies as a result of the death of the killer's victim if—
- (a) the killing prevented the birth of the victim; or
- (b) the killing altered the order in which it could reasonably have been expected that the killer and the victim would have died; or 25
- (c) the killing prevented the victim from reaching any particular age or satisfying any other condition; or
- (d) the killing reduced or closed the membership of a class of beneficiaries that included the victim; or 30
- (e) the killing shortened the period during which the victim could reasonably have been expected to possess an interest in property in which the killer has an interest in remainder. 35

## New (unanimous)

**11A Applications by victim's estate under section 88(2) of Property (Relationships) Act 1976**

When applying section 88(2) of the Property (Relationships) Act 1976, the Court must treat the refusal of leave under that provision as causing a serious injustice if the refusal of leave would allow the killer to retain a more certain or more valuable interest in the property.

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**12 Caveat against dealing with land**

- (1) If an interested person claims that an owner of an undivided estate or interest in land as a joint tenant with a victim is the killer of that victim, the interested person may lodge a caveat in accordance with section 137 of the Land Transfer Act 1952 in respect of *(the estates or interests of the killer of the victim)* that estate or interest. 10
- (2) For as long as a caveat under this section remains in force, the Registrar-General of Land must not register a transmission on survivorship to *(the person who is alleged to be the killer of victims)* the alleged killer, or the alleged killer and any other joint tenant, of any estate or interest *(of that victim)* affected by the caveat. 15  
20
- (3) The provisions of the Land Transfer Act 1952, other than section 141(1), apply to a caveat lodged under this section.
- (4) Section 141(2) and (3) of the Land Transfer Act 1952 apply, *(within)* with any necessary modifications, in respect of a caveat lodged under this section. 25

**13 Evidential effect of conviction in New Zealand**

- (1) The conviction in New Zealand of a person for the homicide of another person or a child that has not become a person is conclusive evidence for the purposes of this Act that the person is guilty of that homicide, unless that conviction has been quashed. 30
- (2) A certificate issued under **section 146A** of the Sentencing Act 2002 is conclusive evidence that a person convicted of an offence of unlawfully killing another person or a child that has not become a person is for the purposes of this Act guilty of 35

the homicide of that other person or child that has not become a person.

- (3) **Subsection (2)** is subject to **subsection (1)**.

**14 Evidential effect of acquittal in New Zealand**

The acquittal in New Zealand of a person on the grounds of that person's insanity in respect of the homicide of another person or a child that has not become a person is conclusive evidence for the purposes of this Act that the person is not guilty of that homicide. 5

**15 Evidence if no criminal prosecution or unsuccessful prosecution in New Zealand** 10

**Struck out (unanimous)**

- (1) This section applies if—
- (a) in any proceedings in which the application of this Act is in issue, any party alleges that another person is guilty of the homicide of a person or a child that has not become a person; and 15
  - (b) the person who is alleged to be guilty of the homicide of another person or a child that has not become a person has not been prosecuted in New Zealand in respect of that homicide, whether or not the person has been prosecuted, convicted or acquitted elsewhere. 20

**New (unanimous)**

- (1) This section applies if,—
- (a) in any proceedings in which the application of this Act is in issue, any party alleges that another person is guilty of the homicide of a person or a child that has not become a person; and 25
  - (b) the person who is alleged to be guilty of the homicide of another person or child that has not become a person has—
    - (i) not been prosecuted in New Zealand in respect of that homicide, whether or not the person has been prosecuted, convicted, or acquitted elsewhere; or 30

**New (unanimous)**

- (ii) been prosecuted in New Zealand in respect of that homicide but has been acquitted other than on the grounds of insanity or the prosecution has been stayed or withdrawn, whether or not the person has been prosecuted, convicted, or acquitted elsewhere. 5

- (2) If this section applies—
  - (a) the court hearing the proceedings may decide for the purposes of this Act whether the killing of a person or a child that has not become a person has taken place and, if so, whether, if the alleged killer had been prosecuted in New Zealand, he or she— 10
    - (i) would be guilty of the homicide of that person or child that has not become a person; or
    - (ii) would by reason of insanity not be guilty of the homicide of that person or child that has not become a person: 15
  - (b) a person who alleges that another person is guilty of homicide for the purposes of this Act must satisfy the court of that fact on the balance of probabilities: 20
  - (c) a person who alleges that he or she is not guilty of the homicide for the purposes of this Act by reason of insanity must satisfy the court of that fact on the balance of probabilities:
  - (d) the conviction elsewhere than in New Zealand of a person in respect of homicide is, for the purposes of this Act, admissible evidence as to whether the person is guilty or not guilty of the homicide and is to be given any weight that the court determines. 25

*Amendments to other enactments* 30

**16 Amendments to other enactments**

The enactments specified in the Schedule are amended in the manner set out in the Schedule.

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## Schedule Enactments amended

### Administration Act 1969 (1969 No 52)

Insert after section 5:

**“5A Killer not competent to be granted administration** 5

A person who is a killer of a victim for the purposes of the Succession (Homicide) Act 2006 or who is awaiting trial for an offence of homicide (within the meaning of that Act) is not competent to be granted and must not be granted—

“(a) probate of the victim’s will; or 10

“(b) letters of administration of the estate of the victim, with or without a will annexed.”

Section 47(1): insert after paragraph (e):

“(ea) under the Succession (Homicide) Act 2006:”.

Section 47: add: 15

“(5) Subsection (4) does not apply to protect an administrator who, at the time of making a distribution, had reason to suspect that the death of the deceased was a homicide and the person to whom the distribution was made was a killer of the deceased.”

#### New (unanimous)

**Law Reform (Testamentary Promises) Act 1949 (1949 No 33)** 20

Section 3: add:

“(9) Subsection (3) is subject to **section 10(2A) to (4)** of the Succession (Homicide) Act 2006.”

**Proceeds of Crime Act 1991 (1991 No 120)**

Section 24: add as subsection (2): 25

“(2) Despite subsection (1), sections 25 to 29 do not apply to interests in or claims against property that a person who is a killer under the Succession (Homicide) Act 2006 is not entitled to claim or receive because of that Act.”

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**New (unanimous)**


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**Property (Relationships) Act 1976 (1976 No 166)**

Section 88: add:

“(4) Subsection (2) is subject to **section 11A** of the Succession (Homicide) Act **2006**.”

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**Sentencing Act 2002 (2002 No 9)**

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Insert after section 146:

**“146A A certificate of conviction for succession purposes**

“(1) On or at any time after sentencing a person for an offence against any Act of unlawfully killing another person or child that has not become a person, a Court may certify that for the purposes of the Succession (Homicide) Act **2006** the person convicted is guilty of homicide of that other person or child that has not become a person. 10

“(2) A Court may issue a certificate under this section on the application of the informant, any interested person, or on its own initiative.” 15

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**Legislative history**

8 September 2006

Introduction (Bill 74–1)

10 October 2006

First reading and referral to Justice and Electoral Committee