

PROBATE DUTY (APPLICATION) BILL 1978.

EXPLANATORY MEMORANDUM.

Clause 1.

This clause contains the usual statutory provisions concerning the short title of the Act and the date of commencement.

Clause 2.

This clause repeals those provisions in the *Probate Duty Act 1977* ("the 1977 Act") relating to the operation of that Act. They are replaced by other provisions in clause 3 which are explained hereunder.

Clause 3.

The 1977 Act abolished probate duty in Victoria on all property passing to children of the deceased in respect of the estates of persons dying on or after 1 January, 1978. Following the decision of the Commonwealth Government to abolish Commonwealth estate duty on all property passing to children of the deceased in respect of the estates of persons dying on or after 21 November, 1977, the Victorian Government gave an undertaking to introduce amending legislation so that the Victorian legislation would also operate in respect of the estates of persons dying on or after 21 November, 1977. Sub-clause (4) of clause 3 gives effect to that undertaking.

Provisions of the 1977 Act which do not relate directly to the abolition of probate duty on property passing to children will continue to apply to the estates of persons dying on or after 1 January, 1978 (see sub-clause (3)).

Sub-clauses (1) and (2) re-enact sections 1 (4) and 1 (5) of the 1977 Act to preserve the existing provisions so that they may continue to apply to the estates of persons dying before 21 November, 1977 or before 1 January, 1978 as the case may be.

Sub-clause (5) provides for sub-sections (4), (5) and (6) of section 15, sections 38A and 38B of the *Probate Duty Act 1962* ("the Principal Act") to operate from 1 January, 1978 irrespective of the date of death of the deceased person. Sub-sections (4) and (5) of section 15 relate to fees for production of statements in court, preparation of documents for certification by the Commissioner and the making of copies or extracts, while sub-section (6) enables the Commissioner to dispose of statements after the expiration of fifteen years from the date of death of the deceased person to whose estate the statement relates. Sections 38A and 38B are concerned with the provision of relief from hardship.

Clause 4.

Section 11 (1) of the Principal Act, which is mandatory in its operation, requires administrators of estates of deceased persons to lodge detailed statements of assets, liabilities and other prescribed information. In respect of estates of persons dying on or after 21 November, 1977 there will be a large number of estates which will not become dutiable, because they pass to the widow, widower and children of the deceased or to organizations or for purposes which come within section 21 of the Principal Act.

The provision of information on the existing basis for these estates to satisfy the requirements of section 11 (1) is unnecessary, onerous and expensive. Clause 4 therefore amends section 11 to enable the Commissioner to dispense with the need to provide information which is considered to be unnecessary and which may be costly to obtain.

By Authority: F. D. ATKINSON, Government Printer, Melbourne

Operation of
Act.

3. (1) Subject to sub-sections (4) and (5), the provisions of the Principal Act as in force immediately before the 1st January, 1978 shall apply to and with respect to the estates of persons dying before the 1st January, 1978, and for the purposes of such application the Principal Act as in force before the 1st January, 1978 shall, subject to sub-section (2), be deemed to remain in force. 5

(2) Notwithstanding the provisions of sub-section (1), the administrator or other person liable to pay the duty in respect of the estate of a person who died on or after the 1st day of October, 1976 and before the 21st day of November, 1977 may, with the consent of the spouse, elect to have the duty payable in respect of the estate assessed, or where the duty has been assessed, reassessed as if section 10A of the Principal Act was not in force at the date of death. 10 15

(3) Subject to sub-sections (4) and (5), the provisions of the Principal Act as amended by the *Probate Duty Act* 1977 shall apply to and with respect to the estates of persons dying on or after 1st January, 1978.

(4) The provisions of the Principal Act as amended by sections 2, 3, 5, 8 (*f*), 9, 10 (3), 13 and 14 of the *Probate Duty Act* 1977 and by section 4 of this Act shall apply to and with respect to, the estates of persons dying on or after 21st November, 1977. 20

(5) The provisions of sections 15 (4), 15 (5), 15 (6), 38A and 38B of the Principal Act shall apply to and with respect to the estate of any person irrespective of the time of death. 25

Amendment of
No. 6890 s. 11.

4. Section 11 of the Principal Act shall be amended as follows:—

(a) In sub-section (1) for the words “ Every administrator ” there shall be substituted the words “ Subject to sub-section (1A), every administrator ” ; 30

(b) After sub-section (1) there shall be inserted the following sub-section :—

“ (1A) Where a deceased person was at the time of his death domiciled in Victoria and—

(a) the final balance of the estate of the deceased person passes to the widow, widower or children of the deceased ; or 35

(b) the final balance of the estate of the deceased person is nil by virtue of section 21 of this Act— 40

the administrator of the estate shall file in the office of the Commissioner a statement specifying particulars of—

(c) the relationship (if any) to the deceased of the person or persons entitled to all 45

property

- property which is or is deemed to form part of the estate of the deceased ;
- 5 (d) all property in relation to which a certificate of the Commissioner is required under section 14 of this Act ;
- (e) an address at which notices and other documents may be served and to which notices or other documents may be sent ; and
- 10 (f) such other information and particulars as the Commissioner considers necessary.”