

Act No. 1976.

Stamp Duties (Amendment).

Enacted by the Council and Legislative Assembly of the State of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Stamp Duties (Amendment) Act, 1976.

2. The Stamp Duties Act, 1920, is amended in the Amendment of Act No. 47, 1920.

No. 1976.

Sec. 2.

10

A BILL

To amend the Stamp Duties Act, 1920, with respect to death duties.

[Mr F. J. WALKER on behalf of Mr RENSHAW—16 November, 1976.]

12

after the date of his death and who was at the date of his death domiciled in New South Wales, no death duty shall be chargeable—

20

(a) on any property other than non-assessable property included in the dutiable estate of the deceased—

BE

(b) being property which passes by the intestacy or under the will of the deceased to the widow or widower of the deceased.

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SCHEDULE

Stamp Duties (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Stamp Duties Short
(Amendment) Act, 1976". title.

2. The Stamp Duties Act, 1920, is amended in the Amendment
of Act No.
47, 1920.
manner set forth in Schedules 1 and 2.

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SCHEDULE 1.

Sec. 2.

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO DEATH DUTY EXEMPTION FOR WIDOWS AND WIDOWERS.

(1) Section 101D (6)—

After section 101D (5), insert :—

15

(6) In the case of every person who dies on or after the date of assent to the Stamp Duties (Amendment) Act, 1976, whether in New South Wales or elsewhere and who was at the date of his death domiciled in New South Wales, no death duty shall be chargeable—

20

(a) on any property, other than non-aggregated property, included in the dutiable estate of the deceased—

25

(i) being property which passes by the intestacy or under the will of the deceased to the widow or widower of the deceased; or

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO DEATH DUTY EXEMPTION FOR WIDOWS AND
WIDOWERS—*continued.*

5 (ii) being property which, or the value
of which, is included by this Act in
that dutiable estate where the
beneficial interest in the property
on the death of the deceased is
10 vested in or passes to the widow or
widower of the deceased; or

(b) on any non-aggregated property included
in the dutiable estate of the deceased and
directed by this Act to be separately
15 assessed which passes on the death of the
deceased or at any time determinable by
reference to the death of the deceased to
the widow or widower of the deceased.

(2) Section 112D (9)—

20 After section 112D (8), insert :—

(9) In the case of every person who dies on or
after the date of assent to the Stamp Duties
(Amendment) Act, 1976, no death duty shall be
payable on any non-aggregated property included in
25 the dutiable estate of the deceased and directed by
this Act to be separately assessed where the
Commissioner is satisfied that any such property
passing on the cesser of the limited interest to the
widow or widower of the person who created the
30 limited interest was included in the estate of the
person who created the limited interest and any duty
payable thereon was paid.

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2.

Sec. 2.

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS.

(1) (a) Section 100—

5 Omit “and the Third Schedule hereto”.

(b) Section 100, definitions of “Associate” and
“Associated operations”—

After the definition of “Administrator”, insert :—

10 “Associate”, in relation to a controlled
company, means—

- (a) a director or member of that company;
- 15 (b) a person who has any voting rights at any meeting of, or in relation to, that company in relation to any disposition of property by that company, whether or not he has any such rights in relation to any other disposition of property by that company; or
- 20 (c) a person who, by the constitution of that company, possesses, alone or together with any other person or persons—
 - 25 (i) a right to appoint or remove any director of that company; or
 - 30 (ii) a right to veto or vary a decision at any meeting of, or in relation to, that company,

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

5 and includes an associate, as hereinbefore
defined, of another controlled company
which is one of the five or fewer persons
under whose control the firstmentioned
10 controlled company is or to which the
firstmentioned controlled company is
related within the meaning of the
Companies Act, 1961.

15 “Associated operations” means any two or
more operations, being or being of a kind
similar to—

(a) operations which affect the same
property, or one or more of which
affects or affect some property and
the other or others of which
20 affects or affect property which
represents, whether directly or
indirectly, that property, or
income arising from that property,
or any property representing
25 accumulations of any such
income; or

(b) operations—
(i) each of which is effected
with reference to another
or each of which, except
30 one, is effected with
reference to another, that
one being an operation
with reference to which
the other operation is or
35 the other operations are
effected; or

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (ii) each of which is effected
with a view to enabling
another of those opera-
tions to be effected or to
facilitating its being
10 effected or each of which,
except one, is effected
with that view, that one
being an operation with a
view to effecting which or
15 to facilitating the effect-
ing of which the other
operation is or the other
operations are effected,
whether those operations are effected by
20 the same person or by different persons
and whether or not they or any two or
more of them are simultaneous.

(c) Section 100, definitions of “Controlled company”
and “Corporation”—

- 25 After the definition of “Child”, insert :—
“Controlled company”, in relation to a
disposition of property, means any
corporation which, at any relevant time
referred to in subsection (6) (whether
30 that time is on, before or after the date
of assent to the Stamp Duties (Amend-
ment) Act, 1976) is under the control
of not more than five persons, is not a
listed corporation, is not a corporation
35 in which the public are substantially

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

5 interested and is not a subsidiary of a
corporation in which corporation the
public are substantially interested, but
does not include a corporation the
10 members of which are precluded, by its
constitution, from being paid any
dividend and would, if the corporation
were to be wound up, be precluded from
receiving any part of the assets of the
corporation.

15 “Corporation” has the meaning ascribed
thereto in section 5 (1) of the Companies
Act, 1961.

(d) Section 100, definition of “Director”—

20 Before the definition of “Disposition of property”,
insert :—

“Director” has the meaning ascribed to that
expression in the Companies Act, 1961.

(e) Section 100, definition of “Disposition of
property”—

25 Omit the definition, insert instead :—

“Disposition of property” means—

30 (a) a conveyance, transfer, assign-
ment, mortgage, delivery,
payment or other alienation of
property whether at law or in
equity ;

(b) the creation of any trust ;

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (c) the release, discharge, surrender,
forfeiture or abandonment at law
or in equity of any debt, contract
or chose in action, or of any right,
10 power, estate or interest in or
over any property;
- (d) the exercise of a general power of
appointment in favour of any
person other than the donee of
the power;
- 15 (e) an agreement, obligation, engage-
ment, arrangement, contract or
transaction entered into by a
person, an act done or effected
or omitted to be done or effected
20 by a person, or a forbearance by
a person to exercise a right or
power, as a result of which—
- (i) the value of the total
property of that person is,
25 whether during his life-
time or upon or in
consequence of his death,
directly or indirectly
diminished; and
- 30 (ii) the value of the total
property of some other
person is directly or
indirectly increased,
- 35 whether or not at the request or
subject to the acquiescence or on
behalf of a person;

*Stamp Duties (Amendment).*SCHEDULE 2—*continued.*AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (f) the distribution by a controlled
company of a dividend upon
shares held in that company or
the payment of interest on money
advanced to that company,
10 whether or not the dividend or
interest is paid to the shareholder
or creditor entitled thereto,
accumulated or invested on his
15 behalf, credited in his name to a
loan account or fund however
designated or otherwise held or
dealt with on his behalf or as he
may permit or direct; or
- 20 (g) the allotment or issue of shares in
or debentures of a controlled
company, the grant of rights to
a person in or in relation to a
controlled company or the grant
25 of an option to take up unissued
shares in a controlled company
or to acquire rights in or in
relation to a controlled company,
- 30 whether or not effected by an instrument
in writing, by a person alone or by two
or more persons or by associated
operations and whether effected on,
before or after the date of assent to the
Stamp Duties (Amendment) Act, 1976.

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

5 (f) Section 100, definition of “Listed corporation”—

After the definition of “Gift”, insert :—

“Listed corporation” means a corporation any
of the shares in which are quoted on a
stock exchange and any corporation
10 which is, by virtue of section 6 (5) of
the Companies Act, 1961, deemed to be
related to a corporation any of the shares
in which are quoted on a stock exchange
and in none of the shares in which a
15 natural person has a beneficial interest,
whether or not the stock exchange is a
stock exchange within the meaning of
the Securities Industry Act, 1975.

(g) Section 100, definition of “Share”—

20 After the definition of “Settlement”, insert :—

“Share”, in relation to a controlled company,
includes stock in that company.

(h) Section 100 (2)–(24)—

At the end of section 100, insert :—

25 (2) For the purposes of the definitions of
“Associate” and “Controlled company” in sub-
section (1)—

(a) “a subsidiary of a corporation” has the
30 same meaning as that expression has
in the Companies Act, 1961;

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—continued.**AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.**

- 5 (b) a corporation shall be deemed to be a
corporation in which the public are
substantially interested only if—
- 10 (i) the right to exercise more than
twenty-five per centum of the
voting power in respect of all
of the matters that may be
dealt with at a general meeting
of the corporation is held on
their own behalf by persons
15 other than a controlled com-
pany or an associate of a
controlled company; and
- 20 (ii) in the case of a corporation
limited by shares or by shares
and guarantee, the right to
transfer those shares is not
restricted and those shares are,
in the opinion of the Commis-
sioner, generally available for
25 purchase by the public;
- (c) a corporation shall be deemed to be
under the control of not more than five
persons—
- 30 (i) if any five or fewer persons
together possess, or possess a
right the exercise of which
would directly or indirectly
enable them to acquire, the
majority of the voting power
35 in relation to any matter at a

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*Stamp Duties (Amendment).*SCHEDULE 2—*continued.*AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 general meeting of the corporation, whether or not possessed in relation to any other matter that may be dealt with at such a meeting;
- 10 (ii) if any five or fewer persons together exercise, or are able to exercise, or possess a right the exercise of which would directly or indirectly enable
- 15 them to acquire a right to exercise, direct or indirect control of the affairs, or any of the affairs, of the corporation and they cannot be deprived
- 20 of that control by the exercise of the voting power of any other person or persons at a general meeting of the corporation;
- 25 (iii) if, in the case of a corporation limited by shares or by shares and guarantee, any five or fewer persons together possess,
- 30 or possess a right the exercise of which would directly or indirectly enable them to acquire, shares in the corporation, the paid-up amount of which is more than one-half of the paid-
- 35 up share capital of the corporation;

Stamp Duties (Amendment).

SCHEDULE 2—continued.

**AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.**

- 5 (iv) if any five or fewer persons together possess a right, or possess a right the exercise of which would directly or indirectly enable them to acquire the right, being in either case a right which would, if the whole of the income of the corporation were in fact distributed to the members, entitle them to receive more than one-half of the amount so distributed; or
- 10 (v) if any five or fewer persons would, if the corporation were to be wound up, be entitled to receive more than one-half of the net assets of the corporation which would be available for distribution; and
- 15 (d) in determining whether a corporation is or is not under the control of not more than five persons, a person who is related to another person and that other person, a person who is a nominee of another person and that other person and any other nominees of that other person, persons in partnership, or persons interested in any shares or obligations of the corporation which are subject to any trust or
- 20 are part of the estate of a deceased person, shall be treated as one person.
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- 30
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Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (3) For the purposes of subsection (2)
(d)—
- 10 (a) a person shall be deemed to be related
to another person if one of those
persons is the lineal issue, brother,
sister, lineal issue of a brother or sister,
spouse, ancestor of the spouse, brother
or sister of the spouse, spouse of the
brother or sister of the spouse, lineal
15 issue of the brother or sister of the
spouse, spouse of the lineal issue,
spouse of a brother or sister, spouse of
the lineal issue of a brother or sister or
spouse of the lineal issue of the brother
or sister of the spouse of the other of
20 those persons;
- (b) a corporation shall be deemed to be
related—
- 25 (i) to a person, if the corporation
is a controlled company and
any of its associates is related,
as mentioned in paragraph (a),
to that person; or
- 30 (ii) to another corporation, if those
corporations are controlled
companies and either if any
associate of one of them is
related, as mentioned in
paragraph (a), to any associate
of the other of them or if they
35 are related corporations within
the meaning of the Companies
Act, 1961; and

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

5 (c) if any two persons are related to
another person, as mentioned in
paragraph (a), those two persons
shall, although they are not related to
10 one another as so mentioned, be
deemed to be related to one another.

(4) A reference in subsection (3) (a) to
lineal issue includes a reference—

(a) to a step-child; and

(b) to an adopted child,

15 and a step-child shall, for the purposes of
subsection (3) (a), be deemed to be related to
any other persons in the same manner as he
would be if he were the child of both his step-
parent and the spouse of his step-parent.

20 (5) For the purposes of subsection (2) (d),
a person shall be deemed to be the nominee of
another person in respect of a corporation if,
whether directly or indirectly, he possesses on
25 behalf of that other person, or may be required
to exercise on the direction of or on behalf of
that other person, any right or power in relation
to that corporation.

30 (6) The reference in the definition of
“Controlled company” in subsection (1) to the
relevant time is a reference to any time during
the period ending with the death of the deceased
and beginning at the date of the disposition of
property or, if that disposition of property was
35 effected by associated operations, at the date of
the earliest of those operations.

SCHEDULE

*Stamp Duties (Amendment).*SCHEDULE 2—*continued.*AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (7) Where a debt, contract, chose in action
or a right, power, estate or interest in or over
property is irrecoverable or unenforceable
through the lapse of time or otherwise, it shall—
- 10 (a) for the purposes of paragraph (c) of
the definition of "Disposition of
property" in subsection (1), be deemed
to have been released, discharged,
surrendered, forfeited, renounced,
disclaimed or abandoned; and
- 15 (b) for the purposes of this Part and Part
V, be deemed to have been released,
discharged, surrendered, forfeited,
renounced, disclaimed or abandoned at
the time when it became so irrecover-
20 able or unenforceable.
- (8) Where, but for the fact that the
transaction from which it arises or which it
constitutes is void, a debt, contract, chose in
action or a right, power, estate or interest in or
25 over property would arise or be constituted and
be recoverable or enforceable, the debt, contract,
chose in action, right, power, estate or interest
shall—
- 30 (a) for the purposes of paragraph (c) of
the definition of "Disposition of
property" in subsection (1), be
deemed to have been released,
discharged, surrendered, forfeited,
renounced, disclaimed or abandoned;
35 and

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (b) for the purposes of this Part and Part
V, be deemed to have been released,
discharged, surrendered, forfeited, re-
nounced, disclaimed or abandoned at
10 the time when the transaction is
entered into.
- (9) Neither subsection (7) nor subsection
(8) applies to or in respect of a debt, contract,
chase in action, right, power, estate or interest
in or over property if the Commissioner is satis-
15 fied that the transaction was a normal commercial
transaction and that it would not be just and
reasonable in the circumstances that subsection
(7) or (8), as the case may be, should apply.
- (10) Where, after any debt, contract, chase
20 in action or any right, power, estate or interest
in or over property is to be deemed to have been
released, discharged, surrendered, forfeited,
renounced, disclaimed or abandoned, as men-
tioned in subsection (7) or (8), so as to con-
25 stitute a gift, there passes from the person to
whom the disposition is made to the person by
whom the disposition is made any consideration
(in this subsection referred to as "return con-
sideration") that, had the debt, contract, chase
30 in action, right, power, estate or interest in or
over property not been irrecoverable or
unenforceable or not arisen from or not con-
stituted a void transaction, would have been
consideration to which that lastmentioned person
35 was entitled on account of the debt, contract,

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 chose in action or right, power, estate or interest
in or over property, then, for the purposes of this
Part and Part V—
- (a) the value of the property in the gift
shall be reduced by the return con-
10 sideration; and
- (b) the passing of the return consideration
shall be deemed not to be a disposition
of property.
- (11) For the purposes of paragraph (e) of
15 the definition of "Disposition of property" in
subsection (1), the passing of a resolution or the
making of a decision by, within or on behalf of
a controlled company shall be deemed to be a
transaction entered into by the controlled com-
20 pany.
- (12) Without affecting subsection (13) (b),
for the purposes of this Part and Part V—
- (a) a diminution in the value of the total
25 property of a person, as referred to in
paragraph (e) (i) of the definition of
"Disposition of property" in subsection
(1), shall be deemed to occur by virtue
of a result referred to in paragraph (e)
30 of that definition if the value of all of
the property to which that person is
beneficially entitled immediately after
that result is less, by virtue of that
result, than the value of all of the
35 property to which he was beneficially
entitled immediately before that result;
and

SCHEDULE

*Stamp Duties (Amendment).*SCHEDULE 2—*continued.*AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (b) an increase in the value of the total
property of a person, as referred to in
paragraph (e) (ii) of that definition,
shall be deemed to occur by virtue of a
10 result referred to in paragraph (e) of
that definition if the value of all of the
property to which that person is
beneficially entitled immediately after
that result is greater, by virtue of that
15 result, than the value of all of the
property to which he was beneficially
entitled immediately before that result,
whether or not the diminution and increase are
simultaneous.
- 20 (13) Except where otherwise expressly pro-
vided, for the purposes of this Part and Part V—
- (a) the diminution of the value of the total
property of the person referred to in
paragraph (e) (i) of the definition of
25 "Disposition of property" in subsection
(1) shall be deemed to be property;
- (b) a disposition of property referred to in
paragraph (e) of that definition shall
be deemed to be made and the property
therein to pass at the time the value of
30 total property of the person referred to
in paragraph (e) (ii) of that definition
is increased, but if that time is at the
death of the deceased or is a time
related to his death shall be deemed to
35 be made immediately before his death;

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Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (c) the person referred to in paragraph (e)
(i) of that definition shall be deemed
to be the person by whom the disposi-
tion is made or from whom the
10 property therein passes and the person
referred to in paragraph (e) (ii) of
that definition shall be deemed to be
the person to whom the disposition is
made or to whom the property therein
passes;
- 15 (d) the value of the property in the disposi-
tion shall be deemed to be an amount
that is equivalent to the amount by
which the value of the total property—
20 (i) of the person referred to in
paragraph (e) (i) of that
definition is diminished; or
(ii) of the person referred to in
paragraph (e) (ii) of that
definition is increased,
25 whichever is the greater;
- (e) in determining whether or not an
increase in the value of the total
property of a person referred to in
30 paragraph (e) (ii) of that definition
has occurred and, if so, the value of
the increase, no allowance shall be
made in respect of any contingency
affecting the interest of that person;
- 35 (f) in determining whether or not a
diminution in the value of the total
property of the person referred to in

SCHEDULE

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

5 paragraph (e) (i) of that definition
has occurred and, if so, the value of the
diminution, no allowance shall be made
in respect of any contingency affecting
the interest of that person; and

10 (g) the property the subject of the dis-
position shall be deemed to be personal
property situate in New South Wales
except to the extent that, if the person
referred to in paragraph (e) (i) of
15 that definition is at his death domiciled
outside New South Wales, the Com-
missioner, in his absolute discretion,
determines that that property shall not
be regarded as being personal property
20 situate in New South Wales.

(14) Where any consideration for a disposi-
tion of property consists of a covenant, promise
or option entered into or granted to a deceased
person and that covenant, promise or option
25 remained unperformed or unexercised, in whole
or in part, at his death, and could only be per-
formed or exercised during his lifetime, the
disposition shall be deemed to be a gift made
immediately before his death the value of which
30 shall be deemed to be the consideration in money
or money's worth paid or payable by the
deceased in respect of the covenant, promise or
option reduced by the value of such part, if any,
of the covenant, promise or option as was per-
35 formed or exercised before his death.

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

5 (15) Where—

(a) a disposition of property—

10 (i) not being an allotment or
issue of shares, the grant of
an option to take up unissued
shares or the payment of
interest, is made by a controlled
company, either alone or
together with any other person
or persons without full con-
sideration in money or money's
worth; or

15 (ii) being an allotment or issue of
shares or the grant of an
option to take up unissued
shares, is made by a controlled
company; and

20 (b) the passing of the resolution or the
making of the decision whereby the
disposition was made or the obligation
to make the disposition was created—

25 (i) resulted, whether wholly or
partly or directly or indirectly,
from the exercise of a right or
power that was possessed or
that, by the constitution of the
controlled company, was
expressed to be possessed by a
particular person; or

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SCHEDULE 2—continued.**AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.**

5 (ii) could have been prevented by
the exercise of a right or power
that was possessed or that, by
the constitution of the con-
trolled company, was expressed
10 to be possessed by a particular
person,

either alone or together with any other
person or persons, that particular per-
son or that particular person and that
other or those other persons, as the
15 case may be, shall, for the purposes of
this Part and Part V, be deemed to
have been the person or persons by
whom the disposition of the property
is made and the property in the dis-
20 position shall be deemed to be the
property in the disposition made by
the controlled company.

(16) Where a disposition of property, being
25 the payment of interest, is made by a controlled
company, either alone or together with any other
person or persons, the associates of that company
shall, for the purposes of this Act, be deemed to
have been the persons by whom the disposition
30 of property is made and the property in the
disposition shall be deemed to be that interest.

(17) Notwithstanding any other provisions
of this Act, a disposition of property referred to
in subsection (15) (a) (i), being a distribution
35 of dividend, or a disposition of property referred
to in subsection (15) (a) (ii) or (16), any such

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 disposition being a disposition of property deemed
pursuant to subsection (15) or (16) to have
been made by a person other than the controlled
company, shall, for the purposes of this Part and
Part V, be deemed to have been made without
10 consideration except to the extent that—
- (a) in case of a disposition referred to in
subsection (15) (a) (i), being a
distribution of dividend, or a dis-
position referred to in subsection (15)
15 (a) (ii), the consideration, if any, that
passed from the person to whom the
disposition is made to the person or
persons by whom the disposition is
made or to the controlled company
20 was, in the opinion of the Commis-
sioner, full consideration having
regard—
- (i) to the nature and extent of the
right or power that could have
25 been exercised by the person
or persons by whom the
disposition is deemed to be
made;
- (ii) to any increase in the value of
30 the total property of the person
to whom the disposition is
deemed to be made that
resulted from the disposition;
- (iii) to the nature and extent of the
35 respective interests of the
associates of the company; and

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (iv) to any other circumstances that
he thinks relevant; and
- (b) in the case of a disposition referred to
in subsection (16), the Commissioner
10 is satisfied that the payment of the
interest was made in the course of a
normal commercial transaction and
that it would not be just and reason-
able in the circumstances that that
subsection should apply.
- 15 (18) For the purposes of subsection (17), a
disposition of property referred to in subsection
(15) shall be deemed to have been made for full
consideration—
- 20 (a) where the disposition (in the case of a
distribution of dividend or an allot-
ment or issue of shares) is made to all
the shareholders of the company in
proportion to their respective paid-up
shareholdings (not being shareholdings
25 entitled to a fixed rate of dividend); or
- (b) to the extent that the person or persons
deemed by subsection (15) to be the
person or persons by whom the
disposition is made disposes or dispose
30 of the property in the disposition to
himself or themselves.
- (19) Where a person dies and within three
years before his death, he was either an associate,
referred to in paragraph (c) of the definition of

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 “Associate” in subsection (1), of a controlled
company or was an associate of a controlled
company by reason of his possessing, or possess-
10 ing a right the exercise of which would directly
or indirectly have enabled him to acquire, the
majority of the voting power or control over the
majority of the voting power at a meeting of, or
in relation to, a controlled company in relation
to any disposition of property by the company,
15 whether or not he has that power in relation to
any other disposition of property by the company
(that person being referred to in this subsection
as a controller of that company)—
- 20 (a) he shall be deemed to have been,
immediately before the prescribed
time, possessed of an interest in the
company and that interest shall be
deemed to be property of which he
shall be deemed to have made a
disposition at the prescribed time;
- 25 (b) the value of the property in the dis-
position shall be deemed to be an
amount equal to the net value of the
assets of the company immediately
before the prescribed time less, where
30 the company was wound up within
three years before his death, any
amount received by him on the winding
up out of those net assets;
- 35 (c) the property in the disposition shall be
deemed to be personal property situate
in New South Wales except to the

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 extent that, if that controller is at his
death domiciled outside New South
Wales, the Commissioner, in his
absolute discretion, determines that
10 that property shall not be regarded as
personal property situate in New South
Wales; and
- (d) the disposition shall be deemed to have
been made to the other associate or
15 associates of the company in such
proportions as the Commissioner, in his
absolute discretion, may determine but
having regard to the matters referred
to in subsection (22).
- (20) The references in subsection (19) (a)
20 and (b) to the prescribed time in relation to a
controller, referred to in subsection (19), of a
controlled company is—
- (a) where the company had not been
25 wound up before the death of the con-
troller, a reference to the time of his
death; or
- (b) where the company had been wound
up within three years before the death
30 of the controller, the time of the wind-
ing up of the company.
- (21) Notwithstanding any other provisions of
this Act, a disposition of property referred to in
subsection (19) shall, for the purposes of this

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 Part and Part V, be deemed to have been made
without consideration except to the extent that
the Commissioner, in his absolute discretion,
determines that it would not be just and reason-
10 able to regard the disposition as having been
made without consideration, and in making that
determination the Commissioner shall have
regard to—
- 15 (a) the extent, if any, to which the value
of the rights and powers of the con-
troller referred to in subsection (19) in
the controlled company are, in the
opinion of the Commissioner, reflected
in the dutiable estate of the controller,
20 other than in the property referred to
in subsection (19) (a);
- (b) the nature and extent of the interest of
the controller in the controlled com-
pany and of other associates of that
company immediately before the
25 prescribed time referred to in
subsection (19) (a);
- (c) any increase in the value of the total
property of the person to whom the
disposition is made that resulted from
30 the disposition; and
- (d) any other matters that he thinks
relevant.

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

5 (22) The matters to which the Commissioner
is required to have regard, as referred to in
subsection (19) (d), are—

10 (a) the nature and extent of any right or
power that could have been exercised
by the controller referred to in sub-
section (19) in relation to the con-
trolled company;

15 (b) any increase in the value of the total
property of the person or persons to
whom the disposition is made that
resulted from the disposition;

(c) the nature and extent of the respective
interests of the associates of the com-
pany; and

20 (d) any other circumstances that he thinks
relevant.

(23) For the purposes of this section, except
subsections (19), (20), (21) and (22)—

25 (a) a member of a company limited by
guarantee or limited both by shares
and guarantee, that member being a
guarantor of that company, shall be
deemed to be the holder of shares in
the company as if it were a company
30 limited only by shares, those shares
having a total paid-up value equal to
the amount of the guarantee and hav-
ing attached to them the same rights,

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 powers and obligations as the guarantor who is deemed to be the holder of them enjoys or is subject to in relation to the company; and
- 10 (b) any distribution of a share in the profits or income of such a company shall be deemed to be a distribution of a dividend.
- 15 (24) Except where otherwise expressly provided, where, under this Part, the dutiable estate of a deceased person would, but for this subsection, include two or more different kinds of property the disposition of which, in the opinion of the Commissioner, arose from the same or substantially similar circumstances, the dutiable
- 20 estate of that deceased person shall include only property of such one of those kinds as attracts the higher or highest amount of death duty.

(2) (a) Section 102 (2) (c) (i)—

Omit “, or the proceeds of the sale thereof,”.

25 (b) Section 102 (2) (c)—

After “deceased.”, where lastly occurring, insert :—

30 The property passing under any such settlement, trust or other disposition of property made by the deceased shall be deemed to include the proceeds of the sale or conversion of the property originally comprised in the settlement,

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

5 trust or other disposition of property and all
investments for the time being representing it and
all property which has in any manner been
substituted for the property so comprised.

10 Where the property originally comprised in
the settlement, trust or other disposition of
property cannot, in the opinion of the
Commissioner, be identified in the proceeds of
the sale or conversion of that property or in
15 investments representing it or in any substituted
property at the death of the deceased, the
property to be deemed to be included shall
(except where the property so comprised was in
a disposition of property made for the purchase
of an annuity to a person authorised to carry on
20 insurance business under, or a person not
prohibited from carrying on insurance business
by, the Insurance Acts 1973 of the Parliament
of the Commonwealth) be the value of that
property at the time the settlement, trust or other
25 disposition of property was made or such lesser
value as is determined by the Commissioner in
his absolute discretion, having regard to any
depreciation to which, in his opinion, that
property would have been subject had it remained
30 in the hands of the deceased until his death or
where the property so comprised was money, the
actual amount of that money.

(c) Section 102 (2) (d)—

35 After "property", insert " , other than property
referred to in section 100 (2) (da),".

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

5 (d) Section 102 (2) (d)—

After “died.”, insert :—

10 The property comprised in any such gift made
by the deceased (whether on, before or after the
date of assent to the Stamp Duties (Amendment)
Act, 1976) shall be deemed to include the
proceeds of the sale or conversion of the property
originally comprised in the gift and all invest-
ments for the time being representing the
property so comprised and all property which
15 has in any manner been substituted for the
property so comprised.

20 Where the property originally comprised in
the gift cannot, in the opinion of the Commis-
sioner, be identified in the proceeds of the sale
or conversion of that property or in investments
representing it or any substituted property at the
death of the deceased, the property to be deemed
to be included shall be the value of that property
at the time the gift was made or such lesser value
25 as is determined by the Commissioner, in his
absolute discretion, having regard to any
depreciation to which, in his opinion, that
property would have been subject had it
remained in the hands of the deceased until his
30 death or where the property so comprised was
money, the actual amount of that money.

35 Where the deceased retains possession or
enjoyment of part only of the property, being
land, or of part only of the property, being land,
which by virtue of this subparagraph is deemed

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

5 to be included in the property comprised in the
gift, or does not retain the whole of the benefit
of any such property, the property to be included
in the estate of the deceased shall be such portion
10 of the value of that property as the Commis-
sioner, in his absolute discretion, may determine.

Where the property comprised in the gift was
in a disposition of property made by a controlled
company and the deceased is by section 100
15 (15) or (16) deemed to be the person or one
of the persons by whom that disposition was
made, possession and enjoyment of the property
shall be deemed not to have been retained to the
exclusion of the deceased or of any benefit to him
if at any time during the period of three years
20 before his death he was an associate of that
controlled company.

(e) Section 102 (2) (da)—

After section 102 (2) (d), insert :—

25 (da) Any property, being property referred to
in section 100 (13) (a), comprised in
any gift made pursuant to a disposition
of property referred to in paragraph (e)
of the definition of "Disposition of
30 property" in section 100 (1) (whether or
not pursuant to a disposition of property
referred to in any other paragraph of that
definition) by the deceased at any time
except to the extent that the deceased
35 had, during the period of three years
ending with his death, no right or no

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 means, except as a bona fide purchaser
for value, of obtaining the right to
increase, decrease or transfer the benefit
of the increase referred to in paragraph
(e) (ii) of that definition.
- 10 (3) Section 103A (3)—
After section 103A (2), insert :—
(3) Where—
- 15 (a) death duty has been paid under this Act on
property referred to in section 100 (13)
(a), (15), (16) or (19) and included in
the dutiable estate of a deceased person
(not being property in any other disposition
of property included in his dutiable estate);
and
- 20 (b) the Commissioner is satisfied death duty has
been lawfully paid under the law of another
state, territory or country (not being a law
of the Parliament of the Commonwealth) on
that property,
- 25 the Commissioner may, in his absolute discretion,
refund such part of the death duty paid under this
Act as he, in his absolute discretion, thinks fit.
- (4) Section 120 (8)—
After section 120 (7), insert :—
- 30 (8) A reference in this section to property included
in the dutiable estate of a deceased person does not
include a reference to—

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (a) property in a disposition of property that is
a disposition by reason only of section 100
(7) or (8);
- 10 (b) property in a disposition of property that is
a disposition of property by reason only of
paragraph (e) of the definition of "Dis-
position of property" in section 100 (1); or
- (c) property in a disposition of property deemed
by section 100 (15), (16) or (19) to have
been made by any person or persons.

15 (5) Section 120A—

After section 120, insert :—

20 120A. (1) Where a person dies and that person
has at any time made a disposition of property referred
to in section 120 (8) (a), (b) or (c), which is
included in the dutiable estate of the deceased, the
person to whom the disposition is made or the property
therein passes shall, within three months after the date
of death of the deceased, notify the Commissioner in a
form approved by the Commissioner of particulars of
25 the disposition, unless the Commissioner has
previously been notified of particulars of the
disposition.

30 (2) A person who wilfully fails to comply
with the provisions of subsection (1) shall be liable
to a fine not exceeding an amount equal to double the
death duty payable in respect of the property in the
disposition referred to in that subsection.

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (3) Where—
- (a) a disposition of property is made by a controlled company and under section 100 (15) or (16) a person is deemed to have made a disposition of that property;
- 10 (b) that person dies; and
- (c) the property in the disposition deemed to have been made by him is included in his dutiable estate,
- 15 the death duty payable in respect of the property referred to in paragraph (c)—
- (d) shall constitute as from that person's death a floating charge, in priority to all other charges, on the New South Wales assets owned by that controlled company at that person's death or acquired at any time thereafter and a charge on any such assets that have been distributed, but no such charge shall affect the title of a bona fide purchaser for value (whether before or after the death of the deceased) without notice; and
- 20
- 25 and
- (e) to the extent that it has not been paid, shall be a debt payable to Her Majesty by the controlled company and by each person, except the deceased, by whom the disposition is deemed by section 100 (15) or (16) to have been made, and shall be recoverable in any court of competent jurisdiction.
- 30

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (4) Where property in a disposition of
property referred to in paragraph (e) of the definition
of "Disposition of property" in section 100 (1) or
referred to in section 100 (7), (8) or (19) is
10 included in the dutiable estate of a deceased person
and the death duty payable in respect of the property
has not been paid within six months after the death of
the deceased, the death duty on that property, to the
extent that it has not been paid, shall, together with
15 interest thereon at the rate of eight per centum per
annum from the date of the expiration of the period of
six months after the death of the deceased or, if
administration has been first granted out of New South
Wales, from the date of the expiration of the period
of twelve months after the death of the deceased, be
20 a debt payable to Her Majesty by the person by whom
the disposition was made and shall be recoverable in
any court of competent jurisdiction.

(6) Section 137—

Omit the section, insert instead :—

- 25 137. (1) Every contract, agreement or arrange-
ment made or entered into orally or in writing whether
on, before or after the date of assent to the Stamp
Duties (Amendment) Act, 1976, so far as it has or
purports to have the purpose of effect of in any way
30 directly or indirectly—
- (a) relieving any person from liability to pay
any death duty or file any statement;
- (b) defeating, evading or avoiding any death
duty or liability imposed on any person by
35 this Act;

Provision
to prevent
evasion or
avoidance
of duty.

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (c) affecting the value of any property which
forms or is deemed to form part of the
dutable estate of any person under this
Act; or
- 10 (d) preventing the operation of Part IV or V in
any respect,
- shall be absolutely void for the purposes of this Act
or in regard to any proceedings under this Act but
without prejudice to such validity as it may have in
any other respect or for any other purpose.
- 15 (2) Where under subsection (1) a contract,
agreement or arrangement is avoided, the property the
subject-matter of the contract, agreement or arrange-
ment shall be deemed to form part of the dutiable
estate of the deceased person.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1976

[40c]

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

R. E. WARD,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 25 November, 1976.*

New South Wales



ANNO VICESIMO QUINTO

ELIZABETHÆ II REGINÆ

Act No. , 1976.

**An Act to amend the Stamp Duties Act, 1920, with respect
to death duties.**

BE

Stamp Duties (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Stamp Duties Short (Amendment) Act, 1976". title.

2. The Stamp Duties Act, 1920, is amended in the manner set forth in Schedules 1 and 2. Amendment of Act No. 47, 1920.

10

SCHEDULE 1.

Sec. 2.

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING TO DEATH DUTY EXEMPTION FOR WIDOWS AND WIDOWERS.

(1) Section 101D (6)—

After section 101D (5), insert :—

15

(6) In the case of every person who dies on or after the date of assent to the Stamp Duties (Amendment) Act, 1976, whether in New South Wales or elsewhere and who was at the date of his death domiciled in New South Wales, no death duty shall be chargeable—

20

(a) on any property, other than non-aggregated property, included in the dutiable estate of the deceased—

25

(i) being property which passes by the intestacy or under the will of the deceased to the widow or widower of the deceased; or

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO DEATH DUTY EXEMPTION FOR WIDOWS AND
WIDOWERS—*continued.*

- 5 (ii) being property which, or the value
of which, is included by this Act in
that dutiable estate where the
beneficial interest in the property
on the death of the deceased is
10 vested in or passes to the widow or
widower of the deceased; or
- (b) on any non-aggregated property included
in the dutiable estate of the deceased and
directed by this Act to be separately
15 assessed which passes on the death of the
deceased or at any time determinable by
reference to the death of the deceased to
the widow or widower of the deceased.

(2) Section 112D (9)—

20 After section 112D (8), insert :—

- (9) In the case of every person who dies on or
after the date of assent to the Stamp Duties
(Amendment) Act, 1976, no death duty shall be
payable on any non-aggregated property included in
25 the dutiable estate of the deceased and directed by
this Act to be separately assessed where the
Commissioner is satisfied that any such property
passing on the cesser of the limited interest to the
widow or widower of the person who created the
30 limited interest was included in the estate of the
person who created the limited interest and any duty
payable thereon was paid.

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2.

Sec. 2.

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS.

(1) (a) Section 100—

5 Omit “and the Third Schedule hereto”.

(b) Section 100, definitions of “Associate” and
“Associated operations”—

After the definition of “Administrator”, insert :—

10 “Associate”, in relation to a controlled
company, means—

(a) a director or member of that
company;

15 (b) a person who has any voting
rights at any meeting of, or in
relation to, that company in
relation to any disposition of
property by that company,
whether or not he has any such
rights in relation to any other
disposition of property by that
company; or

25 (c) a person who, by the constitution
of that company, possesses, alone
or together with any other person
or persons—

(i) a right to appoint or
remove any director of
that company; or

30 (ii) a right to veto or vary a
decision at any meeting
of, or in relation to, that
company,

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—continued.**AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.**

5 and includes an associate, as hereinbefore
defined, of another controlled company
which is one of the five or fewer persons
under whose control the firstmentioned
10 controlled company is or to which the
firstmentioned controlled company is
related within the meaning of the
Companies Act, 1961.

15 “Associated operations” means any two or
more operations, being or being of a kind
similar to—

(a) operations which affect the same
property, or one or more of which
affects or affect some property and
the other or others of which
20 affects or affect property which
represents, whether directly or
indirectly, that property, or
income arising from that property,
or any property representing
25 accumulations of any such
income; or

(b) operations—
(i) each of which is effected
with reference to another
or each of which, except
30 one, is effected with
reference to another, that
one being an operation
with reference to which
the other operation is or
the other operations are
35 effected; or

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (ii) each of which is effected
with a view to enabling
another of those opera-
tions to be effected or to
10 facilitating its being
effected or each of which,
except one, is effected
with that view, that one
being an operation with a
view to effecting which or
15 to facilitating the effect-
ing of which the other
operation is or the other
operations are effected,

20 whether those operations are effected by
the same person or by different persons
and whether or not they or any two or
more of them are simultaneous.

(c) Section 100, definitions of “Controlled company”
and “Corporation”—

25 After the definition of “Child”, insert :—

“Controlled company”, in relation to a
disposition of property, means any
corporation which, at any relevant time
referred to in subsection (6) (whether
30 that time is on, before or after the date
of assent to the Stamp Duties (Amend-
ment) Act, 1976) is under the control
of not more than five persons, is not a
listed corporation, is not a corporation
35 in which the public are substantially

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

5 interested and is not a subsidiary of a
corporation in which corporation the
public are substantially interested, but
does not include a corporation the
10 members of which are precluded, by its
constitution, from being paid any
dividend and would, if the corporation
were to be wound up, be precluded from
receiving any part of the assets of the
corporation.

15 “Corporation” has the meaning ascribed
thereto in section 5 (1) of the Companies
Act, 1961.

(d) Section 100, definition of “Director”—

20 Before the definition of “Disposition of property”,
insert :—

“Director” has the meaning ascribed to that
expression in the Companies Act, 1961.

(e) Section 100, definition of “Disposition” of
property”—

25 Omit the definition, insert instead :—

“Disposition of property” means—

30 (a) a conveyance, transfer, assign-
ment, mortgage, delivery,
payment or other alienation of
property whether at law or in
equity;

(b) the creation of any trust;

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (c) the release, discharge, surrender,
forfeiture or abandonment at law
or in equity of any debt, contract
or chose in action, or of any right,
10 power, estate or interest in or
over any property ;
- (d) the exercise of a general power of
appointment in favour of any
person other than the donee of
the power ;
- 15 (e) an agreement, obligation, engage-
ment, arrangement, contract or
transaction entered into by a
person, an act done or effected
or omitted to be done or effected
20 by a person, or a forbearance by
a person to exercise a right or
power, as a result of which—
- (i) the value of the total
property of that person is,
25 whether during his life-
time or upon or in
consequence of his death,
directly or indirectly
diminished ; and
- 30 (ii) the value of the total
property of some other
person is directly or
indirectly increased,
- 35 whether or not at the request or
subject to the acquiescence or on
behalf of a person ;

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—continued.

**AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.**

- 5 (f) the distribution by a controlled
company of a dividend upon
shares held in that company or
the payment of interest on money
advanced to that company,
10 whether or not the dividend or
interest is paid to the shareholder
or creditor entitled thereto,
accumulated or invested on his
behalf, credited in his name to a
15 loan account or fund however
designated or otherwise held or
dealt with on his behalf or as he
may permit or direct; or
- 20 (g) the allotment or issue of shares in
or debentures of a controlled
company, the grant of rights to
a person in or in relation to a
controlled company or the grant
25 of an option to take up unissued
shares in a controlled company
or to acquire rights in or in
relation to a controlled company,
- 30 whether or not effected by an instrument
in writing, by a person alone or by two
or more persons or by associated
operations and whether effected on,
before or after the date of assent to the
Stamp Duties (Amendment) Act, 1976.

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

5 (f) Section 100, definition of "Listed corporation"—

After the definition of "Gift", insert :—

10 "Listed corporation" means a corporation any
of the shares in which are quoted on a
stock exchange and any corporation
which is, by virtue of section 6 (5) of
the Companies Act, 1961, deemed to be
related to a corporation any of the shares
in which are quoted on a stock exchange
and in none of the shares in which a
15 natural person has a beneficial interest,
whether or not the stock exchange is a
stock exchange within the meaning of
the Securities Industry Act, 1975.

(g) Section 100, definition of "Share"—

20 After the definition of "Settlement", insert :—

"Share", in relation to a controlled company,
includes stock in that company.

(h) Section 100 (2)–(24)—

At the end of section 100, insert :—

25 (2) For the purposes of the definitions of
"Associate" and "Controlled company" in sub-
section (1)—

30 (a) "a subsidiary of a corporation" has the
same meaning as that expression has
in the Companies Act, 1961;

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (b) a corporation shall be deemed to be a
corporation in which the public are
substantially interested only if—
- 10 (i) the right to exercise more than
twenty-five per centum of the
voting power in respect of all
of the matters that may be
dealt with at a general meeting
of the corporation is held on
their own behalf by persons
15 other than a controlled com-
pany or an associate of a
controlled company; and
- 20 (ii) in the case of a corporation
limited by shares or by shares
and guarantee, the right to
transfer those shares is not
restricted and those shares are,
25 in the opinion of the Commis-
sioner, generally available for
purchase by the public;
- (c) a corporation shall be deemed to be
under the control of not more than five
persons—
- 30 (i) if any five or fewer persons
together possess, or possess a
right the exercise of which
would directly or indirectly
enable them to acquire, the
majority of the voting power
35 in relation to any matter at a

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 general meeting of the corporation, whether or not possessed in relation to any other matter that may be dealt with at such a meeting;
- 10 (ii) if any five or fewer persons together exercise, or are able to exercise, or possess a right the exercise of which would directly or indirectly enable
- 15 them to acquire a right to exercise, direct or indirect control of the affairs, or any of the affairs, of the corporation and they cannot be deprived
- 20 of that control by the exercise of the voting power of any other person or persons at a general meeting of the corporation;
- 25 (iii) if, in the case of a corporation limited by shares or by shares and guarantee, any five or fewer persons together possess,
- 30 or possess a right the exercise of which would directly or indirectly enable them to acquire, shares in the corporation, the paid-up amount of which is more than one-half of the paid-
- 35 up share capital of the corporation;

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (iv) if any five or fewer persons
together possess a right, or
possess a right the exercise of
which would directly or in-
10 directly enable them to acquire
the right, being in either case
a right which would, if the
whole of the income of the
corporation were in fact
15 distributed to the members,
entitle them to receive more
than one-half of the amount so
distributed; or
- 20 (v) if any five or fewer persons
would, if the corporation were
to be wound up, be entitled to
receive more than one-half of
the net assets of the corporation
which would be available for
distribution; and
- 25 (d) in determining whether a corporation
is or is not under the control of not
more than five persons, a person who
is related to another person and that
other person, a person who is a
30 nominee of another person and that
other person and any other nominees
of that other person, persons in partner-
ship, or persons interested in any
shares or obligations of the corpora-
35 tion which are subject to any trust or
are part of the estate of a deceased
person, shall be treated as one person.

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (3) For the purposes of subsection (2)
(d)—
- 10 (a) a person shall be deemed to be related
to another person if one of those
persons is the lineal issue, brother,
sister, lineal issue of a brother or sister,
spouse, ancestor of the spouse, brother
or sister of the spouse, spouse of the
brother or sister of the spouse, lineal
issue of the brother or sister of the
15 spouse, spouse of the lineal issue,
spouse of a brother or sister, spouse of
the lineal issue of a brother or sister or
spouse of the lineal issue of the brother
or sister of the spouse of the other of
20 those persons;
- (b) a corporation shall be deemed to be
related—
- 25 (i) to a person, if the corporation
is a controlled company and
any of its associates is related,
as mentioned in paragraph (a),
to that person; or
- 30 (ii) to another corporation, if those
corporations are controlled
companies and either if any
associate of one of them is
related, as mentioned in
paragraph (a), to any associate
of the other of them or if they
35 are related corporations within
the meaning of the Companies
Act, 1961; and

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—continued.**AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.**

- 5 (c) if any two persons are related to
another person, as mentioned in
paragraph (a), those two persons
shall, although they are not related to
10 one another as so mentioned, be
deemed to be related to one another.
- (4) A reference in subsection (3) (a) to
lineal issue includes a reference—
(a) to a step-child; and
(b) to an adopted child,
15 and a step-child shall, for the purposes of
subsection (3) (a), be deemed to be related to
any other persons in the same manner as he
would be if he were the child of both his step-
parent and the spouse of his step-parent.
- 20 (5) For the purposes of subsection (2) (d),
a person shall be deemed to be the nominee of
another person in respect of a corporation if,
whether directly or indirectly, he possesses on
25 behalf of that other person, or may be required
to exercise on the direction of or on behalf of
that other person, any right or power in relation
to that corporation.
- (6) The reference in the definition of
30 “Controlled company” in subsection (1) to the
relevant time is a reference to any time during
the period ending with the death of the deceased
and beginning at the date of the disposition of
property or, if that disposition of property was
35 effected by associated operations, at the date of
the earliest of those operations.

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (7) Where a debt, contract, chose in action
or a right, power, estate or interest in or over
property is irrecoverable or unenforceable
through the lapse of time or otherwise, it shall—
- 10 (a) for the purposes of paragraph (c) of
the definition of "Disposition of
property" in subsection (1), be deemed
to have been released, discharged,
surrendered, forfeited, renounced,
disclaimed or abandoned; and
- 15 (b) for the purposes of this Part and Part
V, be deemed to have been released,
discharged, surrendered, forfeited,
renounced, disclaimed or abandoned at
the time when it became so irrecover-
20 able or unenforceable.
- (8) Where, but for the fact that the
transaction from which it arises or which it
constitutes is void, a debt, contract, chose in
action or a right, power, estate or interest in or
25 over property would arise or be constituted and
be recoverable or enforceable, the debt, contract,
chose in action, right, power, estate or interest
shall—
- 30 (a) for the purposes of paragraph (c) of
the definition of "Disposition of
property" in subsection (1), be
deemed to have been released,
discharged, surrendered, forfeited,
renounced, disclaimed or abandoned;
35 and

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

5 (b) for the purposes of this Part and Part
V, be deemed to have been released,
discharged, surrendered, forfeited, re-
nounced, disclaimed or abandoned at
10 the time when the transaction is
entered into.

(9) Neither subsection (7) nor subsection
(8) applies to or in respect of a debt, contract,
chase in action, right, power, estate or interest
15 in or over property if the Commissioner is satis-
fied that the transaction was a normal commercial
transaction and that it would not be just and
reasonable in the circumstances that subsection
(7) or (8), as the case may be, should apply.

(10) Where, after any debt, contract, chase
20 in action or any right, power, estate or interest
in or over property is to be deemed to have been
released, discharged, surrendered, forfeited,
renounced, disclaimed or abandoned, as men-
25 tioned in subsection (7) or (8), so as to con-
stitute a gift, there passes from the person to
whom the disposition is made to the person by
whom the disposition is made any consideration
(in this subsection referred to as "return con-
30 sideration") that, had the debt, contract, chase
in action, right, power, estate or interest in or
over property not been irrecoverable or
unenforceable or not arisen from or not con-
stituted a void transaction, would have been
35 consideration to which that lastmentioned person
was entitled on account of the debt, contract,

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 chose in action or right, power, estate or interest
in or over property, then, for the purposes of this
Part and Part V—
- (a) the value of the property in the gift
shall be reduced by the return con-
10 sideration; and
- (b) the passing of the return consideration
shall be deemed not to be a disposition
of property.
- (11) For the purposes of paragraph (e) of
15 the definition of “Disposition of property” in
subsection (1), the passing of a resolution or the
making of a decision by, within or on behalf of
a controlled company shall be deemed to be a
transaction entered into by the controlled com-
20 pany.
- (12) Without affecting subsection (13) (b),
for the purposes of this Part and Part V—
- (a) a diminution in the value of the total
25 property of a person, as referred to in
paragraph (e) (i) of the definition of
“Disposition of property” in subsection
(1), shall be deemed to occur by virtue
of a result referred to in paragraph (e)
30 of that definition if the value of all of
the property to which that person is
beneficially entitled immediately after
that result is less, by virtue of that
result, than the value of all of the
35 property to which he was beneficially
entitled immediately before that result;
and

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (b) an increase in the value of the total
property of a person, as referred to in
paragraph (e) (ii) of that definition,
shall be deemed to occur by virtue of a
10 result referred to in paragraph (e) of
that definition if the value of all of the
property to which that person is
beneficially entitled immediately after
that result is greater, by virtue of that
15 result, than the value of all of the
property to which he was beneficially
entitled immediately before that result,

whether or not the diminution and increase are
simultaneous.
- 20 (13) Except where otherwise expressly pro-
vided, for the purposes of this Part and Part V—
- (a) the diminution of the value of the total
property of the person referred to in
paragraph (e) (i) of the definition of
25 "Disposition of property" in subsection
(1) shall be deemed to be property;
- (b) a disposition of property referred to in
paragraph (e) of that definition shall
be deemed to be made and the property
therein to pass at the time the value of
30 total property of the person referred to
in paragraph (e) (ii) of that definition
is increased, but if that time is at the
death of the deceased or is a time
related to his death shall be deemed to
35 be made immediately before his death;

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (c) the person referred to in paragraph (e)
(i) of that definition shall be deemed
to be the person by whom the disposi-
tion is made or from whom the
property therein passes and the person
10 referred to in paragraph (e) (ii) of
that definition shall be deemed to be
the person to whom the disposition is
made or to whom the property therein
passes;
- 15 (d) the value of the property in the disposi-
tion shall be deemed to be an amount
that is equivalent to the amount by
which the value of the total property—
20 (i) of the person referred to in
paragraph (e) (i) of that
definition is diminished; or
(ii) of the person referred to in
paragraph (e) (ii) of that
definition is increased,
25 whichever is the greater;
- (e) in determining whether or not an
increase in the value of the total
property of a person referred to in
30 paragraph (e) (ii) of that definition
has occurred and, if so, the value of
the increase, no allowance shall be
made in respect of any contingency
affecting the interest of that person;
- 35 (f) in determining whether or not a
diminution in the value of the total
property of the person referred to in

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 paragraph (e) (i) of that definition
has occurred and, if so, the value of the
diminution, no allowance shall be made
in respect of any contingency affecting
the interest of that person; and
- 10 (g) the property the subject of the dis-
position shall be deemed to be personal
property situate in New South Wales
except to the extent that, if the person
referred to in paragraph (e) (i) of
- 15 that definition is at his death domiciled
outside New South Wales, the Com-
missioner, in his absolute discretion,
determines that that property shall not
be regarded as being personal property
- 20 situate in New South Wales.
- (14) Where any consideration for a disposi-
tion of property consists of a covenant, promise
or option entered into or granted to a deceased
person and that covenant, promise or option
remained unperformed or unexercised, in whole
or in part, at his death, and could only be per-
formed or exercised during his lifetime, the
disposition shall be deemed to be a gift made
immediately before his death the value of which
shall be deemed to be the consideration in money
or money's worth paid or payable by the
deceased in respect of the covenant, promise or
option reduced by the value of such part, if any,
of the covenant, promise or option as was per-
formed or exercised before his death.
- 25
- 30
- 35

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

5 (15) Where—

(a) a disposition of property—

10 (i) not being an allotment or
issue of shares, the grant of
an option to take up unissued
shares or the payment of
interest, is made by a controlled
company, either alone or
together with any other person
or persons without full con-
sideration in money or money's
worth; or

20 (ii) being an allotment or issue of
shares or the grant of an
option to take up unissued
shares, is made by a controlled
company; and

25 (b) the passing of the resolution or the
making of the decision whereby the
disposition was made or the obligation
to make the disposition was created—

30 (i) resulted, whether wholly or
partly or directly or indirectly,
from the exercise of a right or
power that was possessed or
that, by the constitution of the
controlled company, was
expressed to be possessed by a
particular person; or

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (ii) could have been prevented by
the exercise of a right or power
that was possessed or that, by
the constitution of the con-
10 trolled company, was expressed
to be possessed by a particular
person,
either alone or together with any other
person or persons, that particular per-
son or that particular person and that
15 other or those other persons, as the
case may be, shall, for the purposes of
this Part and Part V, be deemed to
have been the person or persons by
whom the disposition of the property
20 is made and the property in the dis-
position shall be deemed to be the
property in the disposition made by
the controlled company.
- 25 (16) Where a disposition of property, being
the payment of interest, is made by a controlled
company, either alone or together with any other
person or persons, the associates of that company
shall, for the purposes of this Act, be deemed to
30 have been the persons by whom the disposition
of property is made and the property in the
disposition shall be deemed to be that interest.
- 35 (17) Notwithstanding any other provisions
of this Act, a disposition of property referred to
in subsection (15) (a) (i), being a distribution
of dividend, or a disposition of property referred
to in subsection (15) (a) (ii) or (16), any such

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 disposition being a disposition of property deemed
pursuant to subsection (15) or (16) to have
been made by a person other than the controlled
company, shall, for the purposes of this Part and
10 Part V, be deemed to have been made without
consideration except to the extent that—
- (a) in case of a disposition referred to in
subsection (15) (a) (i), being a
distribution of dividend, or a dis-
position referred to in subsection (15)
15 (a) (ii), the consideration, if any, that
passed from the person to whom the
disposition is made to the person or
persons by whom the disposition is
made or to the controlled company
20 was, in the opinion of the Commis-
sioner, full consideration having
regard—
- (i) to the nature and extent of the
right or power that could have
25 been exercised by the person
or persons by whom the
disposition is deemed to be
made;
- (ii) to any increase in the value of
30 the total property of the person
to whom the disposition is
deemed to be made that
resulted from the disposition;
- (iii) to the nature and extent of the
35 respective interests of the
associates of the company; and

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (iv) to any other circumstances that
he thinks relevant; and
- (b) in the case of a disposition referred to
in subsection (16), the Commissioner
is satisfied that the payment of the
10 interest was made in the course of a
normal commercial transaction and
that it would not be just and reason-
able in the circumstances that that
subsection should apply.
- 15 (18) For the purposes of subsection (17), a
disposition of property referred to in subsection
(15) shall be deemed to have been made for full
consideration—
- 20 (a) where the disposition (in the case of a
distribution of dividend or an allot-
ment or issue of shares) is made to all
the shareholders of the company in
proportion to their respective paid-up
shareholdings (not being shareholdings
25 entitled to a fixed rate of dividend); or
- (b) to the extent that the person or persons
deemed by subsection (15) to be the
person or persons by whom the
disposition is made disposes or dispose
30 of the property in the disposition to
himself or themselves.

(19) Where a person dies and within three
years before his death, he was either an associate,
referred to in paragraph (c) of the definition of

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 “Associate” in subsection (1), of a controlled
company or was an associate of a controlled
company by reason of his possessing, or possess-
10 ing a right the exercise of which would directly
or indirectly have enabled him to acquire, the
majority of the voting power or control over the
majority of the voting power at a meeting of, or
in relation to, a controlled company in relation
15 to any disposition of property by the company,
whether or not he has that power in relation to
any other disposition of property by the company
(that person being referred to in this subsection
as a controller of that company)—
- 20 (a) he shall be deemed to have been,
immediately before the prescribed
time, possessed of an interest in the
company and that interest shall be
deemed to be property of which he
shall be deemed to have made a
disposition at the prescribed time;
- 25 (b) the value of the property in the dis-
position shall be deemed to be an
amount equal to the net value of the
assets of the company immediately
30 before the prescribed time less, where
the company was wound up within
three years before his death, any
amount received by him on the winding
up out of those net assets;
- 35 (c) the property in the disposition shall be
deemed to be personal property situate
in New South Wales except to the

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

5 extent that, if that controller is at his
death domiciled outside New South
Wales, the Commissioner, in his
absolute discretion, determines that
10 that property shall not be regarded as
personal property situate in New South
Wales; and

(d) the disposition shall be deemed to have
been made to the other associate or
15 associates of the company in such
proportions as the Commissioner, in his
absolute discretion, may determine but
having regard to the matters referred
to in subsection (22).

(20) The references in subsection (19) (a)
20 and (b) to the prescribed time in relation to a
controller, referred to in subsection (19), of a
controlled company is—

(a) where the company had not been
wound up before the death of the con-
25 troller, a reference to the time of his
death; or

(b) where the company had been wound
up within three years before the death
of the controller, the time of the wind-
30 ing up of the company.

(21) Notwithstanding any other provisions of
this Act, a disposition of property referred to in
subsection (19) shall, for the purposes of this

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 Part and Part V, be deemed to have been made
without consideration except to the extent that
the Commissioner, in his absolute discretion,
determines that it would not be just and reason-
10 able to regard the disposition as having been
made without consideration, and in making that
determination the Commissioner shall have
regard to—
- 15 (a) the extent, if any, to which the value
of the rights and powers of the con-
troller referred to in subsection (19) in
the controlled company are, in the
opinion of the Commissioner, reflected
in the dutiable estate of the controller,
20 other than in the property referred to
in subsection (19) (a);
- 25 (b) the nature and extent of the interest of
the controller in the controlled com-
pany and of other associates of that
company immediately before the
prescribed time referred to in
subsection (19) (a);
- 30 (c) any increase in the value of the total
property of the person to whom the
disposition is made that resulted from
the disposition; and
- (d) any other matters that he thinks
relevant.

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

5 (22) The matters to which the Commissioner
is required to have regard, as referred to in
subsection (19) (d), are—

10 (a) the nature and extent of any right or
power that could have been exercised
by the controller referred to in sub-
section (19) in relation to the con-
trolled company;

15 (b) any increase in the value of the total
property of the person or persons to
whom the disposition is made that
resulted from the disposition;

 (c) the nature and extent of the respective
interests of the associates of the com-
pany; and

20 (d) any other circumstances that he thinks
relevant.

(23) For the purposes of this section, except
subsections (19), (20), (21) and (22)—

25 (a) a member of a company limited by
guarantee or limited both by shares
and guarantee, that member being a
guarantor of that company, shall be
deemed to be the holder of shares in
the company as if it were a company
30 limited only by shares, those shares
having a total paid-up value equal to
the amount of the guarantee and hav-
ing attached to them the same rights,

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

5 powers and obligations as the guarantor who is deemed to be the holder of them enjoys or is subject to in relation to the company; and

10 (b) any distribution of a share in the profits or income of such a company shall be deemed to be a distribution of a dividend.

15 (24) Except where otherwise expressly provided, where, under this Part, the dutiable estate of a deceased person would, but for this subsection, include two or more different kinds of property the disposition of which, in the opinion of the Commissioner, arose from the same or substantially similar circumstances, the dutiable estate of that deceased person shall include only
20 property of such one of those kinds as attracts the higher or highest amount of death duty.

(2) (a) Section 102 (2) (c) (i)—

Omit “, or the proceeds of the sale thereof,”.

25 (b) Section 102 (2) (c)—

After “deceased.”, where lastly occurring, insert :—

30 The property passing under any such settlement, trust or other disposition of property made by the deceased shall be deemed to include the proceeds of the sale or conversion of the property originally comprised in the settlement,

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

5 trust or other disposition of property and all
investments for the time being representing it and
all property which has in any manner been
substituted for the property so comprised.

10 Where the property originally comprised in
the settlement, trust or other disposition of
property cannot, in the opinion of the
Commissioner, be identified in the proceeds of
the sale or conversion of that property or in
15 investments representing it or in any substituted
property at the death of the deceased, the
property to be deemed to be included shall
(except where the property so comprised was in
a disposition of property made for the purchase
of an annuity to a person not prohibited by the
20 Life Insurance Act 1945–1973 of the Parliament
of the Commonwealth from carrying on life
business within the meaning of that Act) be the
value of that property at the time the settlement,
trust or other disposition of property was made
25 or such lesser value as is determined by the
Commissioner in his absolute discretion, having
regard to any depreciation to which, in his
opinion, that property would have been subject
had it remained in the hands of the deceased
30 until his death or where the property so com-
prised was money, the actual amount of that
money.

(c) Section 102 (2) (d)—

35 After “property”, insert “; other than property
referred to in section 100 (2) (da),”.

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

5 (d) Section 102 (2) (d)—

After “died.”, insert :—

10 The property comprised in any such gift made
by the deceased (whether on, before or after the
date of assent to the Stamp Duties (Amendment)
Act, 1976) shall be deemed to include the
proceeds of the sale or conversion of the property
originally comprised in the gift and all invest-
ments for the time being representing the
property so comprised and all property which
15 has in any manner been substituted for the
property so comprised.

20 Where the property originally comprised in
the gift cannot, in the opinion of the Commis-
sioner, be identified in the proceeds of the sale
or conversion of that property or in investments
representing it or any substituted property at the
death of the deceased, the property to be deemed
to be included shall be the value of that property
at the time the gift was made or such lesser value
25 as is determined by the Commissioner, in his
absolute discretion, having regard to any
depreciation to which, in his opinion, that
property would have been subject had it
remained in the hands of the deceased until his
30 death or where the property so comprised was
money, the actual amount of that money.

35 Where the deceased retains possession or
enjoyment of part only of the property, being
land, or of part only of the property, being land,
which by virtue of this subparagraph is deemed

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—continued.**AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
*continued.***

5 to be included in the property comprised in the
gift, or does not retain the whole of the benefit
of any such property, the property to be included
10 in the estate of the deceased shall be such portion
of the value of that property as the Commis-
sioner, in his absolute discretion, may determine.

Where the property comprised in the gift was
in a disposition of property made by a controlled
company and the deceased is by section 100
15 (15) or (16) deemed to be the person or one
of the persons by whom that disposition was
made, possession and enjoyment of the property
shall be deemed not to have been retained to the
exclusion of the deceased or of any benefit to him
20 if at any time during the period of three years
before his death he was an associate of that
controlled company.

(e) Section 102 (2) (da)—

After section 102 (2) (d), insert :—

25 (da) Any property, being property referred to
in section 100 (13) (a), comprised in
any gift made pursuant to a disposition
of property referred to in paragraph (e)
of the definition of "Disposition of
30 property" in section 100 (1) (whether or
not pursuant to a disposition of property
referred to in any other paragraph of that
definition) by the deceased at any time
except to the extent that the deceased
35 had, during the period of three years
ending with his death, no right or no

Stamp Duties (Amendment).

SCHEDULE 2—continued.

**AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.**

5 means, except as a bona fide purchaser
for value, of obtaining the right to
increase, decrease or transfer the benefit
of the increase referred to in paragraph
(e) (ii) of that definition.

10 (3) Section 103A (3)—

After section 103A (2), insert :—

(3) Where—

15 (a) death duty has been paid under this Act on
property referred to in section 100 (13)
(a), (15), (16) or (19) and included in
the dutiable estate of a deceased person
(not being property in any other disposition
of property included in his dutiable estate);
and

20 (b) the Commissioner is satisfied death duty has
been lawfully paid under the law of another
state, territory or country (not being a law
of the Parliament of the Commonwealth) on
that property,

25 the Commissioner may, in his absolute discretion,
refund such part of the death duty paid under this
Act as he, in his absolute discretion, thinks fit.

(4) Section 120 (8)—

After section 120 (7), insert :—

30 (8) A reference in this section to property included
in the dutiable estate of a deceased person does not
include a reference to—

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (a) property in a disposition of property that is
a disposition by reason only of section 100
(7) or (8);
- 10 (b) property in a disposition of property that is
a disposition of property by reason only of
paragraph (e) of the definition of "Dis-
position of property" in section 100 (1); or
- (c) property in a disposition of property deemed
by section 100 (15), (16) or (19) to have
been made by any person or persons.

15 (5) Section 120A—

After section 120, insert :—

20 120A. (1) Where a person dies and that person has at any time made a disposition of property referred to in section 120 (8) (a), (b) or (c), which is included in the dutiable estate of the deceased, the person to whom the disposition is made or the property therein passes shall, within three months after the date of death of the deceased, notify the Commissioner in a form approved by the Commissioner of particulars of the disposition, unless the Commissioner has previously been notified of particulars of the disposition.

25 (2) A person who wilfully fails to comply with the provisions of subsection (1) shall be liable to a fine not exceeding an amount equal to double the death duty payable in respect of the property in the disposition referred to in that subsection.

30

SCHEDULE

*Stamp Duties (Amendment).*SCHEDULE 2—*continued.*AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (3) Where—
- (a) a disposition of property is made by a controlled company and under section 100 (15) or (16) a person is deemed to have made a disposition of that property;
- 10 (b) that person dies; and
- (c) the property in the disposition deemed to have been made by him is included in his dutiable estate,
- the death duty payable in respect of the property referred to in paragraph (c)—
- 15 (d) shall constitute as from that person's death a floating charge, in priority to all other charges, on the New South Wales assets owned by that controlled company at that person's death or acquired at any time thereafter and a charge on any such assets that have been distributed, but no such charge shall affect the title of a bona fide purchaser for value (whether before or after the death of the deceased) without notice;
- 20 and
- 25 (e) to the extent that it has not been paid, shall be a debt payable to Her Majesty by the controlled company and by each person,
- 30 except the deceased, by whom the disposition is deemed by section 100 (15) or (16) to have been made, and shall be recoverable in any court of competent jurisdiction.

SCHEDULE

*Stamp Duties (Amendment)*SCHEDULE 2—*continued*.AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

5 (4) Where property in a disposition of
property referred to in paragraph (e) of the definition
of "Disposition of property" in section 100 (1) or
10 referred to in section 100 (7), (8) or (19) is
included in the dutiable estate of a deceased person
and the death duty payable in respect of the property
has not been paid within six months after the death of
the deceased, the death duty on that property, to the
extent that it has not been paid, shall, together with
15 interest thereon at the rate of eight per centum per
annum from the date of the expiration of the period of
six months after the death of the deceased or, if
administration has been first granted out of New South
Wales, from the date of the expiration of the period
of twelve months after the death of the deceased, be
20 a debt payable to Her Majesty by the person to whom
the disposition was made and shall be recoverable in
any court of competent jurisdiction.

(6) Section 137—

Omit the section, insert instead:—

25 137. (1) Every contract, agreement or arrange- Provision
ment made or entered into orally or in writing whether to prevent
on, before or after the date of assent to the Stamp evasion or
Duties (Amendment) Act, 1976, so far as it has or avoidance
purports to have the purpose or effect of in any way of duty.
30 directly or indirectly—

- (a) relieving any person from liability to pay
any death duty or file any statement;
- (b) defeating, evading or avoiding any death
duty or liability imposed on any person by
35 this Act;

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (c) affecting the value of any property which
forms or is deemed to form part of the
dutiable estate of any person under this
Act; or
- 10 (d) preventing the operation of Part IV or V in
any respect,
shall be absolutely void for the purposes of this Act
or in regard to any proceedings under this Act but
without prejudice to such validity as it may have in
any other respect or for any other purpose.
- 15 (2) Where under subsection (1) a contract,
agreement or arrangement is avoided, the property the
subject-matter of the contract, agreement or arrange-
ment shall be deemed to form part of the dutiable
estate of the deceased person.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1976

[40c]

Section 1976 (continued)

SCHEDULE 2—continued

AMENDMENTS TO THE STATE PUBLIC ACT 1970, RELATING
TO THE PUBLIC SERVICE OF THE STATE OF MISSISSIPPI—
continued

1. The following shall be the minimum standards for the public service of the State of Mississippi:

2. The following shall be the minimum standards for the public service of the State of Mississippi:

3. The following shall be the minimum standards for the public service of the State of Mississippi:

4. The following shall be the minimum standards for the public service of the State of Mississippi:

5. The following shall be the minimum standards for the public service of the State of Mississippi:

THE HOUSE OF REPRESENTATIVES
OF THE STATE OF NEW YORK
IN SENATE, JANUARY 1, 1902.

REPORT
OF THE
COMMISSIONER OF THE LAND OFFICE.

1

2

3

4

ALBANY: 1902.

STAMP DUTIES (AMENDMENT) BILL, 1976

EXPLANATORY NOTE

THE objects of this Bill are—

- (a) to provide that no death duty shall be chargeable on property included in the dutiable estate of a deceased person where the spouse of that deceased person is entitled to that property (Schedule 1);
 - (b) to include in the dutiable estate of a deceased person certain property which, under schemes or arrangements now in use, has not been subject to death duty (Schedule 2); and
 - (c) to make other provisions of a consequential and ancillary character.
-

Stamp Duties (Amendment)

It is enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Stamp Duties (Amendment) Act, 1976."

2. The Stamp Duties Act, 1920, is amended in the manner set forth in Schedules 1 and 2.

Act No. , 1976.

A BILL

To amend the Stamp Duties Act, 1920, with respect to death duties.

[Mr F. J. WALKER on behalf of Mr RENSHAW—16 November, 1976.]

BE

Stamp Duties (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Stamp Duties (Amendment) Act, 1976". Short title.

2. The Stamp Duties Act, 1920, is amended in the manner set forth in Schedules 1 and 2. Amendment of Act No. 7, 1920.

10

SCHEDULE 1.

Sec. 2.

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING TO DEATH DUTY EXEMPTION FOR WIDOWS AND WIDOWERS.

(1) Section 101D (6)—

After section 101D (5), insert:—

15

(6) In the case of every person who dies on or after the date of assent to the Stamp Duties (Amendment) Act, 1976, whether in New South Wales or elsewhere and who was at the date of his death domiciled in New South Wales, no death duty shall be chargeable—

20

(a) on any property, other than non-aggregated property, included in the dutiable estate of the deceased—

25

(i) being property which passes by the intestacy or under the will of the deceased to the widow or widower of the deceased; or

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO DEATH DUTY EXEMPTION FOR WIDOWS AND
WIDOWERS—*continued.*

5 (ii) being property which, or the value
of which, is included by this Act in
that dutiable estate where the
beneficial interest in the property
on the death of the deceased is
10 vested in or passes to the widow or
widower of the deceased; or

(b) on any non-aggregated property included
in the dutiable estate of the deceased and
directed by this Act to be separately
15 assessed which passes on the death of the
deceased or at any time determinable by
reference to the death of the deceased to
the widow or widower of the deceased.

(2) Section 112D (9)—

20 After section 112D (8), insert :—

(9) In the case of every person who dies on or
after the date of assent to the Stamp Duties
(Amendment) Act, 1976, no death duty shall be
payable on any non-aggregated property included in
25 the dutiable estate of the deceased and directed by
this Act to be separately assessed where the
Commissioner is satisfied that any such property
passing on the cesser of the limited interest to the
widow or widower of the person who created the
30 limited interest was included in the estate of the
person who created the limited interest and any duty
payable thereon was paid.

Stamp Duties (Amendment).

SCHEDULE 2.

Sec. 2.

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS.

(1) (a) Section 100—

5 Omit “and the Third Schedule hereto”.

(b) Section 100, definitions of “Associate” and
“Associated operations”—

After the definition of “Administrator”, insert :—

10 “Associate”, in relation to a controlled
company, means—

(a) a director or member of that
company;

15 (b) a person who has any voting
rights at any meeting of, or in
relation to, that company in
relation to any disposition of
property by that company,
whether or not he has any such
rights in relation to any other
disposition of property by that
company; or

20 (c) a person who, by the constitution
of that company, possesses, alone
or together with any other person
or persons—

25 (i) a right to appoint or
remove any director of
that company; or

30 (ii) a right to veto or vary a
decision at any meeting
of, or in relation to, that
company,

SCHEDULE

SCHEDULE

*Stamp Duties (Amendment).*SCHEDULE 2—*continued.*AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

5 and includes an associate, as hereinbefore
defined, of another controlled company
10 which is one of the five or fewer persons
under whose control the firstmentioned
controlled company is or to which the
firstmentioned controlled company is
related within the meaning of the
Companies Act, 1961.

15 “Associated operations” means any two or
more operations, being or being of a kind
similar to—

(a) operations which affect the same
property, or one or more of which
affects or affect some property and
the other or others of which
20 affects or affect property which
represents, whether directly or
indirectly, that property, or
income arising from that property,
or any property representing
25 accumulations of any such
income; or

(b) operations—
(i) each of which is effected
with reference to another
or each of which, except
one, is effected with
reference to another, that
one being an operation
with reference to which
30 the other operation is or
the other operations are
effected; or

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (ii) each of which is effected
with a view to enabling
another of those opera-
tions to be effected or to
10 facilitating its being
effected or each of which,
except one, is effected
with that view, that one
being an operation with a
15 view to effecting which or
to facilitating the effect-
ing of which the other
operation is or the other
operations are effected,
20 whether those operations are effected by
the same person or by different persons
and whether or not they or any two or
more of them are simultaneous.

(c) Section 100, definitions of “Controlled company”
and “Corporation”—

- 25 After the definition of “Child”, insert :—
“Controlled company”, in relation to a
disposition of property, means any
corporation which, at any relevant time
referred to in subsection (6) (whether
30 that time is on, before or after the date
of assent to the Stamp Duties (Amend-
ment) Act, 1976) is under the control
of not more than five persons, is not a
listed corporation, is not a corporation
35 in which the public are substantially

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

5 interested and is not a subsidiary of a
corporation in which corporation the
public are substantially interested, but
does not include a corporation the
10 members of which are precluded, by its
constitution, from being paid any
dividend and would, if the corporation
were to be wound up, be precluded from
receiving any part of the assets of the
corporation.

15 “Corporation” has the meaning ascribed
thereto in section 5 (1) of the Companies
Act, 1961.

(d) Section 100, definition of “Director”—

20 Before the definition of “Disposition of property”,
insert :—

“Director” has the meaning ascribed to that
expression in the Companies Act, 1961.

(e) Section 100, definition of “Disposition of
property”—

25 Omit the definition, insert instead :—

“Disposition of property” means—

30 (a) a conveyance, transfer, assign-
ment, mortgage, delivery,
payment or other alienation of
property whether at law or in
equity;

(b) the creation of any trust;

SCHEDULE

*Stamp Duties (Amendment).*SCHEDULE 2—*continued.*AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (c) the release, discharge, surrender,
forfeiture or abandonment at law
or in equity of any debt, contract
or chose in action, or of any right,
10 power, estate or interest in or
over any property;
- (d) the exercise of a general power of
appointment in favour of any
person other than the donee of
the power;
- 15 (e) an agreement, obligation, engage-
ment, arrangement, contract or
transaction entered into by a
person, an act done or effected
or omitted to be done or effected
20 by a person, or a forbearance by
a person to exercise a right or
power, as a result of which—
- (i) the value of the total
property of that person is,
25 whether during his life-
time or upon or in
consequence of his death,
directly or indirectly
diminished; and
- 30 (ii) the value of the total
property of some other
person is directly or
indirectly increased,
- 35 whether or not at the request or
subject to the acquiescence or on
behalf of a person;

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—continued.**AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.**

- 5 (f) the distribution by a controlled
company of a dividend upon
shares held in that company or
the payment of interest on money
10 advanced to that company,
whether or not the dividend or
interest is paid to the shareholder
or creditor entitled thereto,
accumulated or invested on his
15 behalf, credited in his name to a
loan account or fund however
designated or otherwise held or
dealt with on his behalf or as he
may permit or direct; or
- 20 (g) the allotment or issue of shares in
or debentures of a controlled
company, the grant of rights to
a person in or in relation to a
controlled company or the grant
25 of an option to take up unissued
shares in a controlled company
or to acquire rights in or in
relation to a controlled company,
- 30 whether or not effected by an instrument
in writing, by a person alone or by two
or more persons or by associated
operations and whether effected on,
before or after the date of assent to the
Stamp Duties (Amendment) Act, 1976.

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

5 (f) Section 100, definition of “Listed corporation”—

After the definition of “Gift”, insert :—

“Listed corporation” means a corporation any
of the shares in which are quoted on a
stock exchange and any corporation
10 which is, by virtue of section 6 (5) of
the Companies Act, 1961, deemed to be
related to a corporation any of the shares
in which are quoted on a stock exchange
and in none of the shares in which a
15 natural person has a beneficial interest,
whether or not the stock exchange is a
stock exchange within the meaning of
the Securities Industry Act, 1975.

(g) Section 100, definition of “Share”—

20 After the definition of “Settlement”, insert :—

“Share”, in relation to a controlled company,
includes stock in that company.

(h) Section 100 (2)–(24)—

At the end of section 100, insert :—

25 (2) For the purposes of the definitions of
“Associate” and “Controlled company” in sub-
section (1)—

(a) “a subsidiary of a corporation” has the
same meaning as that expression has
30 in the Companies Act, 1961;

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (b) a corporation shall be deemed to be a
corporation in which the public are
substantially interested only if—
- 10 (i) the right to exercise more than
twenty-five per centum of the
voting power in respect of all
of the matters that may be
dealt with at a general meeting
of the corporation is held on
15 their own behalf by persons
other than a controlled com-
pany or an associate of a
controlled company; and
- 20 (ii) in the case of a corporation
limited by shares or by shares
and guarantee, the right to
transfer those shares is not
restricted and those shares are,
25 in the opinion of the Commis-
sioner, generally available for
purchase by the public;
- (c) a corporation shall be deemed to be
under the control of not more than five
persons—
- 30 (i) if any five or fewer persons
together possess, or possess a
right the exercise of which
would directly or indirectly
enable them to acquire, the
majority of the voting power
35 in relation to any matter at a

*Stamp Duties (Amendment).*SCHEDULE 2—*continued.*AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 general meeting of the corporation, whether or not possessed in relation to any other matter that may be dealt with at such a meeting;
- 10 (ii) if any five or fewer persons together exercise, or are able to exercise, or possess a right the exercise of which would directly or indirectly enable
- 15 them to acquire a right to exercise, direct or indirect control of the affairs, or any of the affairs, of the corporation and they cannot be deprived
- 20 of that control by the exercise of the voting power of any other person or persons at a general meeting of the corporation;
- 25 (iii) if, in the case of a corporation limited by shares or by shares and guarantee, any five or fewer persons together possess,
- 30 or possess a right the exercise of which would directly or indirectly enable them to acquire, shares in the corporation, the paid-up amount of which is more than one-half of the paid-up
- 35 share capital of the corporation;

*Stamp Duties (Amendment).***SCHEDULE 2—continued.****AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.**

- 5 (iv) if any five or fewer persons
together possess a right, or
possess a right the exercise of
which would directly or in-
10 directly enable them to acquire
the right, being in either case
a right which would, if the
whole of the income of the
corporation were in fact
15 distributed to the members,
entitle them to receive more
than one-half of the amount so
distributed; or
- 20 (v) if any five or fewer persons
would, if the corporation were
to be wound up, be entitled to
receive more than one-half of
the net assets of the corporation
which would be available for
distribution; and
- 25 (d) in determining whether a corporation
is or is not under the control of not
more than five persons, a person who
is related to another person and that
30 other person, a person who is a
nominee of another person and that
other person and any other nominees
of that other person, persons in partner-
ship, or persons interested in any
35 shares or obligations of the corpora-
tion which are subject to any trust or
are part of the estate of a deceased
person, shall be treated as one person.

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

5 (3) For the purposes of subsection (2)
(d)—

10 (a) a person shall be deemed to be related
to another person if one of those
persons is the lineal issue, brother,
sister, lineal issue of a brother or sister,
spouse, ancestor of the spouse, brother
or sister of the spouse, spouse of the
brother or sister of the spouse, lineal
issue of the brother or sister of the
15 spouse, spouse of the lineal issue,
spouse of a brother or sister, spouse of
the lineal issue of a brother or sister or
spouse of the lineal issue of the brother
or sister of the spouse of the other of
20 those persons;

(b) a corporation shall be deemed to be
related—

25 (i) to a person, if the corporation
is a controlled company and
any of its associates is related,
as mentioned in paragraph (a),
to that person; or

30 (ii) to another corporation, if those
corporations are controlled
companies and either if any
associate of one of them is
related, as mentioned in
paragraph (a), to any associate
of the other of them or if they
are related corporations within
the meaning of the Companies
35 Act, 1961; and

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (c) if any two persons are related to
another person, as mentioned in
paragraph (a), those two persons
shall, although they are not related to
10 one another as so mentioned, be
deemed to be related to one another.
- (4) A reference in subsection (3) (a) to
lineal issue includes a reference—
(a) to a step-child; and
(b) to an adopted child,
15 and a step-child shall, for the purposes of
subsection (3) (a), be deemed to be related to
any other persons in the same manner as he
would be if he were the child of both his step-
parent and the spouse of his step-parent.
- 20 (5) For the purposes of subsection (2) (d),
a person shall be deemed to be the nominee of
another person in respect of a corporation if,
whether directly or indirectly, he possesses on
25 behalf of that other person, or may be required
to exercise on the direction of or on behalf of
that other person, any right or power in relation
to that corporation.
- (6) The reference in the definition of
30 "Controlled company" in subsection (1) to the
relevant time is a reference to any time during
the period ending with the death of the deceased
and beginning at the date of the disposition of
property or, if that disposition of property was
35 effected by associated operations, at the date of
the earliest of those operations.

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (7) Where a debt, contract, chose in action
or a right, power, estate or interest in or over
property is irrecoverable or unenforceable
through the lapse of time or otherwise, it shall—
- 10 (a) for the purposes of paragraph (c) of
the definition of "Disposition of
property" in subsection (1), be deemed
to have been released, discharged,
surrendered, forfeited, renounced,
disclaimed or abandoned; and
- 15 (b) for the purposes of this Part and Part
V, be deemed to have been released,
discharged, surrendered, forfeited,
renounced, disclaimed or abandoned at
the time when it became so irrecover-
20 able or unenforceable.
- (8) Where, but for the fact that the
transaction from which it arises or which it
constitutes is void, a debt, contract, chose in
action or a right, power, estate or interest in or
25 over property would arise or be constituted and
be recoverable or enforceable, the debt, contract,
chose in action, right, power, estate or interest
shall—
- 30 (a) for the purposes of paragraph (c) of
the definition of "Disposition of
property" in subsection (1), be
deemed to have been released,
discharged, surrendered, forfeited,
renounced, disclaimed or abandoned;
35 and

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (b) for the purposes of this Part and Part
V, be deemed to have been released,
discharged, surrendered, forfeited, re-
nounced, disclaimed or abandoned at
10 the time when the transaction is
entered into.
- (9) Neither subsection (7) nor subsection
(8) applies to or in respect of a debt, contract,
chase in action, right, power, estate or interest
15 in or over property if the Commissioner is satis-
fied that the transaction was a normal commercial
transaction and that it would not be just and
reasonable in the circumstances that subsection
(7) or (8), as the case may be, should apply.
- (10) Where, after any debt, contract, chase
20 in action or any right, power, estate or interest
in or over property is to be deemed to have been
released, discharged, surrendered, forfeited,
renounced, disclaimed or abandoned, as men-
25 tioned in subsection (7) or (8), so as to con-
stitute a gift, there passes from the person to
whom the disposition is made to the person by
whom the disposition is made any consideration
(in this subsection referred to as "return con-
30 sideration") that, had the debt, contract, chase
in action, right, power, estate or interest in or
over property not been irrecoverable or
unenforceable or not arisen from or not con-
stituted a void transaction, would have been
35 consideration to which that lastmentioned person
was entitled on account of the debt, contract,

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

5 chose in action or right, power, estate or interest
in or over property, then, for the purposes of this
Part and Part V—

(a) the value of the property in the gift
shall be reduced by the return con-
10 sideration; and

(b) the passing of the return consideration
shall be deemed not to be a disposition
of property.

(11) For the purposes of paragraph (e) of
15 the definition of “Disposition of property” in
subsection (1), the passing of a resolution or the
making of a decision by, within or on behalf of
a controlled company shall be deemed to be a
transaction entered into by the controlled com-
20 pany.

(12) Without affecting subsection (13) (b),
for the purposes of this Part and Part V—

(a) a diminution in the value of the total
property of a person, as referred to in
25 paragraph (e) (i) of the definition of
“Disposition of property” in subsection
(1), shall be deemed to occur by virtue
of a result referred to in paragraph (e)
30 of that definition if the value of all of
the property to which that person is
beneficially entitled immediately after
that result is less, by virtue of that
result, than the value of all of the
property to which he was beneficially
35 entitled immediately before that result;
and

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (b) an increase in the value of the total
property of a person, as referred to in
paragraph (e) (ii) of that definition,
shall be deemed to occur by virtue of a
10 result referred to in paragraph (e) of
that definition if the value of all of the
property to which that person is
beneficially entitled immediately after
that result is greater, by virtue of that
15 result, than the value of all of the
property to which he was beneficially
entitled immediately before that result,
whether or not the diminution and increase are
simultaneous.
- 20 (13) Except where otherwise expressly pro-
vided, for the purposes of this Part and Part V—
- (a) the diminution of the value of the total
property of the person referred to in
paragraph (e) (i) of the definition of
25 "Disposition of property" in subsection
(1) shall be deemed to be property;
- (b) a disposition of property referred to in
paragraph (e) of that definition shall
be deemed to be made and the property
therein to pass at the time the value of
30 total property of the person referred to
in paragraph (e) (ii) of that definition
is increased, but if that time is at the
death of the deceased or is a time
related to his death shall be deemed to
35 be made immediately before his death;

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (c) the person referred to in paragraph (e)
(i) of that definition shall be deemed
to be the person by whom the disposi-
tion is made or from whom the
10 property therein passes and the person
referred to in paragraph (e) (ii) of
that definition shall be deemed to be
the person to whom the disposition is
made or to whom the property therein
passes;
- 15 (d) the value of the property in the disposi-
tion shall be deemed to be an amount
that is equivalent to the amount by
which the value of the total property—
20 (i) of the person referred to in para-
graph (e) (i) of that definition is
diminished; or
(ii) of the person referred to in para-
graph (e) (ii) of that definition is
increased,
25 whichever is the greater;
- (e) in determining whether or not an
increase in the value of the total
property of a person referred to in
30 paragraph (e) (ii) of that definition
has occurred and, if so, the value of
the increase, no allowance shall be
made in respect of any contingency
affecting the interest of that person;
- 35 (f) in determining whether or not a
diminution in the value of the total
property of the person referred to in

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 paragraph (e) (i) of that definition
has occurred and, if so, the value of the
diminution, no allowance shall be made
in respect of any contingency affecting
the interest of that person; and
- 10 (g) the property the subject of the dis-
position shall be deemed to be personal
property situate in New South Wales
except to the extent that, if the person
referred to in paragraph (e) (i) of
15 that definition is at his death domiciled
outside New South Wales, the Com-
missioner, in his absolute discretion,
determines that that property shall not
be regarded as being personal property
20 situate in New South Wales.
- (14) Where any consideration for a disposi-
tion of property consists of a covenant, promise
or option entered into or granted to a deceased
25 person and that covenant, promise or option
remained unperformed or unexercised, in whole
or in part, at his death, and could only be per-
formed or exercised during his lifetime, the
disposition shall be deemed to be a gift made
immediately before his death the value of which
30 shall be deemed to be the consideration in money
or money's worth paid or payable by the
deceased in respect of the covenant, promise or
option reduced by the value of such part, if any,
of the covenant, promise or option as was per-
35 formed or exercised before his death.

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (15) Where—
- (a) a disposition of property—
- 10 (i) not being an allotment or
issue of shares, the grant of
an option to take up unissued
shares or the payment of
interest, is made by a controlled
company, either alone or
together with any other person
or persons without full con-
sideration in money or money's
worth; or
- 15 (ii) being an allotment or issue of
shares or the grant of an
option to take up unissued
shares, is made by a controlled
company; and
- 20 (b) the passing of the resolution or the
making of the decision whereby the
disposition was made or the obligation
to make the disposition was created—
- 25 (i) resulted, whether wholly or
partly or directly or indirectly,
from the exercise of a right or
power that was possessed or
that, by the constitution of the
controlled company, was
expressed to be possessed by a
particular person; or
- 30

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (ii) could have been prevented by
the exercise of a right or power
that was possessed or that, by
the constitution of the con-
trolled company, was expressed
10 to be possessed by a particular
person,
either alone or together with any other
person or persons, that particular per-
son or that particular person and that
15 other or those other persons, as the
case may be, shall for the purposes of
this Part and Part V, be deemed to
have been the person or persons by
whom the disposition of the property
20 is made and the property in the dis-
position shall be deemed to be the
property in the disposition made by
the controlled company.
- (16) Where a disposition of property, being
25 the payment of interest, is made by a controlled
company, either alone or together with any other
person or persons, the associates of that company
shall, for the purposes of this Act, be deemed to
30 have been the persons by whom the disposition
of property is made and the property in the
disposition shall be deemed to be that interest.
- (17) Notwithstanding any other provisions
of this Act, a disposition of property referred to
35 in subsection (15) (a) (i), being a distribution
of dividend, or a disposition of property referred
to in subsection (15) (a) (ii) or (16), any such

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 disposition being a disposition of property deemed
pursuant to subsection (15) or (16) to have
been made by a person other than the controlled
company, shall, for the purposes of this Part and
10 Part V, be deemed to have been made without
consideration except to the extent that—
- (a) in case of a disposition referred to in
subsection (15) (a) (i), being a
distribution of dividend, or a dis-
position referred to in subsection (15)
15 (a) (ii), the consideration, if any, that
passed from the person to whom the
disposition is made to the person or
persons by whom the disposition is
made or to the controlled company
20 was, in the opinion of the Commis-
sioner, full consideration having
regard—
- (i) to the nature and extent of the
right or power that could have
25 been exercised by the person
or persons by whom the
disposition is deemed to be
made;
- (ii) to any increase in the value of
30 the total property of the person
to whom the disposition is
deemed to be made that
resulted from the disposition;
- (iii) to the nature and extent of the
35 respective interests of the
associates of the company; and

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (iv) to any other circumstances that
he thinks relevant; and
- (b) in the case of a disposition referred to
in subsection (16), Commissioner is
10 satisfied that the payment of the
interest was made in the course of a
normal commercial transaction and
that it would not be just and reason-
able in the circumstances that that
subsection should apply.
- 15 (18) For the purposes of subsection (17), a
disposition of property referred to in subsection
(15) shall be deemed to have been made for full
consideration—
- 20 (a) where the disposition (in the case of a
distribution of dividend or an allot-
ment or issue of shares) is made to all
the shareholders of the company in
proportion to their respective paid-up
25 shareholdings (not being shareholdings
entitled to a fixed rate of dividend); or
- (b) to the extent that the person or persons
deemed by subsection (15) to be the
person or persons by whom the
30 disposition is made disposes or dispose
of the property in the disposition to
himself or themselves.

(19) Where a person dies and within three
years before his death, he was either an associate,
referred to in paragraph (c) of the definition of

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

5 “Associate” in subsection (1), of a controlled
company or was an associate of a controlled
company by reason of his possessing, or possess-
10 ing a right the exercise of which would directly
or indirectly have enabled him to acquire, the
majority of the voting power or control over the
majority of the voting power at a meeting of, or
in relation to, a controlled company in relation
to any disposition of property by the company,
15 whether or not he has that power in relation to
any other disposition of property by the company
(that person being referred to in this subsection
as a controller of that company)—

20 (a) he shall be deemed to have been,
immediately before the prescribed
time, possessed of an interest in the
company and that interest shall be
deemed to be property of which he
shall be deemed to have made a
disposition at the prescribed time;

25 (b) the value of the property in the dis-
position shall be deemed to be an
amount equal to the net value of the
assets of the company immediately
before the prescribed time less, where
30 the company was wound up within
three years before his death, any
amount received by him on the winding
up out of those net assets;

35 (c) the property in the disposition shall be
deemed to be personal property situate
in New South Wales except to the

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 extent that, if that controller is at his
death domiciled outside New South
Wales, the Commissioner, in his
absolute discretion, determines that
10 that property shall not be regarded as
personal property situate in New South
Wales; and
- (d) the disposition shall be deemed to have
been made to the other associate or
15 associates of the company in such
proportions as the Commissioner, in his
absolute discretion, may determine but
having regard to the matters referred
to in subsection (22).
- (20) The references in subsection (19) (a)
20 and (b) to the prescribed time in relation to a
controller, referred to in subsection (19), of a
controlled company is—
- (a) where the company had not been
25 wound up before the death of the con-
troller, a reference to the time of his
death; or
- (b) where the company had been wound
30 up within three years before the death
of the controller, the time of the wind-
ing up of the company.
- (21) Notwithstanding any other provisions of
this Act, a disposition of property referred to in
subsection (19) shall, for the purposes of this

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 Part and Part V, be deemed to have been made
without consideration except to the extent that
the Commissioner, in his absolute discretion,
determines that it would not be just and reason-
10 able to regard the disposition as having been
made without consideration, and in making that
determination the Commissioner shall have
regard to—
- 15 (a) the extent, if any, to which the value
of the rights and powers of the con-
troller referred to in subsection (19) in
the controlled company are, in the
opinion of the Commissioner, reflected
in the dutiable estate of the controller,
20 other than in the property referred to
in subsection (19) (a);
- (b) the nature and extent of the interest of
the controller in the controlled com-
pany and of other associates of that
company immediately before the
25 prescribed time referred to in
subsection (19) (a);
- (c) any increase in the value of the total
property of the person to whom the
disposition is made that resulted from
30 the disposition; and
- (d) any other matters that he thinks
relevant.

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

5 (22) The matters to which the Commissioner
is required to have regard, as referred to in
subsection (19) (d), are—

10 (a) the nature and extent of any right or
power that could have been exercised
by the controller referred to in sub-
section (19) in relation to the con-
trolled company;

15 (b) any increase in the value of the total
property of the person or persons to
whom the disposition is made that
resulted from the disposition;

(c) the nature and extent of the respective
interests of the associates of the com-
pany; and

20 (d) any other circumstances that he thinks
relevant.

(23) For the purposes of this section, except
subsections (19), (20), (21) and (22)—

25 (a) a member of a company limited by
guarantee or limited both by shares
and guarantee, that member being a
guarantor of that company, shall be
deemed to be the holder of shares in
the company as if it were a company
30 limited only by shares, those shares
having a total paid-up value equal to
the amount of the guarantee and hav-
ing attached to them the same rights,

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

5 powers and obligations as the guarantor who is deemed to be the holder of them enjoys or is subject to in relation to the company; and

10 (b) any distribution of a share in the profits or income of such a company shall be deemed to be a distribution of a dividend.

15 (24) Except where otherwise expressly provided, where, under this Part, the dutiable estate of a deceased person would, but for this subsection, include two or more different kinds of property the disposition of which, in the opinion of the Commissioner, arose from the same or substantially similar circumstances, the dutiable
20 estate of that deceased person shall include only property of such one of those kinds as attracts the higher or highest amount of death duty.

(2) (a) Section 102 (2) (c) (i)—

Omit “, or the proceeds of the sale thereof,”.

25 (b) Section 102 (2) (c)—

After “deceased.”, where lastly occurring, insert :—

30 The property passing under any such settlement, trust or other disposition of property made by the deceased shall be deemed to include the proceeds of the sale or conversion of the property originally comprised in the settlement,

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

5 trust or other disposition of property and all
investments for the time being representing it and
all property which has in any manner been
substituted for the property so comprised.

10 Where the property originally comprised in
the settlement, trust or other disposition of
property cannot, in the opinion of the
Commissioner, be identified in the proceeds of
the sale or conversion of that property or in
15 investments representing it or in any substituted
property at the death of the deceased, the
property to be deemed to be included shall
(except where the property so comprised was in
a disposition of property made for the purchase
of an annuity to a person authorised to carry on
20 insurance business under, or a person not
prohibited from carrying on insurance business
by, the Insurance Acts 1973 of the Parliament
of the Commonwealth) be the value of that
property at the time the settlement, trust or other
25 disposition of property was made or such lesser
value as is determined by the Commissioner in
his absolute discretion, having regard to any
depreciation to which, in his opinion, that
property would have been subject had it remained
30 in the hands of the deceased until his death or
where the property so comprised was money, the
actual amount of that money.

(c) Section 102 (2) (d)—

35 After “property”, insert “, other than property
referred to in section 100 (2) (da),”.

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

5 (d) Section 102 (2) (d)—

After “died.”, insert :—

10 The property comprised in any such gift made
by the deceased (whether on, before or after the
date of assent to the Stamp Duties (Amendment)
Act, 1976) shall be deemed to include the
proceeds of the sale or conversion of the property
originally comprised in the gift and all invest-
ments for the time being representing the
property so comprised and all property which
15 has in any manner been substituted for the
property so comprised.

20 Where the property originally comprised in
the gift cannot, in the opinion of the Commis-
sioner, be identified in the proceeds of the sale
or conversion of that property or in investments
representing it or any substituted property at the
death of the deceased, the property to be deemed
to be included shall be the value of that property
at the time the gift was made or such lesser value
25 as is determined by the Commissioner in his
absolute discretion, having regard to any
depreciation to which, in his opinion, that
property would have been subject had it
remained in the hands of the deceased until his
30 death or where the property so comprised was
money, the actual amount of that money.

35 Where the deceased retains possession or
enjoyment of part only of the property, being
land, or of part only of the property, being land
which by virtue of this subparagraph is deemed

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

5 to be included in the property comprised in the
gift, or does not retain the whole of the benefit
of any such property, the property to be included
in the estate of the deceased shall be such portion
10 of the value of that property as the Commis-
sioner, in his absolute discretion, may determine.

Where the property comprised in the gift was
in a disposition of property made by a controlled
company and the deceased is by section 100
15 (15), (16) or (19) deemed to be the person or
one of the persons by whom that disposition was
made, possession and enjoyment of the property
shall be deemed not to have been retained to the
exclusion of the deceased or of any benefit to him
if at any time during the period of three years
20 before his death he was an associate of that
controlled company.

(e) Section 102 (2) (da)—

After section 102 (2) (d), insert :—

25 (da) Any property, being property referred to
in section 100 (13) (a), comprised in
any gift made pursuant to a disposition
of property referred to in paragraph (e)
of the definition of "Disposition of
30 property" in section 100 (1) (whether or
not pursuant to a disposition of property
referred to in any other paragraph of that
definition) by the deceased at any time
except to the extent that the deceased
had, during the period of three years
35 ending with his death, no right or no

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

5 means, except as a bona fide purchaser
for value, of obtaining the right to
increase, decrease or transfer the benefit
of the increase referred to in paragraph
(e) (ii) of that definition.

10 (3) Section 103A (3)—

After section 103A (2), insert :—

(3) Where—

15 (a) death duty has been paid under this Act on
property referred to in section 100 (13)
(a), (15), (16) or (19) and included in
the dutiable estate of a deceased person
(not being property in any other disposition
of property included in his dutiable estate);
and

20 (b) the Commissioner is satisfied death duty has
been lawfully paid under the law of another
state, territory or country (not being a law
of the Parliament of the Commonwealth) on
that property,

25 the Commissioner may, in his absolute discretion,
refund such part of the death duty paid under this
Act as he, in his absolute discretion, thinks fit.

(4) Section 120 (8)—

After section 120 (7), insert :—

30 (8) A reference in this section to property included
in the dutiable estate of a deceased person does not
include a reference to—

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (a) property in a disposition of property that is
a disposition by reason only of section 100
(7) or (8);
- 10 (b) property in a disposition of property that is
a disposition of property by reason only of
paragraph (e) of the definition of “Dis-
position of property” in section 100 (1); or
- (c) property in a disposition of property deemed
by section 100 (15), (16) or (19) to have
been made by any person or persons.

15 (5) Section 120A—

After section 120, insert :—

20 120A. (1) Where a person dies and that person
has at any time made a disposition of property referred
to in section 120 (8) (a), (b) or (c), which is
included in the dutiable estate of the deceased, the
person to whom the disposition is made or the property
therein passes shall, within three months after the date
of death of the deceased, notify the Commissioner in a
form approved by the Commissioner of particulars of
25 the disposition, unless the Commissioner has
previously been notified of particulars of the
disposition.

30 (2) A person who wilfully fails to comply
with the provisions of subsection (1) shall be liable
to a fine not exceeding an amount equal to double the
death duty payable in respect of the property in the
disposition referred to in that subsection.

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

- 5 (3) Where—
- (a) a disposition of property is made by a controlled company and under section 100 (15) or (16) a person is deemed to have made a disposition of that property;
- 10 (b) that person dies; and
- (c) the property in the disposition deemed to have been made by him is included in his dutiable estate,
- 15 the death duty payable in respect of the property referred to in paragraph (c)—
- (d) shall constitute as from that person's death a floating charge, in priority to all other charges, on the New South Wales assets owned by that controlled company at that person's death or acquired at any time thereafter and a charge on any such assets that have been distributed, but no such charge shall affect the title of a bona fide purchaser for value (whether before or after the death of the deceased) without notice; and
- 20 (e) to the extent that it has not been paid, shall be a debt payable to Her Majesty by the controlled company and by each person, except the deceased, by whom the disposition is deemed by section 100 (15) or (16) to have been made, and shall be recoverable in any court of competent jurisdiction.
- 25
- 30

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

5 (4) Where property in a disposition of
property referred to in paragraph (e) of the definition
of "Disposition of property" in section 100 (1) or
10 referred to in section 100 (7), (8) or (19) is
included in the dutiable estate of a deceased person
and the death duty payable in respect of the property
has not been paid within six months after the death of
the deceased, the death duty on that property, to the
extent that it has not been paid, shall, together with
15 interest thereon at the rate of eight per centum per
annum from the date of the expiration of the period of
six months after the death of the deceased or, if
administration has been first granted out of New South
Wales, from the date of the expiration of the period
of twelve months after the death of the deceased, be
20 a debt payable to Her Majesty by the person by whom
the disposition was made and shall be recoverable in
any court of competent jurisdiction.

(6) Section 137—

Omit the section, insert instead :—

25 137. (1) Every contract, agreement or arrange- Provision
ment made or entered into orally or in writing whether to prevent
on, before or after the date of assent to the Stamp evasion or
Duties (Amendment) Act, 1976, so far as it has or avoidance
purports to have the purpose of effect of in any way of duty.
30 directly or indirectly—
(a) relieving any person from liability to pay
any death duty or file any statement;
(b) defeating, evading or avoiding any death
duty or liability imposed on any person by
35 this Act;

SCHEDULE

Stamp Duties (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE STAMP DUTIES ACT, 1920, RELATING
TO THE DUTIABLE ESTATES OF DECEASED PERSONS—
continued.

5 (c) affecting the value of any property which
forms or is deemed to form part of the
dutiable estate of any person under this
Act; or

10 (d) preventing the operation of Part IV or V in
any respect,

shall be absolutely void for the purposes of this Act
or in regard to any proceedings under this Act but
without prejudice to such validity as it may have in
any other respect or for any other purpose.

15 (2) Where under subsection (1) a contract,
agreement or arrangement is avoided, the property the
subject-matter of the contract, agreement or arrange-
ment shall be deemed to form part of the dutiable
estate of the deceased person.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1976

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