

PROBATE DUTY (AMENDMENT) BILL 1973

EXPLANATORY MEMORANDUM

Clause 1.—Title and Commencement.

Sub-clause (3) provides for the Act to come into operation on a date to be fixed by proclamation of the Governor in Council.

Sub-clause (4) ensures that the Principal Act 1962 as in force before the commencement of this Act operates in relation to the estates of persons dying before the commencement of this Act.

Sub-clause (5) provides for the Principal Act as amended by this Bill to apply to the estates of persons dying on or after the commencement of this Act.

Clauses 2 and 3.—Deductions.

Clause 2.

Sub-clause (1) increases the deduction in respect of the matrimonial home which passes to the surviving spouse from \$15,000 to \$30,000 and extends the operation of the deduction from the jointly owned matrimonial home, to the solely owned matrimonial home, or the home which is owned as tenants in common.

The new deduction for the matrimonial home continues to apply to the matrimonial home which is a home unit or own-your-own flat occupied as the result of the ownership of shares in a company. A discretion is given to the Commissioner to enable estates to obtain the benefit of the exemption in cases where, even though it may not be clear from the wording of the will that the matrimonial home passes directly to the spouse of the deceased, arrangements made in the course of administration of the estate would have that result. The provision follows a similar provision in section 24 of the Probate Duty Act in relation to the rebate of duty for primary production land.

Sub-clause (2) is a technical amendment which corrects an obvious omission of words in sub-paragraph (iii) of paragraph (a) of sub-section (1) of Section 10 of the Principal Act.

Clause 3 makes an amendment to Section 7 (2) (a) of the Probate Duty Act which is consequential on the extension of the deduction for the matrimonial home, and places a gift of an interest as tenant in common in the matrimonial on the same basis as a gift of a joint interest.

Clause 4.—Servicemen.

This clause increases the concession which applies to the estates of servicemen whose death is accepted as due to war service by the Repatriation Commission.

The concession operates in respect of that part of the estate to which the widow or widower, lineal ancestors, lineal descendants or brothers and sisters are entitled and is increased from \$15,000 to \$30,000.

Clause 5.—Fees.

This clause provides for fees payable under the Sections 31, 32 and 33 of the Probate Duty Act to be fixed by regulation.

Clause 6.—Rates of Duty.

This clause inserts the new rates of probate duty for the four paragraphs of clause 1 of the First Schedule to the Principal Act. Under paragraph (a) which applies to the widow, widower, children who have not attained 21 years, wholly dependent adult children or wholly dependent widowed mother of the deceased the amount which is exempt from duty has been increased from \$12,000 to \$24,000.

The new maximum rates of duty are summarised below and compared with maximum rates now applying. The final balance to which the maximum rate of duty applies is shown in brackets.

Final balance passes to :—

		<i>New</i> %	<i>Existing.</i> \$
(a) widow, widower or dependent children ..	26 (over \$200,696)	22.5	(over \$189,334)
(b) adult children or grand-children	26.5 (over \$200,810)	25	(over \$194,332)
(c) brothers and sisters	31 (over \$230,070)	30	(over \$227,680)
(d) other persons	34 (over \$233,258)	33	(over \$233,250)

The effect of the new rates is shown in the examples attached.

COMPARISON OF DUTY PAYABLE.

PARA 1 (a) FIRST SCHEDULE, PROBATE DUTY ACT.

i.e. estates passing to widows, widowers, children under 21 years of age, wholly dependent adult children or the wholly dependent widowed mother of the deceased.

<i>Final Balance</i>	<i>Present Duty</i>	<i>Proposed Duty</i>	<i>Change in Duty</i>
\$	\$	\$	\$
100,000	13,100	13,100	Nil
120,000	17,850	18,350	500
140,000	24,350	25,100	750
160,000	31,600	33,350	1,750
180,000	39,100	42,350	3,250
200,000	45,000	51,850	6,850
250,000	56,250	65,000	8,750
500,000	112,500	130,000	17,500
750,000	168,750	195,000	26,250
1,000,000	225,000	260,000	35,000

COMPARISON OF TOTAL VICTORIAN PROBATE AND FEDERAL ESTATE DUTY PAYABLE.

PARA. 1 (a) FIRST SCHEDULE, PROBATE DUTY ACT.

i.e., estates passing to widows, widowers, children under 21 years of age, wholly dependent adult children or the wholly dependent widowed mother of the deceased.

<i>Final Balance</i>	<i>Present Probate and Estate Duty</i>	<i>Proposed Probate and Estate Duty</i>	<i>Increase in Probate Duty</i>	<i>Overall Increase</i>
\$	\$	\$	\$	\$
100,000	17,708	17,708	Nil	Nil
120,000	25,432	25,825	500	393
140,000	35,168	35,738	750	570
160,000	46,009	47,236	1,750	1,227
180,000	57,514	59,682	3,250	2,168
200,000	68,518	72,804	6,850	4,286
250,000	96,993	101,468	8,750	4,475
500,000	214,548	227,402	17,500	12,854
750,000	324,816	343,656	26,250	18,840
1,000,000	436,846	461,650	35,000	24,804

COMPARISON OF DUTY PAYABLE.

PARA. 1 (b) FIRST SCHEDULE, PROBATE DUTY ACT.

i.e., estates passing to children over 21 years of age and grandchildren of the deceased.

<i>Final Balance</i>	<i>Present Duty</i>	<i>Proposed Duty</i>	<i>Change in Duty</i>
\$	\$	\$	\$
100,000	15,600	15,600	Nil
120,000	21,350	21,600	250
140,000	27,850	28,350	500
160,000	35,100	35,850	750
180,000	42,850	44,100	1,250
200,000	50,000	52,850	2,850
250,000	62,500	66,250	3,750
500,000	125,000	132,500	7,500
750,000	187,500	198,750	11,250
1,000,000	250,000	265,000	15,000

COMPARISON OF TOTAL VICTORIAN PROBATE AND FEDERAL ESTATE DUTY PAYABLE.

PARA. 1 (b) FIRST SCHEDULE, PROBATE DUTY ACT.

i.e., estates passing to children over 21 years of age and grandchildren of the deceased.

<i>Final Balance</i>	<i>Present Probate and Estate Duty</i>	<i>Proposed Probate and Estate Duty</i>	<i>Increase in Probate Duty</i>	<i>Overall Increase</i>
\$	\$	\$	\$	\$
100,000	19,784	19,784	Nil	Nil
120,000	28,183	28,389	250	206
140,000	37,770	38,148	500	378
160,000	48,471	48,998	750	527
180,000	60,021	60,858	1,250	837
200,000	71,643	73,449	2,850	1,806
250,000	100,150	102,115	3,750	1,965
500,000	223,756	229,208	7,500	5,452
750,000	338,278	346,347	11,250	8,069
1,000,000	454,562	465,192	15,000	10,630

COMPARISON OF DUTY PAYABLE.

PARA. 1 (c) FIRST SCHEDULE, PROBATE DUTY ACT.

i.e., estates passing to brothers, sisters and parents of the deceased.

<i>Final Balance</i>	<i>Present Duty</i>	<i>Proposed Duty</i>	<i>Change in Duty</i>
\$	\$	\$	\$
100,000	19,040	19,040	Nil
120,000	25,040	25,290	250
140,000	32,040	32,290	250
160,000	39,790	40,290	500
180,000	48,040	48,790	750
200,000	56,540	57,790	1,250
220,000	65,040	66,790	1,750
250,000	75,000	77,500	2,500
500,000	150,000	155,000	5,000
1,000,000	300,000	310,000	10,000

COMPARISON OF TOTAL VICTORIAN PROBATE AND FEDERAL ESTATE DUTY PAYABLE.

PARA. 1 (c) FIRST SCHEDULE, PROBATE DUTY ACT.

i.e., estates passing to brothers, sisters and parents of the deceased.

<i>Final Balance</i>	<i>Present Probate and Estate Duty</i>	<i>Proposed Probate and Estate Duty</i>	<i>Increase in Probate Duty</i>	<i>Overall Increase</i>
\$	\$	\$	\$	\$
100,000	26,370	26,370	Nil	Nil
120,000	35,732	35,862	250	130
140,000	45,837	46,034	250	197
160,000	56,764	57,002	500	238
180,000	68,072	68,629	750	557
200,000	79,981	80,856	1,250	875
250,000	109,125	110,689	2,500	1,564
500,000	241,962	245,597	5,000	3,635
750,000	365,227	370,621	7,500	5,394
1,000,000	490,050	497,162	10,000	7,112

COMPARISON OF DUTY PAYABLE.

PARA. (1) (d) FIRST SCHEDULE, PROBATE DUTY ACT.

i.e., estates passing to persons other than those in paragraphs (a), (b) and (c).

<i>Final Balance</i>	<i>Present Duty</i>	<i>Proposed Duty</i>	<i>Increase in Duty</i>
\$	\$	\$	\$
100,000	21,260	21,260	Nil
120,000	28,760	29,010	250
140,000	36,260	37,010	750
160,000	44,260	45,510	1,250
180,000	53,010	54,260	1,250
200,000	62,010	63,510	1,500
220,000	71,010	73,010	2,000
250,000	82,500	85,000	2,500
500,000	165,000	170,000	5,000
1,000,000	330,000	340,000	10,000

COMPARISON OF TOTAL VICTORIAN PROBATE AND FEDERAL ESTATE DUTY PAYABLE.

PARA. (1) (d) FIRST SCHEDULE, PROBATE DUTY ACT.

i.e., estates passing to persons other than those in paragraphs (a), (b), and (c).

<i>Final Balance</i>	<i>Present Probate and Estate Duty</i>	<i>Proposed Probate and Estate Duty</i>	<i>Increase in Probate Duty</i>	<i>Overall Increase</i>
\$	\$	\$	\$	\$
100,000	28,118	28,118	Nil	Nil
120,000	38,466	38,647	250	181
140,000	49,082	49,657	750	575
160,000	59,954	60,897	1,250	943
180,000	71,652	72,568	1,250	916
200,000	83,785	84,857	1,500	1,072
250,000	113,890	115,525	2,500	1,635
500,000	253,188	256,542	5,000	3,354
750,000	381,441	386,843	7,500	5,402
1,000,000	511,402	518,530	10,000	7,128