

## VICTORIA.



ANNO SEPTIMO

## ELIZABETHÆ SECUNDÆ REGINÆ.



No. 6478

An Act to amend the Law relating to Duties payable on the Estates of Deceased Persons and for other purposes.

[Assented to 16th December, 1958.]

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):—

1. (1) This Act may be cited as the *Administration and Probate (Amendment) Act 1958* and shall be read and construed as one with the *Administration and Probate Act 1928* and the Acts and enactments amending the same which Acts and enactments and this Act may be cited together as the *Administration and Probate Acts*.

Short title construction and citation.  
Nos. 3632, 4141, 4483, 4486, 4918 s. 2, 5123 s. 3, 5277, 5286 s. 9, 5580, 5757 s. 2, 5846 s. 3, 5895, 5996.

(2) This Act shall be deemed to have come into operation on the first day of December One thousand nine hundred and fifty-eight.

(3) The provisions of this Act shall apply only to and with respect to the estates of persons dying on or after the commencement of this Act.

(4) The

(4) The provisions of the Administration and Probate Acts as in force immediately before the commencement of this Act shall apply to and with respect to the estates of persons dying before the commencement of this Act and notwithstanding anything in this or any other Act for the purposes of such application the said Acts as so in force shall be deemed to remain in force.

Amendment of No. 3632 s. 160 as re-enacted by No. 5590 s. 10 and amended by No. 5895 s. 3.

Certain bequests to be free from duty.

2. Section one hundred and sixty of the *Administration and Probate Act* 1928 as re-enacted by the *Administration and Probate (Estates) Act* 1951 is hereby amended as follows :—

(a) In sub-section (1) for the words “ Where any part of the estate of a deceased person is devised or bequeathed or passes by gift *inter vivos* or under a settlement ” there shall be substituted the words “ In computing the final balance for the purposes of the Administration and Probate (Estates) Acts there shall be allowed as deductions from the estate of a deceased person any part of the estate which is devised or bequeathed or passes by gift *inter vivos* or under a settlement ” ;

(b) In sub-section (1) the words “ the duty otherwise payable on the final balance shall be reduced (by proportional calculation) by such proportion as such part of the estate bears to the final balance ” shall be repealed ;

(c) At the end of the section there shall be inserted the following sub-section :—

“ (3) Without limiting the generality of the last two preceding sub-sections it is hereby declared that a devise bequest gift or settlement as aforesaid to or for—

(a) the National Trust of Australia (Victoria) ;

(b) the Trustees of the National Gallery of Victoria ;

(c) the Trustees of the Public Library of Victoria ;

(d) the Trustees of the National Museum of Victoria ;

(e) the Trustees of the Museum of Applied Science of Victoria ;

(f) the National Art Gallery and Cultural Centre Building Committee—

shall be and shall be deemed always to have been a devise bequest gift or settlement for public scientific or public educational purposes in Victoria.”

3. At the end of the *Administration and Probate Act* 1928 there shall be inserted the following new section :—

‘ 182. (1) For the purposes of this section—

“ Deceased successor ” means a person who has become entitled as a successor to a predecessor to any property which formed or was deemed to form part of the estate

of

Rebates to be allowed on quick succession.

of a predecessor and who was the spouse parent child grandchild brother or sister of the predecessor or the spouse of a child of the predecessor ;

“ Predecessor ”, in relation to a deceased successor, means a person who has died (whether before or after the commencement of this Act) within five years before the death of the deceased successor.

(2) Where the Commissioner is satisfied—

- (i) that any property which is or is deemed to form part of the estate of a deceased successor is identifiable with or derived from property which formed or was deemed to form part of the estate of a predecessor ;
- (ii) that such property passed or was deemed to pass from the predecessor directly to the deceased successor ; and
- (iii) that such property passes or is deemed to pass from the deceased successor for the use and benefit of the widow widower parent child grandchild brother or sister of the deceased successor or a spouse of a child of the deceased successor—

the Commissioner shall reduce the net amount of the duty payable in the estate of the deceased successor in respect of that property by one of the following percentages as the case requires :—

- (a) If the deceased successor has died within one year after the death of the predecessor, by fifty per cent. ;
- (b) If the deceased successor has died within two years after the death of the predecessor, by forty per cent. ;
- (c) If the deceased successor has died within three years after the death of the predecessor, by thirty per cent. ;
- (d) If the deceased successor has died within four years after the death of the predecessor, by twenty per cent. ;
- (e) If the deceased successor has died within five years after the death of the predecessor, by ten per cent. :

Provided that where the net amount of the duty payable in the estate of the deceased successor in respect of that property (before making any reduction under this section) exceeds the net amount of the duty actually paid or payable in the estate of the predecessor in respect of that property or the property that it represents the reduction to be made under this section shall be the appropriate percentage of the last-mentioned amount.

(3) The duty payable in respect of any property for the purposes of this section shall be calculated by proportional calculation.’

Amendment of  
No. 5590 s. 16.  
Special  
provision in  
cases where  
death due to  
war service.

4. For paragraphs (a) (b) and (c) of sub-section (1) of section sixteen of the *Administration and Probate (Estates) Act 1951* there shall be substituted the following words "the duty otherwise payable on the share of the final balance of all such persons shall be reduced (by proportional calculation) by such proportion as the total value of the shares therein of all such persons aforesaid or Seven thousand five hundred pounds (whichever is the less) bears to the share of the final balance of all such persons".

New schedule  
substituted for  
No. 3632  
Tenth  
Schedule as  
re-enacted by  
No. 5590.  
First Schedule

5. For the Tenth Schedule to the *Administration and Probate Act 1928* as re-enacted by the *Administration and Probate (Estates) Act 1951* there shall be substituted the following Schedule :—

### ‘ TENTH SCHEDULE.

1. Subject to the particular provisions of this Schedule the duty payable shall be calculated as follows :—

(a) Where the final balance passes to the widow, widower, children who have not attained the age of 21 years, wholly dependent adult children or wholly dependent widowed mother of the deceased.

Where the Final Balance--	The Duty shall be --
Does not exceed £5,000 .. .. .	Nil
Exceeds £5,000 but does not exceed £6,500	18d. for each £1 by which the final balance exceeds £5,000
Exceeds £6,500 but does not exceed £10,000	£112 10s. plus 30d. for each £1 by which the final balance exceeds £6,500
Exceeds £10,000 but does not exceed £15,000	£550 plus 18d. for each £1 by which the final balance exceeds £10,000
Exceeds £15,000 but does not exceed £25,000	£925 plus 24d. for each £1 by which the final balance exceeds £15,000
Exceeds £25,000 but does not exceed £30,000	£1,925 plus 30d. for each £1 by which the final balance exceeds £25,000
Exceeds £30,000 but does not exceed £35,000	£2,550 plus 42d. for each £1 by which the final balance exceeds £30,000
Exceeds £35,000 but does not exceed £45,000	£3,425 plus 48d. for each £1 by which the final balance exceeds £35,000
Exceeds £45,000 but does not exceed £55,000	£5,425 plus 54d. for each £1 by which the final balance exceeds £45,000
Exceeds £55,000 but does not exceed £60,000	£7,675 plus 60d. for each £1 by which the final balance exceeds £55,000
Exceeds £60,000 but does not exceed £65,000	£8,925 plus 72d. for each £1 by which the final balance exceeds £60,000
Exceeds £65,000 but does not exceed £75,000	£10,425 plus 84d. for each £1 by which the final balance exceeds £65,000
Exceeds £75,000 but does not exceed £94,667	£13,925 plus 90d. for each £1 by which the final balance exceeds £75,000

and where the final balance exceeds £94,667 the duty shall be Twenty-two pounds ten shillings per centum of the final balance.

Where part only of the final balance so passes the duty shall be that proportion of the duty that would have been payable had the whole of the final balance so passed which the part that so passes bears to the final balance.

TENTH SCHEDULE—*continued.*

(b) Where the final balance passes to children who have attained the age of 21 years (not being wholly dependent adult children) or grandchildren of the deceased.

Where the Final Balance—	The Duty shall be—
Does not exceed £5,000 .. .. .	Nil
Exceeds £5,000 but does not exceed £6,500	24d. for each £1 by which the final balance exceeds £5,000
Exceeds £6,500 but does not exceed £10,000	£150 plus 36d. for each £1 by which the final balance exceeds £6,500
Exceeds £10,000 but does not exceed £15,000	£675 plus 24d. for each £1 by which the final balance exceeds £10,000
Exceeds £15,000 but does not exceed £25,000	£1,175 plus 30d. for each £1 by which the final balance exceeds £15,000
Exceeds £25,000 but does not exceed £30,000	£2,425 plus 36d. for each £1 by which the final balance exceeds £25,000
Exceeds £30,000 but does not exceed £35,000	£3,175 plus 48d. for each £1 by which the final balance exceeds £30,000
Exceeds £35,000 but does not exceed £45,000	£4,175 plus 54d. for each £1 by which the final balance exceeds £35,000
Exceeds £45,000 but does not exceed £55,000	£6,425 plus 66d. for each £1 by which the final balance exceeds £45,000
Exceeds £55,000 but does not exceed £65,000	£9,175 plus 72d. for each £1 by which the final balance exceeds £55,000
Exceeds £65,000 but does not exceed £75,000	£12,175 plus 84d. for each £1 by which the final balance exceeds £65,000
Exceeds £75,000 but does not exceed £85,000	£15,675 plus 90d. for each £1 by which the final balance exceeds £75,000
Exceeds £85,000 but does not exceed £97,166	£19,425 plus 96d. for each £1 by which the final balance exceeds £85,000

and where the final balance exceeds £97 166 the duty shall be Twenty-five pounds per centum of the final balance.

Where part only of the final balance so passes the duty shall be that proportion of the duty that would have been payable had the whole of the final balance so passed which the part that so passes bears to the final balance.

(c) Where the final balance passes to brothers, sisters or parents of the deceased.

Where the Final Balance—	The Duty shall be—
Does not exceed £600 .. .. .	Nil
Exceeds £600 but does not exceed £1,500	12d. for each £1 by which the final balance exceeds £600
Exceeds £1,500 but does not exceed £5,000	£45 plus 24d. for each £1 by which the final balance exceeds £1,500
Exceeds £5,000 but does not exceed £10,000	£395 plus 36d. for each £1 by which the final balance exceeds £5,000
Exceeds £10,000 but does not exceed £15,000	£1,145 plus 30d. for each £1 by which the final balance exceeds £10,000
Exceeds £15,000 but does not exceed £25,000	£1,770 plus 42d. for each £1 by which the final balance exceeds £15,000
Exceeds £25,000 but does not exceed £35,000	£3,520 plus 48d. for each £1 by which the final balance exceeds £25,000
Exceeds £35,000 but does not exceed £45,000	£5,520 plus 60d. for each £1 by which the final balance exceeds £35,000
Exceeds £45,000 but does not exceed £60,000	£8,020 plus 72d. for each £1 by which the final balance exceeds £45,000
Exceeds £60,000 but does not exceed £65,000	£12,520 plus 78d. for each £1 by which the final balance exceeds £60,000
Exceeds £65,000 but does not exceed £75,000	£14,145 plus 90d. for each £1 by which the final balance exceeds £65,000
Exceeds £75,000 but does not exceed £85,000	£17,895 plus 96d. for each £1 by which the final balance exceeds £75,000
Exceeds £85,000 but does not exceed £113,840	£21,895 plus 102d. for each £1 by which the final balance exceeds £85,000

TENTH SCHEDULE—*continued.*

and where the final balance exceeds £113,840 the duty shall be Thirty pounds per centum of the final balance.

Where part only of the final balance so passes the duty shall be that proportion of the duty that would have been payable had the whole of the final balance so passed which the part that so passes bears to the final balance.

(d) Where the final balance passes to any person (not being a widow, widower or a child, brother, sister or parent of the deceased).

Where the Final Balance—	The Duty shall be—
Does not exceed £600 .. .. .	Nil
Exceeds £600 but does not exceed £1,500	18d. for each £1 by which the final balance exceeds £600
Exceeds £1,500 but does not exceed £5,000	£67 10s. plus 24d. for each £1 by which the final balance exceeds £1,500
Exceeds £5,000 but does not exceed £6,500	£417 10s plus 42d. for each £1 by which the final balance exceeds £5,000
Exceeds £6,500 but does not exceed £10,000	£680 plus 48d. for each £1 by which the final balance exceeds £6,500
Exceeds £10,000 but does not exceed £15,000	£1,380 plus 42d. for each £1 by which the final balance exceeds £10,000
Exceeds £15,000 but does not exceed £35,000	£2,255 plus 48d. for each £1 by which the final balance exceeds £15,000
Exceeds £35,000 but does not exceed £45,000	£6,255 plus 60d. for each £1 by which the final balance exceeds £35,000
Exceeds £45,000 but does not exceed £75,000	£8,755 plus 90d. for each £1 by which the final balance exceeds £45,000
Exceeds £75,000 but does not exceed £85,000	£20,005 plus 102d. for each £1 by which the final balance exceeds £75,000
Exceeds £85,000 but does not exceed £116,625	£24,255 plus 108d. for each £1 by which the final balance exceeds £85,000

and where the final balance exceeds £116,625 the duty shall be Thirty-three pounds per centum of the final balance.

Where part only of the final balance so passes the duty shall be that proportion of the duty that would have been payable had the whole of the final balance so passed which the part that so passes bears to the final balance.

2. (a) The duty chargeable on the final balance of the estate of a deceased person who dies domiciled outside Victoria shall be a sum equal to that proportion of the duty that would be chargeable on the total value of all property wheresoever situated which would be or would be deemed to form part of the estate of the deceased if it were situated in Victoria less the total value of all debts due and owing by him at the time of his death and all other deductions that would be allowed under the Administration and Probate (Estates) Acts (in this clause called the "total estate") which the final balance bears to such total estate.

(b) In calculating the duty which would be payable on the total estate for the purposes of this paragraph the provisions of the Administration and Probate (Estates) Acts and of this Schedule shall apply as if the total estate were the final balance.

(c) No duty shall be chargeable under this paragraph where the final balance does not exceed £100.

(d) Where any part of the total estate is devised or bequeathed or passes by gift *inter vivos* or under a settlement in such a manner that if the total estate were in Victoria a deduction under Section one hundred and sixty of the *Administration and Probate Act 1928* would be allowed then unless the will of the deceased or the instrument of gift or settlement provides otherwise, the devise bequest gift or settlement shall be deemed to be made from property in Victoria.

TENTH SCHEDULE—*continued.*

(e) For the purpose of this paragraph the Commissioner may require the person who files the statement in respect of the deceased person's estate to furnish the Commissioner with such valuations certificates and other information (including certificates from any taxation or other public authority outside Victoria) as he deems necessary to determine the value of the total estate.

3. Where the duty calculated under this Schedule is less than Ten shillings the duty chargeable shall nevertheless be Ten shillings.

4. Where a proportional calculation is required to be made for the purposes of applying or calculating an addition to or a reduction or apportionment of duty as between different parts of an estate, then for the purpose only of such application or calculation no account shall be taken of any addition or reduction under this Act but such addition or reduction shall be made thereafter.

5. For the purposes of calculating duty payable under this Act—

“ Brothers or sisters ” includes brothers or sisters of the half blood.

“ Children ” includes

(a) children adopted under any law for the time being in force in Victoria or in any other State of the Commonwealth or (if the adoption would be recognized by the law of Victoria) under any other law ;

(b) where the deceased person was a woman the illegitimate children of such person ; and

(c) the step-children of the deceased person.

“ Wholly dependent adult children ” means—

(a) children in respect of whom an invalid pension is being paid under any Commonwealth Act relating to Social Services ; or

(b) children who have been wholly engaged in keeping house for the deceased for at least two years out of the three years immediately preceding his death.

“ Wholly dependent widowed mother ” means the widowed mother of the deceased person who is not in receipt of an annual income greater than the maximum rate of pension payable under any Commonwealth Act in force from time to time relating to Old Age, Invalid, and Widow's Pensions, and who was receiving assistance from the deceased.

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