

STAMP DUTIES (AMENDMENT) ACT.

New South Wales



ANNO VICESIMO PRIMO

ELIZABETHÆ II REGINÆ

Act No. 79, 1972.

An Act to provide for a method of valuing superannuation benefits for death duty purposes and for the allowance of certain deductions in respect thereof; for these and other purposes to amend the Stamp Duties Act, 1920; and for purposes connected therewith. [Assented to, 4th December, 1972.]

BE

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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 :—

Short title.

1. This Act may be cited as the "Stamp Duties (Amendment) Act, 1972".

Amendment
of Act No.
47, 1920.

2. The Stamp Duties Act, 1920, is amended—

Sec. 100.
(Interpre-
tation.)

(a) by inserting next after the definition of "Disposition of property" in section 100 the following new definition :—

"Eligible superannuation scheme" means any scheme, fund or plan established for the purpose of providing superannuation benefits or superannuation benefits and death benefits, and—

- (a) created or arranged by an employer for the benefit of his employees and operated under the terms of an instrument of trust executed by or on behalf of the employer;
- (b) created or arranged for the benefit of employees or self-employed persons in a form approved by the Commissioner for the purposes of this Part; or
- (c) created and operated by or under any law of the Commonwealth or of any State or Territory of the Commonwealth.

(b)

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(b) (i) by omitting from section 102 (2) (h) the words "Any money" and by inserting instead the words "Subject to subsection (7) of section 102E, any money";

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Sec. 102.
(Property subject to duty as part of the estate of deceased person.)

(ii) by omitting section 102 (2) (i) and by inserting instead the following subparagraph :—

(i) Any annuity or other interest purchased or provided before or after the commencement of this Act—

(i) by or on behalf of the deceased, either by the deceased alone or in concert or by arrangement with any other person;

(ii) by or on behalf of any person in concert or by arrangement with the deceased; or

(iii) by any person who at any time was an employer of the deceased or was acting on behalf of or in concert or by arrangement with an employer of the deceased,

to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased.

(iii) by inserting next after section 102 (2) (1) the following new subparagraph :—

(m) The value of any benefit that accrues to any person or any amount of money paid or payable to any person, on or

after

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after the death of the deceased by the operation of, or pursuant to, any agreement entered into, or disposition made, by the deceased before or after the commencement of this Act or by the operation of, or pursuant to, the memorandum, articles or rules of any body, corporate or unincorporate, association, scheme, fund or plan of or in which the deceased was a member or participant, where the benefit accrued or the money was paid or is payable by reason of the deceased having died while he was holding an office or while he was an employee, whether or not the benefit or payment is enforceable and whether or not that person was ascertained on the death of the deceased.

(iv) by inserting next after section 102 (2B) the following new paragraph :—

(2c) The value of any benefit that accrues outside New South Wales, and any amount of money paid or payable outside New South Wales, where—

- (a) the deceased dies after the commencement of the Stamp Duties (Amendment) Act, 1972;
- (b) the deceased was, at the time of his death, domiciled in New South Wales; and
- (c) the benefit or amount of money would, had it accrued or been paid or payable in New South Wales, have been deemed by the operation of subparagraph (m) of paragraph (2) to have been included in the dutiable estate of the deceased.

(v)

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(v) by omitting section 102 (3) (c) and by inserting instead the following subparagraph :— No. 79, 1972

(c) the value of an annual or periodical payment of money under an eligible superannuation scheme to the widow or widower of the deceased, or to any children of the deceased who, at the time of the death of the deceased, were under the age of twenty-one years or were wholly dependent adult children, or to the wholly dependent widower father or the wholly dependent widowed mother of the deceased, where—

(i) the payment is to be made during the life, or until the remarriage, of the person entitled to the payment or for a term certain of not less than ten years; and

(ii) any right to commute the whole or part of the payment to a capital sum is exercisable only by the person entitled to the payment under the scheme.

(c) by inserting next after section 102D the following new section :— New sec. 102E.

102E. (1) Where an annuity or other interest referred to in subparagraph (i) of paragraph (2) of section 102 was purchased or provided— Further provisions relating to dutiable estate.

(a) partly by or on behalf of the deceased; and

(b) partly by or on behalf of another person (not being a person who at any time was the employer of the deceased or a person

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who was acting in concert or by arrangement with a person who at any time was the employer of the deceased),

that subparagraph applies to and in respect of only so much of the annuity or other interest as was purchased or provided by or on behalf of the deceased.

(2) For the purposes of subparagraph (i) of paragraph (2) of section 102, to the extent to which an annuity or other interest was purchased or provided—

- (a) by or on behalf of a person who at any time was the employer of the deceased; or
- (b) by or on behalf of a person who was acting in concert or by arrangement with a person who at any time was the employer of the deceased,

it shall be deemed to have been purchased or provided by or on behalf of the deceased.

(3) For the purposes of subparagraph (i) of paragraph (2) of section 102, where a contract is, in so far as it does or may confer a benefit on a person who is not a party, enforceable by the administrator of the estate of the deceased—

- (a) the benefit shall be deemed to be an annuity or other interest purchased or provided by the deceased; and
- (b) the beneficial interest in the benefit shall be deemed to accrue or arise on the death of the deceased in favour of the person on whom the benefit is or may be conferred, notwithstanding the inability of that person to enforce the contract.

(4) For the purposes of subparagraph (i) of paragraph (2) of section 102, the extent of any beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased shall

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shall be ascertained without regard to any interest, No. 79, 1972 whether contingent or defeasible or in expectancy, that the beneficiary may have had therein before the death of the deceased.

(5) For the purposes of subparagraphs (i) and (m) of paragraph (2) of section 102, where a beneficial interest accrues or arises, a benefit accrues or an amount of money is paid or becomes payable—

- (a) at or from a time ascertained by reference to the death of the deceased; or
- (b) after the death of the deceased and so accrues, arises, is paid or becomes payable pursuant to the exercise of a discretion by any person,

the beneficial interest, benefit or amount of money shall be deemed to have accrued, arisen, been paid or become payable on the death of the deceased.

(6) For the purposes of Schedule 7A, where—

- (a) a beneficial interest referred to in subparagraph (i) of paragraph (2) of section 102; or
- (b) a benefit or amount of money referred to in subparagraph (m) of that paragraph,

accrues, arises or is paid or becomes payable pursuant to the exercise of a discretion after the death of the deceased by any person, the beneficial interest, benefit or amount of money shall be deemed to have vested in, or passed to, the person in whose favour the discretion was exercised.

(7) In the case of a person who dies after the commencement of the Stamp Duties (Amendment) Act, 1972, subparagraph (h) of

paragraph

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paragraph (2) of section 102 does not apply to or in respect of money payable under a policy of assurance to the extent that—

- (a) a beneficial interest referred to in subparagraph (i) of that paragraph accrues or arises therein on the death of the deceased; or
- (b) the money is a benefit or an amount of money referred to in subparagraph (m) of that paragraph,

and is included in the dutiable estate of the deceased or is deemed, by subparagraph (c) of paragraph (3) of section 102, not to be included therein.

(8) Where, on the death of a person domiciled in New South Wales, benefits accrue or become payable, pursuant to one or more eligible superannuation schemes, to the widow or widower of the deceased, or to any children of the deceased who, at the time of the death of the deceased, were under the age of twenty-one years or were wholly dependent adult children of the deceased, or to the wholly dependent widower father or the wholly dependent widowed mother of the deceased, there shall be allowed as a deduction from the dutiable estate of that person—

- (a) where all those benefits so accruing or payable to those persons are included in the dutiable estate—the lesser of—
 - (i) the aggregate amount of those benefits; and
 - (ii) \$70,000; or
- (b) where part only of those benefits so accruing or payable to those persons is included in the dutiable estate—the lesser of—
 - (i) the value of that part; and

(ii)

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- (ii) an amount that bears to \$70,000 No. 79, 1972 the same proportion as that part bears to the aggregate amount of those benefits, whether included in the dutiable estate or not.

(9) Where a benefit accruing or arising under an eligible superannuation scheme is, pursuant to the scheme, payable to the administrator of the estate of the deceased, it shall, for the purposes of subsection (8), be deemed to be payable pursuant to the scheme to the person entitled thereto under the will or upon the intestacy of the deceased.

(10) Where a person dies domiciled outside New South Wales, there shall be allowed as a deduction from the dutiable estate of that person any benefits accruing or payable pursuant to an eligible superannuation scheme where the benefits are included in the dutiable estate.

(11) Notwithstanding anything in this section, a deduction under this section shall not be allowed in respect of a benefit accruing or payable pursuant to an eligible superannuation scheme if the deceased was aged more than seventy-three years at the time of his death.

- (d) (i) by inserting next after section 122 (1) the following new subsections :—
- (1A) Subject to subsection (1B) where, on at or after the death of a person, a benefit accrues or is payable to another person (whether or not that other person has previously been ascertained) pursuant to one or more superannuation schemes of or in which the deceased was a member or participant, the payment of any money or transfer of any property, in order to give effect to the benefit, shall not be made without the production of a certificate of the Commissioner in

Sec. 122.
(No dealings with shares, &c., of deceased persons to be registered without certificate of Commissioner.)

the

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the prescribed form to the effect that the benefits have been included in the account lodged in accordance with this Act, or that the benefits do not form part of the dutiable estate of the deceased, or that the Commissioner consents to the proposed payment or transfer.

(1B) The provisions of subsection (1A) do not apply to or in respect of an eligible superannuation scheme to the extent that—

- (a) payments or transfers of property are made pursuant to the scheme to any one or more of the persons referred to in subparagraph (c) of paragraph (3) of section 102 of not more than one-half of the amount of the benefit that accrues or is payable pursuant to the scheme after excluding the value of any annual or periodical payment of money referred to in paragraph (b); and
 - (b) the value of any annual or periodical payment of money pursuant to the scheme is, by subparagraph (c) of paragraph (3) of section 102, deemed not to be included in the dutiable estate of the deceased.
- (ii) by omitting from section 122 (2) the words "Any corporation, company, or society to which this section applies which" and by inserting instead the words "A person who".

SYDNEY