STAMPS BILL 1964.

EXPLANATORY MEMORANDUM.

CLAUSE 1.—*Title and Commencement.*

The Act will come into operation by proclamation and separate sections may operate from different dates.

CLAUSE 2.—*Bills of Exchange and Promissory Notes.*

Sub-clause (1).—This sub-clause enacts new rates of stamp duty on bills of exchange and promissory notes. Cheques will carry a duty of 6d. instead of 3d. and the scale for term bills and promissory notes will be based generally on 2s. for £50 instead of 1s. as at present.

Sub-clause (2).—Section 43 (2) of the Act permits the printing of duty on cheques in lieu of individual stamping or embossing, and also permits the bulk collection of such duty by a system of returns from printers and banks. The new sub-clause validates cheques already printed with 3d. duty. This is an essential transitory provision similar to the provision in the 1956 Act (No. 6021) when the duty on cheques was last varied.

Sub-clause (3).—On the date from which the new rate of stamp duty on cheques comes into operation, there will be stocks of unused cheques in the hands of the banks and of customers who use "special" cheques in respect of which only 3d. duty will have been paid. This sub-clause requires the calculation of existing stocks of such cheques as at the commencement of the increased duty, and the payment to the Comptroller of Stamps of the extra duty involved.

This is also a transitory provision similar to the one used in 1956 with the exception that, in the meantime, "special" cheques have become the subject of bulk payment of duty. The sub-clause, therefore, refers to these "special" cheques as well as cheques held by banks.

Sub-clause (4).—This sub-clause provides for persons who hold ordinary cheque forms at the date from which the new rate of duty operates to affix and cancel a 3d. duty stamp on each of such cheques. This also follows the 1956 transitory provisions.

CLAUSE 3.—*Receipts.*

This clause covers the new stamp duty proposals on receipts, including the rates of duty, the making of receipts for amounts of £20 and upwards compulsory, specified exemptions, and associated machinery matters.

The proposal as announced in the Budget Speech was for a stamp duty on receipts at the rate of 3d. for each £100 or part thereof. Careful examination of information received from, and representations made to the Government by, a wide area of the business community has indicated that provided a simple basis of periodical returns of total amounts received in a given period and on which duty could be paid in one amount at the rate of 3d. per £100 was provided, the budget proposal would not involve complicated and costly administrative machinery on the part of certain businesses. On the other hand, for some types of business, it became clear that in order to avoid costly procedures a simple and definite scale of receipt duty would be desirable. The Bill, therefore, provides for both of these alternatives with the freedom of the individual to choose the periodical return basis where this suits him best. Paragraph (*e*) provides for the periodical return basis which a person may elect to adopt, and paragraph (*f*) sets out the scale of duty which will apply to receipts where a person does not elect to adopt the periodical return basis.

[121]—325/30.11.1964.—8421.

Paragraph (a).—Amendment of Section 50. In the existing Act, receipts for amounts less than £2 are exempt from stamp duty. This paragraph raises the basic exemption to amounts less than £5.

Paragraph (b).—Receipts by Solicitors or Agents, &c. This paragraph refers to the special case of solicitors or agents where a number of receipts are issued to cover what basically amounts to only one transaction. An example of this would be money paid by a person to his solicitor who pays it to another solicitor for payment to the person ultimately entitled to the money. The purpose of this paragraph is to impose the substantive duty once only in a transaction of this nature, any other receipts for the same money in the course of that transaction being dutiable only at the flat rate of 3d.

Paragraph (c).—Penalties. Section 52 provides at present for maximum penalties of £2, £5, and £10 upon payment of which receipts may be stamped within one month, two months and after two months respectively, after they have been made out. The minimum to which the latter may be mitigated is 10s. This paragraph substitutes maximum penalties of £5, £10, and £20, with a minimum of £1.

Paragraph (d).—Offences. This sub-paragraph inserts new provisions in substitution for sub-section 1 of section 53 of the Act. Under the existing provision, it is an offence to give an unstamped receipt, to refuse to give a receipt when demanded if such receipt would have been dutiable or to split receipts to evade duty. These provisions remain in the new sub-section (1) but paragraph (*c*) makes it compulsory to give a receipt for an amount of £20 or upwards.

New sub-section (1A) provides that the requirement to give a receipt for £20 and upwards cannot be affected by any commercial practice or agreement between the parties and also that the compulsion does not extend to receipts which are exempted from stamp duty.

New sub-section (1B). The basis of the present legislation is that dutiability depends on the issue of the receipt. Under new sub-section (1B), it will be sufficient if a receipt is made out and stamped though not sent or delivered to the person making the payment, except when requested.

New sub-section (1C) provides that when receipts are not sent out, they must be retained for two years.

Paragraph (e).—Arrangements for periodical returns of total receipts during a period and payment of duty on such returns instead of duty on individual receipts. As mentioned earlier in this memorandum it has been indicated to the Government that certain types of business would be best suited by being able to make periodical returns to the Comptroller of Stamps setting out the total of amounts received in a given period and on which duty will be payable on an *ad valorem* basis. Paragraph (*e*) of Clause 3 inserts new sections 53A, 53B and 53C in the Act to provide for this type of arrangement.

Any person carrying on any trade, business or profession may elect to make periodical returns to the Comptroller instead of stamping individual receipts. Such returns will show the total amounts received during the appropriate period, other than those exceeding £100 which are exempt from duty or liable to a fixed duty of 3d.

Under section 53B duty will be payable on these statements at the rate of 3d. per £100 or part thereof of the total amount shown in the statement. It will not be necessary for persons who elect to use these provisions to pay duty separately on individual receipts, and receipts made out by such persons will carry a suitable endorsement with the letters "S.D." and the serial number assigned by the Comptroller of Stamps to that person.

Paragraph (f).—This paragraph provides the basic scale of duty to apply to receipts where persons do not elect to enter into an arrangement for periodical returns as described above.

The scale of duty will be—

On receipts for amounts of £5 but less than £100	3d.
On receipts for amounts of £100 but less than £500	1s.
On receipts for amounts of £500 or more	2s.

Paragraph (*g*).—Exemptions from receipt duty.

1. Receipts for money deposited in or withdrawn from any bank except receipts for fixed deposits and money deposited by a third party where such payment would have been dutiable if paid direct to the bank's customer.

2. Receipts for money paid on account of the sale of prescribed unprocessed primary products. This is defined to include wool, cereals, animals, fruit, vegetables, eggs, milk, cream, fish and other marine produce, tobacco leaf and any others prescribed by regulation.

3. Receipts in connexion with betting transactions between bookmakers and punters on a racecourse.

4. Receipts for money paid to or by the Totalizator Agency Board.

5. Receipts for money paid to or by Totalizators on racecourses.

6. Receipts or acknowledgments for income by way of dividend or interest received by a natural person on any investment.

7. Receipts given in connexion with the purchase and sale of government and semi-government securities.

8. Receipts given by or to approved carriers for the delivery of money from or to any bank, e.g., Payroll delivery services.

9. Receipts for wages, salary or pension.

The existing exemptions for savings banks are omitted because it now becomes incorporated in the general exemption for banks. Two existing exemptions which related to receipts for amounts under £5 are also omitted, being covered by paragraph (*a*). Otherwise existing exemptions from receipt duty already provided in the Act will remain.

CLAUSE 4.—*Marketable Securities.*

Sub-clause (1).—Partition of joint holdings of marketable securities. In the case of real property, Section 75 of the Act provides that upon a partition of jointly-held interests into separate interests duty is not payable where the partition is equal. This principle is to be extended to a similar transaction in respect of marketable securities where, at present, sale rates apply to one-half of the total value of the securities to be partitioned. Appropriate duty will apply only to any surplus received by one party.

Sub-clause (2).—Miscellaneous amendments *re* marketable securities.

Paragraph (*a*).—One of the dutiable classes of transfer of marketable securities is the *sale* for full unencumbered value. It has been found that there are cases of transfer for full value which in the strict legal and technical sense are not sales. Theoretically, such cases would fall into another class with much higher rates of duty. It has been suggested by the Crown Solicitor that the words "on the sale thereof" be deleted and the paragraph has this effect.

Paragraph (*b*).—The second dutiable class of transfer of marketable security is the one where there is an inadequate consideration. In that case, duty at sale rates is charged on the amount of the inadequate consideration and duty at the higher rates appropriate to gifts is charged on the inadequacy.

It often occurs in the case of transactions between allied companies which are engaged in internal reconstruction to secure economies and efficiency that there will be transfers of shares. Book values are commonly used in such cases.

It is proposed that such transactions will receive consideration similar to that extended by the English Finance Acts but that they shall be subject only to the sale rates of duty on the value of the shares.

This is confined purely to inter-company transactions where the one owns at least 90 per cent. of the issued share capital of the other or where at least that percentage in both is owned by a third company. The drafting follows the English model.

Paragraph (*c*).—Under existing legislation, the transfer on sale of Victorian semi-government securities is subject to duty. It is proposed to make such transfers free of stamp duty and provision is made accordingly. This will bring the provision into line with the provisions in other States.

Paragraph (*d*).—Transfers of marketable securities from a nominee or trustee to the person beneficially entitled are, subject to certain conditions, exempt from duty. It has been found that the conditions are unduly restrictive in three special cases—where the original purchase took place before the introduction of duty on share transfers, where the shares have changed in character since the original purchase and where the original purchase attracted duty in another State. The exemption is expanded to include these three categories.

CLAUSE 5.—*Settlements and Gifts.*

Sub-clause (1).—Raising of rates of duty. The existing scale of duty on settlements and gifts commences at 2 per cent. on amounts up to £1,000 and ends at 10 per cent. on amounts exceeding £100,000.

The sub-clause introduces a new scale rising from 2½ per cent. to 22 per cent. which will bring the rates of duty closer in line with New South Wales rates. This was foreshadowed in the Budget Speech.

Sub-clause (2).—Application of revised rates. The new rates are to apply to all instruments of settlement and gift coming to the Comptroller after the commencement of the section irrespective of the date of execution of the dutiable instrument. This corresponds to a provision inserted when rates were previously adjusted.

Sub-clause (3).—Gifts *inter vivos*. This is a complementary amendment of the *Probate Duty Act* 1962 under which gifts *inter vivos* made more than three years prior to death are not subject to probate duty. The effect of the new provision is that such gifts if made by written instruments on or after the 19th November, 1964, will be dutiable in the probate field whenever made if no Victorian or other State stamp duty was paid on the gift and provided that the donor at the time of the gift was domiciled or resident in Victoria.

CLAUSE 6.—*Mortgage, Bond, Debenture or Covenant.*

Paragraph (*a*).—Heading.

Paragraph (*b*).—Provides for the insertion of new sections 137D to 137N.

Section 137D.—The term " mortgage " is defined to include mortgages of both real and personal property and, like the balance of this part of the Bill, follows closely the United Kingdom and other State Acts on this particular subject matter. It includes mortgages for fixed amounts and amounts subject to variation and includes other documents securing repayments where no formal mortgage as such exists. If a formal mortgage is subsequently executed after payment of duty on earlier documents of security, no further duty is attracted.

" Foreign securities " are defined as securities of any foreign or colonial State, government, municipal body, corporation or company made or issued in Victoria, upon which interest is payable in Victoria or which are assigned transferred or negotiated in Victoria. Bills of exchange and promissory notes are excluded as are the securities of the Commonwealth, the State, or Territories of the Commonwealth or their public, statutory or municipal corporations.

Section 137E.—This section deals with the duty which will be payable where marketable securities are given to borrowers instead of the advance being made in money.

Section 137F.—(1) If the security is one for an amount which cannot be presently ascertained and there is an upward limit to the amount recoverable, duty is charged on the amount so limited.

(2) If the amount is unlimited, the security is available only to the amount covered by the duty paid. When further advances above that amount are made, there is a fresh security dutiable in respect of the additional amount at the rate of 5s. per £100 or part thereof (being the rate prescribed in the Schedule).

(3) Where original instruments have been lodged in the Titles Office or some other public registration office, additional duty under section 137F (2) may be denoted on a duplicate instrument.

(4) The amount in respect of which duty is chargeable does not include amounts advanced for certain minor and relatively unimportant purposes—for insuring property or keeping in force life policies the subject of the security and for renewing leases on the death of a life tenant.

Section 137G.—Securities for the repayment by way of periodical payment such as rent charges and annuities, of amounts lent advanced or paid are to be charged on the amounts so lent advanced or paid.

Section 137H.—Further charges in respect of duly stamped securities are not subject to additional duty where they merely contain additional security or a further assurance of property previously charged.

Section 137I.—(1) Where there is a duly stamped primary security, any merely collateral security is exempt.

(2) No collateral security may be enforced unless the primary security is stamped.

Section 137J.—The obligation to pay the duty is placed on the mortgagor and all securities exceeding £4,000 must be impressed with duty at the Stamps Office. Securities of £4,000 or less may carry either impressed or adhesive stamps in accordance with the existing provisions of the Act.

Section 137K.—This provision permits the stamping of a foreign security without penalty at any time prior to such security being transferred assigned or negotiated or interest being paid thereon in Victoria.

Section 137L provides penalties for making, issuing, transferring, negotiating, or paying interest on unstamped foreign securities.

Section 137M.—Unless special provision is made otherwise, the trust deed executed in connexion with a public issue of debentures by a borrowing corporation would be liable to duty under this subdivision. Such duty would be charged upon the total amount to be borrowed including amounts which may never be actually borrowed and also including amounts subscribed by the public both inside and outside Victoria. The purpose of this section is to charge the duty at the rate of 5s. per £100 or part of £100 only in respect of amounts actually subscribed by the public in Victoria from time to time.

The section provides a simple procedure for payment of duty on an annual declaration and also provides that, where a borrowing corporation gives the requisite undertaking, the trust deed will not be liable to duty.

Section 137N.—The various expressions in this part of the Act have the same meanings as in the *Companies Act* 1961.

Paragraph (*c*) provides for the rate of duty on mortgages, bonds, debentures or covenants. The duty will be £2 up to £4,000 and thereafter £2 for the first £4,000 plus 5s. per £100 or part thereof in excess of £4,000. The following exemptions are provided :—

(*a*) Securities for repayment of amounts not exceeding £100.

(*b*) Securities given by co-operative and co-operative housing societies in respect of money borrowed by them, e.g., Equitable mortgages.

(*c*) Securities given by religious, charitable or educational bodies.

(*d*) Securities given by Governments both Commonwealth and State and by their statutory bodies.

(*e*) Liens on crop.

(*f*) Liens on wool and stock mortgages.

Paragraph (*d*).—New section 37 inserted in Principal Act. The present section 37 provides a penalty on any person who enrols or registers an instrument liable to duty but not duly stamped. The new section 37 will prohibit the registration or enrolling of such instruments not duly stamped. Under the Companies Act a prospectus for the public issue of debentures may be approved on the production of a certified copy of a Trust Deed, the original of which may never enter the jurisdiction. The proposed new section prohibits the enrolling or registration of a copy of such document unless the person concerned is satisfied that such original is duly stamped.

CLAUSE 7.—*Policies of Life Insurance.*

This clause provides for the stamp duty on life insurance policies as announced in the Budget.

Paragraph (*a*).—Heading.

Paragraph (*b*) provides for the insertion of new sections 111A to 111D.

Section 111A.—This section contains the necessary definitions and is based on similar legislation in Queensland.

Section 111B.—(1) Provides penalties for failing to pay stamp duty on policies of life insurance.

(2) If a person enters into a contract of life insurance outside Victoria in respect of a consideration provided by a person in Victoria, he must make and stamp a memorandum as though it were a policy but any subsequent policy issued will carry no further duty.

(3) Policies or equivalent documents issued outside Victoria must be stamped within ten days of coming into Victoria.

Section 111C. In the case of a mixed life and accident policy, duty is payable on the life content only.

Section 111D. In lieu of the stamping of every individual policy this section permits a simple system of returns and payment of duty on those returns.

Paragraph (*c*).—This paragraph provides for the rates of duty on policies of life insurance. The rates are 1s. per £100 or part thereof on insurance policies up to £1,000 and 2s. per £100 or part on the amount by which the sum assured exceeds £1,000. In the case of temporary or term insurance where premium rates are low, the duty will be 5 per cent. of the first year's premium. Exemption is provided for policies of £100 or less and for policies of re-insurance. Cover notes are not chargeable provided that a duly stamped policy is issued within three months.

CLAUSE 8.—*Various Agreements, Instruments and Deeds Not Otherwise Chargeable.*

(*a*) *Section* 137O *and Heading XXIII., Various Agreements and Instruments.*

In the Budget Speech it was proposed to adopt the legislation of certain other States and place a duty of £1 10s. 0d. on deeds not otherwise chargeable and 1s. 6d. on agreements not under seal and not otherwise subject to duty. Upon further consideration of this proposal it has been decided to apply this duty to certain specified agreements and instruments as set out in the Bill which are not otherwise chargeable (otherwise than as receipts). The duty will be 30s. on each instrument and agreement specified except for instruments appointing an agent where the duty will be 20s. However, in the case of an appointment of a licensed estate agent for a single transaction the duty will be 5s. only.

(*b*) *Section* 137P *and Heading XXIV., Deeds Not Otherwise Chargeable.*

Section 137P.—This section makes provision similar to that of the previous section in relation to all deeds not otherwise chargeable other than as receipts. The appropriate Schedule imposes a duty of 30s. on each such deed. Exemptions are provided for Crown grants, conveyances, &c., to the Crown or for its use and agreements for employment of persons at wages or salaries.