1934.

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA.

FOURTH AND FINAL REPORT

OF THE

ROYAL COMMISSION ON TAXATION.

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COMMONWEALTH OF AUSTRALIA.

FOURTH AND FINAL REPORT OF THE COMMISSIONERS.

To His Excellency, the Right Honorable SIR ISAAC ALFRED ISAACS, *a Member of His Majesty's Most Honorable Privy Council, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Governor-General and Commander in Chief in and over the Commonwealth of Australia.*

MAY IT PLEASE YOUR EXCELLENCY :

We, the Commissioners appointed by Royal Letters Patent, dated 6th October, 1932—

"To inquire into and report upon the simplification and standardization of the taxation laws of the Commonwealth and of the States in so far as they relate to substantially the same subject-matters of taxation, as, for instance, income tax, land tax, and death duties; and, in particular, to make recommendations for the purpose of obtaining uniformity in legislative provisions, including provisions relating to procedure and forms of returns,"

have the honour to submit our fourth and final Report which deals with the simplification and standardization of the taxation laws of the Commonwealth and of the States in so far as they relate to Death Duties and Land Tax. Where it appears advisable to do so we submit recommendations designed to produce a greater measure of uniformity in the law and practice.

DEATH DUTIES.

SECTION LIII.

THE IMPOSITION OF DEATH DUTIES BY THE COMMONWEALTH AND EACH STATE AND A SUMMARY OF PREVIOUS ATTEMPTS TO BRING THE LEGISLATION INTO CLOSER AGREEMENT.

1035. Every Australian State imposed Duties upon the estates of deceased persons many years before it imposed taxes upon dividends or income. The following table shows the year in which all these taxes were first imposed :—

	Death Duties.	Dividend Duty.	Income Tax.
New South Wales	1865	.. ..	1895
Tasmania	1865	1880	1902
Victoria	1870	.. ..	1895
South Australia	1876	.. ..	1884
Queensland	1886	1897	1902
Western Australia	1895	1899	1907
Commonwealth	1914	.. ..	1915

1036. Amendments made in some of the State Acts have varied the original scheme of the legislation and the incidence of the Duty. The increasing financial requirements of all the Governments have also brought about a general increase in rates.

1037. Legislation relating to Death Duties does not affect the general taxpayer to the same extent as that relating to Income Tax. The statistics contained in the Official *Year-Book* of the Commonwealth of Australia for 1933 show that there were in 1931 approximately 47,000 deaths of adult persons, and that the number of Probates and Letters of Administration granted during the same period was 18,000. It would appear, therefore, that about 40 per cent. of the adults who died during the year were possessed of sufficient property to necessitate the taking out of Probate or Letters of Administration. It should be noted, however, that an estate having assets in more than one State would be included in the statistics of each State where the assets were situate. Approximately 8,000 of the estates subject to State Duty were also subject to Commonwealth Estate Duty. The disparity between the Commonwealth and State figures is due to the fact that the Commonwealth allows a larger exemption than any of the States. For the purposes of comparison we may state that during the like period approximately 336,000 taxpayers were subject to Commonwealth Income Tax and that the number subject to State Income Tax would be larger.

1038. The following table shows the amount of Death Duties collected by each Government during the year ended the 30th June, 1933 :—

	£	£
Commonwealth	..	1,126,996
New South Wales	1,639,979	
Victoria	1,164,200	
Queensland	452,872	
South Australia	299,826	
Western Australia	91,995	
Tasmania	117,387	
		3,766,259
Grand Total		4,893,255

1039. Soon after the enactment of the Commonwealth Estate Duty Act it was recognized by the respective Governments that it was desirable that steps should be taken to bring the relevant Acts of the Commonwealth and States into agreement as far as that is possible. The subject was considered at some of the Conferences between Ministers or officials which met to consider proposals for the simplification of Income Tax which are referred to in Section XVI. It appears to have been first discussed at a Conference of Premiers held during December, 1916, when it was resolved that the Commonwealth Government and the Governments of the several States should direct their leading taxation officers to prepare a uniform scheme for Probate Duty. In accordance with that Resolution the matter was referred to a Conference of Taxation Officers which met during March, 1917, and was considered by a sub-committee consisting of officers administering Probate and Succession Duties. The report of the sub-committee states that the members—

> "have given the fullest consideration to the Resolution of the Conference of Premiers, and, after mature deliberation, have prepared a common form of Assets and Liabilities for use throughout the Commonwealth and States, the adoption of which will necessitate legislation.
>
> They have also adopted the following Resolutions :—
>
> (1) That this Committee is of opinion that the institution of a uniform scheme of Probate and Succession Duties would not be of any benefit to the Commonwealth, the States, or the taxpayers, sufficient to justify the alteration in existing conditions which such a scheme would necessitate.
> (Mr. Douglas (for Commonwealth) dissenting.)
>
> (2) That this Committee is of opinion that a considerable saving of expense and trouble, both to the person taxed and the taxing authority, would be effected if arrangements were made whereby duties payable under the Commonwealth Estate Duties Act were assessed and collected for the Commonwealth by the respective States.
> (Mr. Douglas (for Commonwealth) dissenting.)
>
> which they submit with the Common Form for the consideration of the Conference."

1040. A statement which accompanied the report set out the reasons which induced the sub-committee to submit the first of these Resolutions. These may be summarized as under :—

(1) The laws relating to Probate and Succession Duties have been in existence for a much longer time than those relating to Income Tax and are less amenable to amendment. There is a special practice surrounding each of them, each State having a staff of skilled and experienced officers who have been accustomed for many years to work on the lines of their particular Act.

(2) Returns relating to Probate and Succession Duties are required only upon the death of a taxpayer and not annually as in the case of Land and Income Tax.

Therefore "however essential and advisable it is from a taxpayer's point of view that the annual returns for Land and Income Tax should be simplified and reduced to uniformity, it is not in any way essential that the same principles should be applied to Probate and Succession Duties."

(3) The machinery for the collection of the Duties was working smoothly and well, as far as the requirements of each State were concerned, and it should not be disturbed.

1041. We have not been able to ascertain whether the subject of Death Duties was considered at any of the Conferences held between 1917 and 1924. In the latter year one aspect of the subject was discussed at a Premiers' Conference, namely, the means which might be taken to obviate double Death Duty upon shares in companies. This was referred to a Committee of State Taxation Officials. A further Conference of Taxation Officials, held during 1928, discussed means to be adopted to obviate double taxation generally. The Resolutions of both conferences are referred to in that part of our Report relating to Double Taxation.

SECTION LIV.

COMMONWEALTH AND STATE LEGISLATION RELATING TO DEATH DUTIES AND SUGGESTIONS FOR ITS SIMPLIFICATION AND STANDARDIZATION.

1042. The expression " Death Duties " is now generally used as the most compendious term for describing the taxation levied on the estates of deceased persons, or on persons to whom benefits acrue by the death of other persons. It embraces Estate Duty, Probate Duty and Succession Duty, all of which have one point in common—that they are levied in respect of the transmission or devolution of property on death. In this Report we shall therefore use the term to include any of the Duties levied by the Commonwealth or the States, however they may be described in their respective Acts.

1043. Australian legislation relating to Death Duties has invariably followed English precedent. But as we have shown in paragraph 1035 the adoption of Death Duties by the Australian Governments covered a period of nearly 50 years. During that period amendments were made in some of the Acts of the States, and very material amendments were made in English legislation. A summary of these will be of interest.

1044. Prior to 1894 the Death Duties in force in England were as follows :—

(*a*) Probate Duty—A stamp duty levied on all personal property within the jurisdiction of the Probate Court, and hence on all estate and effects in respect of which the personal representatives of the deceased derived title from the grant of Probate of the will or Letters of Administration. It has been concisely described as the price of obtaining Probate.

(*b*) Account Duty, also a stamp duty, charged on certain gifts and settlement.

(*c*) Legacy Duty, on personal property devolving under a will or on intestacy.

(*d*) Succession Duty, on successions to real or personal property, except personalty liable to Legacy Duty.

1045. The *Finance Act* 1894 completely altered this method of imposing Duties. It substituted an Estate Duty which took the place of Probate Duty and Account Duty, and altered the incidence of Succession Duty in some respects. It did not affect Legacy Duty, but where property is chargeable with Estate Duty neither Legacy Duty nor Succession Duty is payable.

1046. Estate Duty, though a substitute for Probate Duty, is much more far-reaching in its operation; for while Probate Duty only affects personal estate passing under a will or intestacy, Estate Duty is payable on every description of either real or personal property within the jurisdiction which " passes " on a death, without regard to its ultimate disposition. It is also leviable on personal property situate abroad, where the deceased was domiciled in the United Kingdom. The test of liability to Duty depends upon whether the property " passes " or can be deemed to " pass " on death, the Duty being leviable not by reason of some person *succeeding* to the property on the death but on account of a *change of possession* consequent upon the termination of an interest by reason of the death.

1047. Property passing on the death of the deceased embraces all property of which he was competent to dispose at his death and some property over which he had no power of disposition. This latter category principally comprises settled property in which the deceased or any other person had a limited interest ceasing at the death of the deceased, and the Duty is aimed not at that limited interest but at the property out of which it was carved, and the quantum of property taxable depends on the extent to which a benefit accrues by the cesser of such limited interest. Gifts made within a certain period prior to death and not specifically exempted are included as part of the estate.

1048. For the purpose of ascertaining the rate of the Duty on each part of the property, the values of the different parts are aggregated. Unless the will otherwise directs, the Duty is payable by the persons to whom the particular property eventually goes, but the legal personal representative is responsible for its payment.

1049. An examination of the Acts of the Australian Governments shows that, while the Acts of the States were based on English legislation in force prior to 1894, the Act of the Commonwealth is based on English legislation enacted subsequent to that date. It may be said, therefore, that the Acts of the States are as a whole based on principles which differ from those adopted by the Commonwealth, and, although some of the States have modified their original Acts and have adopted some of the principles of Estate Duty, upon which the Commonwealth Act is based, none of them has entirely adopted those principles and some have retained, with little change, the provisions of their original legislation. An appreciation of these conditions will explain the reasons for some of the more important differences between the Death Duty legislation of the Commonwealth and of the States to which we shall subsequently refer.

1050. While there is a general recognition of the desirability of simplifying and standardizing legislation relating to Income Tax, less interest is taken in the application of these principles to legislation relating to Death Duties. There are several reasons for this, which may be summarized as follows :—

(1) Returns are not required annually, but only upon the death of a taxpayer.

(2) Returns are usually made by solicitors who are conversant with the requirements of the Acts and the Departments.

(3) The number of estates which have assets in more than one State is comparatively small.

(4) The inducement towards uniformity which operates in regard to Income Tax, because Commonwealth and State taxes are principally assessed and collected by the same Department, is lacking in regard to Death Duties which are assessed and collected by separate Departments in each State.

(5) Finally, the laws relating to the imposition of Death Duties are interwoven with other statutes which affect the title to and the transmission of property generally, and therefore it is more difficult to amend such legislation than it is to amend legislation relating to income taxation.

1051. Standardization of the legislation relating to Death Duties to the same extent as in regard to Income Tax is not practicable, nor is it essential. Agreement in regard to the following matters would remove most of the legitimate grievances of the taxpayer :—

(1) The type of the Duty.

(2) What is to be included in the dutiable estate.

(3) Uniform methods of valuation.

(4) The prevention of double taxation by the States.

If, in addition to the foregoing, all Governments would agree to insert in their Acts provisions for the economical administration of small estates (including under this heading assets of small value situate in another State), a material benefit would be conferred upon those interested in such estates.

SECTION LV.

THE TYPES OF DUTY IMPOSED BY THE COMMONWEALTH AND STATES.

1052. The Acts relating to Death Duties in force in Australia at the date of this Report are as under :—

Commonwealth.—The *Estate Duty Assessment Act* 1914–1928.
New South Wales—The *Stamp Duties Act* 1920–1931.
Victoria—The *Administration and Probate Act* 1928.
Queensland—The *Succession and Probate Duties Acts* 1892–1930.
South Australia.—The *Succession Duties Act* 1929.
Western Australia—The *Administration Act* 1903.
Tasmania—The *Deceased Persons Estates Duties Act* 1931.

1053. The Commonwealth Estate Duty Assessment Act is based on the English Estate Duty Act of 1894 as subsequently amended. Duty is leviable in respect of property, both real and personal, which passes, or is under the Act deemed to have passed, on the death of the deceased. Where the deceased was domiciled in Australia at the date of his death his personal property, wherever situate, is subject to Duty. Where the deceased was domiciled out of Australia at that date, Estate Duty is leviable on all his property in Australia, whether real or personal.

1054. The Acts of New South Wales and Tasmania are based upon the same general principles as is the Commonwealth Act, in that where the deceased was domiciled in the State in question his estate includes personal property, wherever situate, as well as all his property situate in the State, and where he was domiciled out of the State his estate comprises all his property in the State.

1055. In Victoria and Western Australia a Probate Duty is levied upon all estate and effects in respect of which the personal representative of the deceased derives title from the Grant of Probate or Letters of Administration, and a corresponding Duty is levied on settlements of property in the State, made by the deceased, containing dispositions to take effect after his death. Western Australia, however, is not entirely consistent, because it imposes Duty on settlements of personal property situate out of the State.

1056. Queensland imposes a Probate Duty at a flat rate of 1 per cent. on personalty in respect of which the personal representative derives title from the grant of representation. It also imposes a Succession Duty on property passing on the death. This is levied at the time the succession takes place on its value as then ascertained.

1057. South Australia imposes only a Succession Duty. This is levied upon the value of the succession as at the date of death. In certain circumstances subsequent adjustments are made when the succession takes place.

1058. These various types of Duty may be divided into three classes—

(1) Probate Duty, based on property passing under the grant of representation. This is in force in Victoria, Queensland (as to personal property only), and Western Australia.

(2) Succession Duty, leviable on property which a person takes by succession on the death. This is in force in Queensland and South Australia.

(3) Estate Duty, which is a more modern type of Duty. This combines some of the principles of both Probate and Succession Duty. It is in force in the Commonwealth, New South Wales and Tasmania.

1059. For the purposes of comparison these systems may be reduced to two, for from the point of view that we are now considering, Probate and Estate Duty possess many features in common. The first comparison may, therefore, be made between either a Probate or an Estate Duty on the one hand, and a Succession Duty on the other.

1060. A Probate or an Estate Duty is leviable on the whole of the dutiable estate at or about the time when the grant of representation is made. The whole Duty is levied at once and the assessment is final. It is levied at a time when there is naturally a disruption in the affairs of the estate, and when it is frequently necessary, quite apart from the obligation of paying Duty, to realize assets or alter the character of the investments of the deceased. The whole estate is in the hands of the personal representative, to whom alone the Department has to look for payment of Duty, and with whom alone it has to deal in case of any difficulties arising in regard to the assets to be taxed or their valuation. The rate of Duty is determined by reference to the aggregate value of the estate, and consequently it is unnecessary in general to value life interests and remainders as separate assets. It is necessary to consider the separate values of the interests of individual beneficiaries only when some of them are entitled to a concessional rate of Duty because of their relationship to the deceased, while others are not so entitled. Where as is frequently the case, all beneficiaries are entitled to the same rate concession, it is unnecessary to consider their individual interests at all.

1061. In comparing the systems described in the preceding paragraph with the Succession Duty, it is necessary to point out that neither Queensland nor South Australia imposes a Succession Duty which is exactly true to type. **The essential feature of a Succession Duty is that it is levied on the benefit passing to one person by reason of the death of another, at or about the time when the succession takes place, and the rate of Duty is based on the value of the succession as then ascertained.** While in Queensland the value of the succession is determined at the time it takes place, the rate applicable is based on the whole estate of the predecessor and not upon the value of the succession. From this point of view the Queensland Duty is therefore a disguised Estate Duty. In South Australia, while the rate of Duty applicable to the succession is based on the value of the succession itself, the whole Duty is payable as at the death of the predecessor. Where the succession takes place immediately this is immaterial, but where the succession is postponed, as, for instance, where property is left to one person for life with remainder to another, it is always necessary to value the life interest and the remainder separately. The value of these successions is determined by actuarial calculations based on

assumptions which, though no doubt correct in the case of a group, may be very inaccurate in the case of an individual. When the succession is both postponed and contingent, Duty is charged on the highest scale applicable on any possible vesting of the interest. This may involve re-calculations and adjustments many years after the death of the predecessor. A simple example will illustrate some of the difficulties which arise from the manner in which the Succession Duty principle is applied in South Australia. A deceased may leave his whole estate to his widow for life, and after her death to such of his children as survive her. At the time of his death there are six children living. For the purpose of assessing Succession Duty on the remainder, the assumption is made that the property will vest in the manner which results in the highest amount of Duty being payable, and consequently it is assumed that one person only will succeed to the property. If at the date of the widow's death more than one child survives, a re-calculation is made of the Duty that would have been payable had the property been divided among the number of children who do in fact survive, and a refund is then made to the estate of the original predecessor, together with interest at the rate of 3½ per cent. per annum of the amount by which the Duty originally paid exceeds the amount as re-calculated.

1062. An important consideration from the point of view of the successor is that the Duty is payable by him and not out of the estate. The finding of the amount required may cause serious hardship, especially in those cases where the estate to which he succeeds is not immediately or easily realizable.

1063. Succession Duty as applied in Queensland increases the difficulties of administration inasmuch as the whole estate may pass out of the possession of the executors. In such cases the Department must of necessity deal with the successors. In order to protect the Revenue provisions are required to ensure payment of Duty by the successor when he becomes possessed of his interest. Provisions of this nature have created much dissatisfaction in Queensland.

1064. It is claimed that Succession Duty is more equitable than either Probate or Estate Duty. But in the absence of statistics this claim can be neither proved nor disproved. It depends upon the total value of the estate, the amount of each succession, and the rate of Duty imposed in either case. An exact comparison can be made only in specific instances. The Royal Commission on Taxation (Australia) 1920 stated in paragraph 948 of its Report that, in the absence of statistics, there is room for diversity of opinion as to the average number of successions into which estates generally are divided, but assumed, for the purposes of comparison, that the ratio generally is 2 to 2½ successions to one estate. On this basis a succession of £1,000 would, on the average, arise out of an estate of £2,000 if the number of successions be taken as 2, or out of an estate of £2,500 if the number of successions be taken as 2½. If the larger number of successions be taken as being the more favorable, it would appear that when the rate of Duty on a succession of £1,000 is equivalent to the rate of Duty on an estate of £2,500 there would in the average case be no difference in amount whether the Duty is levied as a Succession Duty or as an Estate Duty. But as the proportion of successions varies considerably in different estates, it is probable that neither system is necessarily more equitable or inequitable than the other.

1065. Consideration of the essential features of the various systems makes it impossible to avoid the conclusion that either a Probate or an Estate Duty is simpler and more convenient than a Succession Duty. There is also the practical consideration that the adoption of a Succession Duty by all the Governments would involve a substantial alteration in the law and practice in the Commonwealth and all States, except Queensland and South Australia, and of the rates of Duty in the Commonwealth and all States, except South Australia. We may add that, while the South Australian evidence indicated a preference for Succession Duty, the Queensland evidence strongly advocated its abolition in that State. In the other States there was no public demand nor suggestion that Succession Duty should be adopted.

1066. For these reasons we cannot recommend the retention of a Succession Duty by the States that now impose it, or its adoption by any other Government.

1067. In our opinion the choice therefore lies between a Probate Duty and an Estate Duty. The essential distinction between these systems relates to the liability to Duty in respect of personalty situate out of the jurisdiction which forms part of the estate of a deceased person who at the time of his death was domiciled in the jurisdiction. Such property is not subject to a Probate Duty, but it is subject to an Estate Duty. We have previously shown that Probate Duty in England was abandoned in 1894 and replaced by an Estate Duty.

1068. The rule requiring the inclusion of personalty, wherever situate, in the estate of a deceased person who was locally domiciled has been adopted by the Commonwealth and all the Australian States with the exception of Victoria and Western Australia. It has a logical

basis in that succession to personalty is by international law governed by the law of domicile, and it has a practical basis in that the rate of tax is increased by the inclusion of such personalty to a rate which is more properly applicable to the estate than would be the case if such personalty were excluded. This practical basis is of great importance as between the States of the Commonwealth where by reason of contiguity and common interests it is frequently found that persons domiciled in one State have investments in another. The inclusion of personalty need not involve double taxation if proper provision be made for a rebate of Duty properly paid elsewhere in respect of assets included in the dutiable estate.

1069. The inclusion of personal property, wherever situate, subject to rebate, was recommended by the Conference of Taxation Officers which met in Sydney in 1928. The adoption of this Resolution by Victoria and Western Australia would cause little alteration in administration in those States. But the adoption of the basis now employed in Victoria and Western Australia by the Commonwealth and the remaining States would involve radical alterations in their practice and materially affect the incidence and perhaps the yield of their Duties.

1070. An Estate Duty therefore offers a common ground upon which all the Australian Governments may meet with the least dislocation of their present practice. The Acts of the Commonwealth, New South Wales and Tasmania are of this type. While the adoption of an Estate Duty by Queensland would materially alter its present practice, it would not require any serious alteration in rates, and it would have the effect of accelerating the collection of Revenue and simplifying the administration of the Act. In Victoria and Western Australia practically all that would be involved would be the inclusion in the dutiable estate of a deceased, who at the time of his death was domiciled in the jurisdiction, of his personalty situate out of the jurisdiction, and the aggregation of certain types of settlement with the assets of the deceased. In South Australia the alterations in practice would be substantial, and a complete revision of rates would be necessary. The adjustment could, however, be made in such a manner as not to impose additional Duty on the taxpayer.

1071. We recommend that the principle of an Estate Duty be adopted by all the Australian Governments as the basis for standardized legislation throughout Australia.

SECTION LVI.

THE DUTIABLE ESTATE.

1072. In accordance with the principles of Estate Duty which have been discussed in the previous Section, the dutiable estate includes—

If the deceased was at the time of his death domiciled in the jurisdiction—

(*a*) his real property within the Commonwealth (or in the case of a State—within the State);

(*b*) his personal property wherever situate; and

(*c*) property within the description of (*a*) or (*b*), not being part of the actual estate of the deceased at the time of his death, but which is deemed to form part of that estate.

If the deceased was at the time of his death domiciled elsewhere—

(*a*) his real and personal property in the Commonwealth (or in the case of a State—within the State); and

(*b*) property within the description of (*a*), not being part of the actual estate of the deceased at the time of his death, but which is deemed to form part of that estate.

1073. No difficulty arises in regard to the dutiability of property which was actually owned by the deceased at the date of his death. But property which was not then actually owned by him may fall to be included in the dutiable estate, either because, having been owned by him, it was disposed of by him during his life-time in such a manner that the disposition might be regarded as a substitute for a testamentary disposition or as a means of avoiding Duty, or because he held an interest in or power over the property which he could have used for his own benefit.

1074. Provisions for the imposition of Duty on property not actually forming part of the estate of a deceased person at the time of his death are not peculiar to an Estate Duty, but are contained in every Act imposing Death Duties however described. The provisions of the Acts show that there is a considerable number of types of such property, and these will be separately discussed.

THE DATE AS AT WHICH THE ASSETS SHOULD BE VALUED.

1075. The Commonwealth and State Acts vary in their provisions for fixing the date as at which the assets of the deceased are to be valued. In the Commonwealth, New South Wales and Tasmania they are valued for purposes of Estate Duty as at the date of death. In Victoria and Western Australia for the purposes of Probate Duty they are valued as at the same time. In Queensland personalty subject to Probate Duty is valued as at the date of the application to the Supreme Court for the Grant of Probate. For the purposes of determining the rate to be applied to the succession each succession is originally valued as at the date of death, but the succession is re-valued at the time it falls in. In South Australia the value of each succession is determined as at the date of death.

1076. We recommend that in every case the assets subject to duty be valued as at the date of death.

GIFTS INTER VIVOS.

1077. Provisions as to gifts *inter vivos* appear (in different forms) in all the Acts.

Commonwealth.—The dutiable estate includes all gifts made within one year of the death. Where the deceased has sold property to a purchaser related to him by blood, marriage or adoption for a price which does not exceed three-fourths of its value, the transaction is treated as a gift to the extent to which the price falls below the value of the property.

The Duty payable under these provisions is payable by the personal representative; but the Commissioner may apportion the Duty and collect the appropriate part from the donee, otherwise the administrator may recover it from the donee. Whether the value in the case of gifts should be taken as at the date of gift or of death is a matter upon which the practice does not seem to be uniform. Generally speaking it is a matter of little moment, seeing that under the Commonwealth law the interval between the two dates cannot exceed twelve months, and may be much less.

New South Wales.—Any property comprised in any gift made by the deceased within three years before his death is dutiable, including money paid or property transferred in pursuance of a covenant or agreement made at any time without full consideration in money or money's worth.

The Act also provides that the estate of a deceased shall be deemed to include the value of any property (not included in the estate under the previous provision) comprised in any gift made within three years of the death of the donor. or of property conveyed or transferred within that period in pursuance of a covenant or agreement made at any time without full consideration in money or money's worth. The value of the gift is to be ascertained as at the date of the gift, but the Commissioner may in his discretion reduce such value by the amount by which the value of the property would in the ordinary course have depreciated in the hands of the donor between the dates of gift and of death. This provision is inserted to deal with the case where the subject-matter of the gift is not in existence at the date of death, as, for instance, where money is given and spent or property is given which goes out of existence before the death.

The Act further provides that the estate shall include any property comprised in a gift made at any time, where bona fide possession and enjoyment of the property has not been assumed by the donee immediately upon the gift and thenceforth retained to the entire exclusion of the donor, or of any benefit to him of any kind whether enforceable at law or in equity or not. It will be noted that this provision is not subject to any limitation of time.

Under each of these provisions the duty payable in respect of such property is in the first instance payable by the personal representative, but is chargeable by him to the donee except where provision is made in regard to it by the deceased.

Victoria.—The estate includes every gift *inter vivos* made within twelve months of the death, or made at any time where bona fide possession and enjoyment of the property has not been assumed by the donee immediately upon the gift and thenceforward retained to the entire exclusion of the donor, or of any benefit to him by contract or otherwise.

Duty payable under this Section is chargeable upon the subject-matter of the gift and not on the estate of the donor, and the value of the property is to be ascertained at the date of death and not at the date of gift.

Queensland.—Every disposition of property made by any person less than two years before his death and purporting to act as an immediate gift of property *inter vivos* is upon the death of the donor deemed to confer a succession on the donee, and is accordingly dutiable. The property is valued as at the date of death and Duty is payable by the successor.

South Australia.—Property given by any deed of gift is chargeable with Succession Duty if the donor dies within twelve months after the date of the deed of gift.

"Deed of gift" is defined so as to include every non-testamentary disposition of property by deed. The value of the property is ascertained as at the death.

Gifts not made by deed of gift are dutiable if made within twelve months of the death, or made at any time if the donee did not immediately bona fide assume the beneficial interest in the property and thenceforward retain it to the entire exclusion of the donor and without reserving him any benefit of whatever kind or in any way whatsoever. These provisions do not apply to gifts to any person not exceeding in the aggregate £50. The value of such property liable to Duty is ascertained as at the date of disposition.

Provision is made for aggregating the gifts made by a donor to the same donee within the twelve months period for the purpose of applying the rate of Duty applicable to the aggregate sum.

Western Australia.—Property given to any person under any deed of gift is chargeable with duty in the event of the death of the donor within six months from the date of the deed, except in cases of death by accident. The Duty is a first charge on the property on which it is imposed. The property is not aggregated with the rest of the estate, but is separately taxed. The same scale of rates is used as in regard to the Estate Duty. "Deed of Gift" is defined in wide terms; but no Duty is levied in respect of gifts not made by deed unless it can be shown that they were made with intent to evade the payment of Duty. The value taken is the value of the property at the date of death.

Tasmania.—The Act provides for the inclusion as part of the estate, for the purpose of levying Duty, of all property—

(1) of which the deceased disposed by voluntary disposition purporting to operate as an immediate conveyance or gift *inter vivos* unless such disposition was made in good faith at least three years before the death;

(2) which passes under any conveyance made within three years next preceding the death upon any consideration which is less by one-third than the bona fide saleable value at the time of making the conveyance to the extent to which such value exceeds such consideration; there is a similar provision where the consideration is an annuity;

(3) which is comprised in any gift made at any time where the donee has not assumed in good faith the possession and enjoyment of the property immediately upon the making of the gift and thenceforth retained it to the entire exclusion of the donor and of any benefit whatsoever to him.

The value of the property is taken as at the date of death, except in regard to (2), and the Duty is payable by the personal representative but chargeable to the donee, unless other provision is made in regard to it by a testator.

1078. Analysis of these provisions show that variations occur in regard to—

(*a*) The interval between the date of the gift and the date of death which determines whether the gift is included in or excluded from the dutiable estate.

(*b*) The date as at which the value of the gift is to be determined.

(*c*) The exemption of gifts not exceeding a specified amount.

The Interval Between the Date of the Gift and the Date of Death.

1079. The periods specified in the Acts vary widely. They are—

Six months	Western Australia.
One year	Commonwealth, Victoria and South Australia.
Two years	Queensland.
Three years	New South Wales and Tasmania.

(The Western Australian provision applies only to gifts made by deed of gift where the death was not accidental.)

1080. Uniformity in regard to the period within which gifts may be made without being subject to Duty is desirable, as it would then follow that a gift of property which would be dutiable had it been retained by the deceased would be either taxable or exempt in all cases. The period should be long enough to make it probable that death could not reasonably have been anticipated at the time the gift was made. The fixation of any definite period, whether short or long, is,

however, open to the objection that the difference of a few days may result in total exemption or total dutiability of the gift. To meet this objection it was suggested by the Federal Deputy Commissioner for Estate Duty in Tasmania (Mr. P. C. Douglas) that the value of the gift should be assessed for Duty on a sliding scale and that the amount to be included in the estate should be diminished in each year that elapses between the date of gift and the date of death. It would probably be easier to obtain agreement between the various Governments on such a basis than upon the adoption of any fixed period, in view of the wide differences which now exist.

1081. We recommend that a gift of property which would be dutiable had it been retained by the deceased be included in the estate at an amount to be determined in the following manner :—

Where the period is less than one year—the full amount.

Where the period is not less than one year but is less than two years—two-thirds of the amount.

Where the period is not less than two years but is less than three years—one-third of the amount.

Where the period is not less than three years—the amount should be exempt.

If this recommendation be not accepted we recommend as an alternative that a uniform period of two years be adopted by all Governments.

Gifts at Any Time.

1082. The Acts of New South Wales, Victoria, South Australia and Tasmania provide that a gift made at any time shall be deemed to form part of the estate of the deceased where the donee has not immediately upon the making of the gift entered into possession and thenceforward retained possession to the entire exclusion of the donor. The provisions of these Acts should be brought reasonably into line with the suggested provisions in regard to gifts generally, and the Acts of the Commonwealth and the other States should also be brought into agreement.

1083. We recommend—

(1) That unless possession of the gift has been assumed by the donee and thereafter retained to the entire exclusion of the donor, the gift be included in the estate ;

(2) That if possession has been so assumed at any date and thereafter so retained, that date be deemed to be the date of the gift for the purpose of determining whether it be included in the estate or not ;

(3) That the value of the gift be assessed in accordance with our recommendation contained in paragraph 1087.

The Date at Which the Value of the Gift is to be Determined.

1084. The practice on the point under the several Acts is not uniform. Generally speaking, the value of the gift is taken as at the date of death of the donor, but in some cases as at the date of gift.

1085. We think that in every case the value of the gift should be determined as at the date of death. The reason for including in the taxable estate of the donor property which has been given away by him shortly before his death is that the law treats such gifts for taxation purposes as being in effect testamentary dispositions. "Difficulties of proof and the necessity of certainty, both for the Treasury and the individual", says Isaacs J., dealing with expedients for escaping taxation, "have led to the adoption of more or less rigid standards as simple and definite, and on the whole reasonable working tests of genuineness." (Watt's Case, 38 C.L.R. 32.) The gift is regarded as it if had never been made, as if the conveyance had not been executed, the transfer effected, or the money handed over. In that case the property would not have passed away from the donor ; where it is money it would have remained to his credit in his bank account. The valuation in these circumstances can proceed in exactly the same way as if the subject matter of the gift had been disposed of by will. If it is still in existence, whether in the possession of the donee or not, no difficulty arises ; its value at the date of death is capable of determination. If at that date it has been destroyed, or no longer exists, it adds nothing to the estate and no value should be assigned to it.

1086. It is, however, necessary to make a reservation in cases where insurance or compensation has been paid in respect of an asset which has disappeared, as, for example, a house that has been destroyed by fire, shares in a company which has been liquidated, or securities which have been redeemed, discharged or converted. The consideration receivable in any of these circumstances should then be deemed to be the value of the gift. One must distinguish

between these cases and the case where the donee has sold the subject of the gift, or if it is money, has spent it. In that case the gift has not disappeared, it has simply changed hands. The real matter for consideration is how far the taxable estate of the deceased has been diminished by reason of the gift.

1087. We recommend that the value of a gift be determined in accordance with the following rules :—

(1) Where the property the subject of the gift is still in existence—the value at the date of death ;

(2) Where the property the subject of the gift no longer exists—no value to be assigned to it.

Provided that any amount receivable by the donee or any person into whose hands the gift subsequently comes as compensation for its extinction, or as consideration for its surrender, redemption, discharge or conversion shall be deemed to be the value of the gift.

(3) Where the gift is of a sum of money—the value of the gift to be the amount of the sum given.

The Exemption of Gifts not Exceeding a Specified Amount.

1088. A responsible witness stated that the trustee company which he represented had been required to make inquiries into estates of persons of substantial assets as to the reason for payments of small amounts, and that there appeared to be a tendency to apply the provisions of the Acts relating to gifts to an extreme extent. In our opinion no attempt should be made to include in the estate gifts of small amount.

1089. We recommend that the provision as to the inclusion of gifts should not apply where the value of the property comprised in any gift is less than £50, or in the case of more than one gift to the same donee within the specified period if the aggregate value of such gifts is less than £50.

Gift Duty in New South Wales and Queensland.

1090. Closely associated with the taxation of property contained in settlements and gifts as though it were part of the estate of the deceased settlor or donor is the levy of a duty on gifts *inter vivos* during the life of the donor. This form of taxation has been adopted in New South Wales and Queensland. The New South Wales Stamp Duties Act imposes a duty on all gifts at a rate corresponding to the rate of Death Duty applicable to an estate, the amount of which is obtained by aggregating all the gifts made by the same donor within the three years preceding the gift in question. The *Queensland Gift Duties Act* 1926 imposes a duty on all gifts. The rate is graduated, and is that applicable to an amount obtained by aggregating all gifts made by the same donor within twelve months before and after the making of the gift in question.

1091. This type of duty is in force only in the two States mentioned, and this Commission is concerned with it only in so far as it affects Death Duties generally. It does so in two ways. In the first place when by reason of the death of a donor within three years (in New South Wales) or two years (in Queensland) of the making of the gift the subject matter of the gift is included in the estate subject to Death Duties, provision is made to avoid double duty. A rebate is granted against the Death Duty of any Gift Duty paid. In the second place it may be contended that the effect of the legislation is to assist the Death Duty legislation, because it catches transactions which might be just outside the period within which they would be subject to Death Duties, and discourages the making of gifts which might otherwise be made with a view to avoiding Death Duty. It is considered, however, that this type of taxation, while it may have an effect on Death Duties, has no real connexion with Death Duty legislation. It was strongly condemned in Queensland, although it was pointed out that the effects of the Duty had been avoided with perfect legality to such an extent as to render the Act almost a dead letter. Little evidence was offered on the New South Wales section, probably because of the limited time during which it has been in operation. **The adoption of this form of taxation as a corollary to Death Duty legislation is not recommended.**

Property Disposed of by the Deceased for an Inadequate Consideration.

1092. Some of the Acts contain provisions designed to deal with the sale of property which is disposed of for less than its full consideration in money or money's worth. The means adopted vary. Under the Acts of the Commonwealth and Tasmania no part of the value of the property so disposed of is dutiable if the consideration exceeds a specified proportion of the bona fide sale value of the property as at the date of sale. Under the Commonwealth Act this is fixed at three-fourths. and under the Tasmanian Act at two-thirds, of the sale value, and if the consideration

is less than this proportion the difference between the consideration and the bona fide sale value is deemed to form part of the estate of the deceased. The Commonwealth section applies only when the sale is made to a relative by blood, marriage or adoption, but the Tasmanian section applies to any sale. Under the Acts of New South Wales and South Australia transactions of this nature fall within the definition of a gift, and the difference between the consideration and the bona fide sale value is deemed to form part of the estate. The Acts of the other States do not appear to contain similar provisions.

1093. We received no complaints concerning the administration of these sections, and we assume, therefore, that transactions of this nature are of rare occurrence, or, alternatively, that the authorities administering the various Acts have been able to distinguish genuine from bogus transactions.

1094. Although these provisions are necessary in order to deal with transactions which are in substance gifts of portion of the value of the property disposed of, they should not be permitted to operate so as to impose extra duty on an estate merely because the deceased made a bad bargain. Regard should be had to the real nature of the transaction, and if it can be shown that a sale has been made at less than the bona fide value for the purpose of avoiding Duty, the difference between the consideration and the bona fide value should be deemed to form part of the estate of the deceased. If, on the other hand, the facts show that the sale was a bona fide sale and that the deceased obtained the best price that he could for the property, no part of the difference between the consideration and an assumed sale value should be included in his estate.

1095. If the circumstances of the sale suggest that the transaction has been entered into for the purpose of conferring a benefit upon the purchaser, that benefit should be deemed to form part of the estate of the deceased person and should be treated in all respects as a gift of that amount. Therefore, although the difference between the consideration and the bona fide value at the date of sale may be regarded as the test which renders the transaction subject to investigation, the measure of the amount to be included in the estate should be the difference between the consideration and the value at the date of death of the property sold. This amount should be deemed to be the value of the gift.

1096. We recommend that where property is sold at a price which is less than two-thirds of the bona fide sale value of the property at the date of sale, the difference between the consideration and the bona fide sale value at the date of death should be treated in all respects as though it were a gift made at the date of sale.

Life Interests Surrendered Within a Limited Time of Death.

1097. The Acts of the Commonwealth and New South Wales provide that the value of a life interest in property comprised in a settlement not made by the deceased, shall form part of his estate if within the time specified in the Acts he has surrendered such life interest to the person entitled to the remainder. The value is taken as at the date of surrender.

1098. If the deceased had not surrendered the interest during his lifetime it would have terminated at the date of his death and nothing would have been included in his estate in respect of that property. It is therefore impossible to contend that the surrender was made for the purpose of avoiding or evading duty, or that it could have been effective for that purpose. **In our opinion there is no justification for provisions of this nature in an Estate Duty Act, and we recommend that they be deleted from the Acts in which they now appear.**

Donationes Mortis Causa.

1099. A *donatio mortis causa* is a revocable gift accompanied by delivery made generally during the donor's last illness and in contemplation of death. The gift is perfected by the death and is subject to the condition that if the donor recover the property is to be returned to him. **Property the subject of such a gift should clearly be included as part of the estate for the purposes of levying duty.**

SETTLEMENTS.

1100. Certain types of settlement are frequently mere substitutes for dispositions by will, and if the property settled were not included in the estate it would be open, particularly to a person with a large estate, to avoid the imposition of duty on his death. The interests passing under such settlements on the death of the settlor should be subject to duty. Probably the case of most frequent occurrence is where a person settles his property on himself for life with remainder to other persons. On the death of the settlor there is no property in his estate, as his interest has come to an end. To prevent avoidance by this means such property should be deemed to form part of his estate.

1101. For similar reasons, where the deceased has disposed of property by any settlement containing trusts or other dispositions in respect of the property to take effect after his death, the property subject to the settlement at the date of his death should also be included.

1102. In some cases the effect of a settlement reserving a life interest is obtained by a transaction which is not a settlement in form. For example, an outright transfer of property in consideration of the payment of a life annuity is not a settlement containing trusts or dispositions to take effect after death, and for that reason the property is not dutiable under the Commonwealth Act. In some cases, of course, there may be a genuine sale in consideration of payment of an annuity, the capital value of which is equivalent to the value of the property, and the Tasmanian Act in those cases excludes the property sold from the estate. It is thought, however, that such cases are extremely rare, and could be easily arranged on other lines. An outright transfer of shares, together with an agreement that the transferror should be paid the income arising from the shares during his life, is another illustration of this type of transaction. Almost invariably these transactions have the same effect as if a life interest had been reserved, and it is thought that the only safe course is to deal with them on that basis, and that the provisions of the New South Wales Act to that effect should be generally adopted.

1103. Where a settlement has been made and a life interest reserved to the settlor in any manner, he may during his lifetime surrender the life interest to the persons entitled in remainder. There are then no trusts or dispositions to arise after his death, and he has parted with the property in its entirety. If the surrender was effected outside the period within which gifts are dutiable the property comprised in the settlement should not form part of the dutiable estate; but if it was affected within that period the same result should follow as if the surrender had not been made, and the whole of the property settled by the deceased should be dutiable.

1104. To sum up, we recommend that the following classes of property be deemed to form part of the dutiable estate of a deceased person :—

(1) All property which the deceased disposed of by a settlement containing trusts or dispositions in respect of that property to take effect after his death;

(2) All property passing under any disposition made by the deceased where any interest or benefit in or connected with the property was reserved to the deceased for life and retained by him until death, or surrendered by him within the period within which gifts are dutiable;

(3) All property passing under any disposition made by the deceased which is accompanied by the reservation or assurance of, or a contract for, any benefit to the deceased for life, where the benefit was retained by him until death or surrendered by him within the period within which gifts are dutiable;

(4) All property passing under any disposition made by the deceased by which he reserved any power enabling him to recover the property.

1105. We also recommend that the same principles be applied whether the disposition was effected by the deceased alone or jointly with other persons; but that only the property which immediately prior to the disposition belonged to the deceased should form part of the dutiable estate.

Purchased Annuity Passing on Death.

1106. A case analogous to those in which a life interest is reserved by a settlement is the purchase of an annuity for the life of the purchaser and of some other person. The annuity may be payable to the purchaser for life and on his death to the other person, if surviving, for his life. **The interest of the survivor should be deemed to form part of the dutiable estate of the purchaser.** This is done in New South Wales and South Australia. The case of a pension payable to an employee on retirement from employment and after his death to his widow presents similar features; but it is not normally in the power of the employee to control the terms under which pensions are payable, nor could cases arise where the pensions were acquired for the purpose of avoiding Death Duties. **The inclusion in the estate of the value to his widow of a pension payable in respect of employment of the deceased is accordingly not recommended.**

POWERS OF APPOINTMENT.

These may be either general or special.

General Power Property.

1107. Under the Acts of New South Wales and Victoria property over which the deceased had, at the time of his death, a general power of appointment is deemed to form part of his estate whether the deceased exercised the power by will or settlement or refrained from doing so. Under the Acts of the Commonwealth and all the other States such property is deemed to form part of his estate only if he has exercised the power by will or disposition taking effect after his death.

1108. In our opinion the practice in New South Wales and Victoria is logical. The deceased could have exercised the power in his own favour. If he refrains from doing so, the effect is equivalent to an exercise in favour of the person or persons who take in default of appointment, and the devolution taking place on the death of the deceased should be taxed.

1109. We recommend that all property over which the deceased had, at the time of his death, a general power of appointment be deemed to form part of his estate whether the power is exercised or not.

Special Power Property.

1110. None of the Acts except that of New South Wales contain any provision for including in the estate property over which the deceased had a special power of appointment.

1111. We recommend that the definition of "general power of appointment" be widened to include any power which enables the donee or holder thereof to appoint or dispose of any property as he thinks fit for his own benefit, and that property appointed by the deceased under a special power not created by him be not in any other circumstances deemed to form part of his estate.

JOINT OWNERSHIP AND JOINT TENANCIES.

1112. Where the deceased immediately prior to his death held property jointly with one or more persons, his interest passes on his death to the other person or persons by survivorship, and does not form part of his estate so far as his administrator or beneficiaries are concerned. During his life the deceased would generally have the right to sever the joint ownership or tenancy by partition or otherwise so as to obtain an interest which was not subject to survivorship. His failure to effect a severance might be taken as indicating a desire to permit the interest to pass to his co-owners or co-tenants on his death, and so might be regarded as a testamentary disposition. **To prevent a simple but effective avoidance of duty it is therefore essential to include as part of the dutiable estate interests passing by survivorship.**

1113. Following upon this conclusion, it is necessary to consider the measure of the property which is to be deemed part of the dutiable estate. Two cases arise. The first is where the joint title was not created by the deceased himself, that is, was not in respect of property which was previously his own in its entirety. **In this case the interest which passes by survivorship should be deemed to form part of the dutiable estate.**

1114. The second case is where the deceased, being the owner of the property, vests it in himself and another or others jointly. In some respects this may be regarded in part as a disposition, and **while the interest passing by survivorship should, as in the first case, be deemed to form part of the dutiable estate, the disposition, whether for consideration or not, should be subject to the same rules as any other disposition inter vivos by the deceased.**

POLICIES OF ASSURANCE EFFECTED ON THE LIFE OF THE DECEASED.

1115. Where a policy of assurance effected on the life of any person is held by him for his own benefit at the time of his death it is clear that the proceeds should form part of his estate, and in accordance with all the Acts such proceeds form part of the personal estate of the deceased. The Acts of New South Wales, Queensland, South Australia and Tasmania make special provision regarding the inclusion of the proceeds of policies which do not actually form part of the estate.

1116. The New South Wales Act provides that if the deceased wholly or partially kept up a policy of assurance effected by him on his own life for the benefit of a beneficiary (whether nominee or assignee), a proportion of the moneys payable under the policy in proportion to the premiums which he has paid shall be deemed to be part of his dutiable estate. The provisions of the Tasmanian Act are similar. The Queensland Act provides that the proceeds of any policy of assurance on the life of a deceased person, whether effected by the deceased or by any other person, and irrespective of any question as to who paid the premiums in respect of such policy, shall on the death of the assured be deemed to be derived by the person beneficially entitled to such moneys by way of succession from the deceased. This provision applies also to a policy which has been assigned, unless it be proved to the satisfaction of the Commissioner that the assignment was for a bona fide adequate pecuniary consideration and that all premiums paid in respect of the said policy since the date of assignment were paid by the assignee. The provision, however, does not apply to an assurance effected by a wife on the life of her husband when the amount does not exceed £750 and the wife paid the premiums out of her own money.

1117. The provisions of the South Australian Act incorporate some of the features both of the New South Wales and Queensland Acts, but are different from either of them. Where a policy of assurance has been effected on the life of the deceased, either by him or by any other person, that part of the proceeds of the policy which bears the same proportion to the total amount of the policy as the premiums paid by the deceased bear to the total premiums paid is deemed to form part of the estate of the deceased.

1118. Where the deceased kept up for the benefit of a beneficiary a policy of assurance effected on his own life, it appears to us to be justifiable to include in his estate the proceeds of the policy where it was wholly kept up by him, or some part of the proceeds where it was partially kept up by him. Where, however, a policy is assigned and thereafter the deceased pays no part of the premiums the proceeds should only be deemed to form part of the estate on the basis that a gift of the policy has been made by the deceased. The valuation of a policy assigned by the deceased as a gift presents some difficulty. At first sight it would seem that the surrender value is the proper measure; seeing that that represents the amount that the assignee would have realized had he parted with it at once. From that point of view it is equivalent to a money gift of that amount. But one cannot disregard the view that in the majority of cases a gift of a policy shortly before death is made in expectation of death, and is intended by the donor as a gift of the proceeds. The case falls within the general principle upon which gifts *inter vivos* are included in the estate of the deceased. In such cases we think that the transaction should be treated as a gift of the proceeds of the policy, less the amount of any premiums paid by the assignee.

1119. Accordingly we recommend—

(1) That where a policy effected on the life of the deceased has been wholly or partially kept up by him for a beneficiary (whether a nominee or an assignee or the person affecting the policy) the part of the proceeds which bears to the whole proceeds the same proportion as the premiums paid by the deceased bear to the whole of the premiums paid should be deemed to be part of his estate, and

(2) That where a policy of assurance effected by the deceased on his own life has been assigned by him wholly or partially as a gift, and thereafter no premiums have been paid by him, the provisions recommended in regard to gifts *inter vivos* should be applied. The date when the deceased assigned the policy should be deemed to be the date of the gift and the value to be taken into account should be the proceeds of the policy after deducting the amount of any premiums paid by the assignee.

PROPERTY TRANSFERRED BY THE DECEASED TO A PRIVATE COMPANY.

1120. The Act of New South Wales provides for the inclusion in the estate of a deceased of the value of any property which he has within three years before his death transferred to a private company in consideration of shares or any other interest, including any office or place of profit in the company. The value is to be ascertained as at the date of the transfer, subject to the power given to the Commissioner to reduce the value having regard to the manner in which it would have depreciated in the ordinary course up to the date of death if it had not been transferred. Where property is included in the estate under this provision the shares or other consideration for the transfer are excluded.

1121. The Queensland Act contains a provision related to that in the Act of New South Wales, namely, that where there is a gift of shares, whether by allotment or transfer, and whether by way of gift or expressed to be for consideration if the consideration does not pass or is inadequate, and the donee does not during the life of the donor derive a yearly benefit in respect of the shares of not less than the income which the value of the shares would have produced if it had been invested in Trustee investments, the donee shall be deemed to have acquired the shares as a succession from the donor.

1122. The *English Finance Act* 1930 provides that where a person has at any time transferred certain property to a private company and has within the three years immediately preceding his death received certain benefits out of the resources or at the expense of the company, a proportionate part of the total assets of the company is deemed to pass on the death.

The provision does not apply to (*inter alia*)—

(*a*) a bona fide sale where the consideration whether in cash, shares or debentures was wholly received by the deceased for his own benefit;

(*b*) transfers of a business not being a business which substantially consists in holding land, and

(*c*) transfers of patents or copyrights or movable tangible property.

The benefits referred to include any right in or enjoyment of any land and any payment, whether for consideration or not, not being dividends, interest, payments of purchase money or royalties. The part of the assets to be taken into consideration is arrived at by taking the part of the total assets which bears to the total assets the average of the proportions which the total value of the benefits referred to in each of the three accounting years preceding the death bears to the total income of the company in each of those periods. The provisions do not apply where the average benefit does not exceed 50 per cent. of the income of the company.

1123. A comparison of the provisions of the various Acts cited suggests that none of them are entirely satisfactory. The provisions of the New South Wales Act appear to be too wide, as they cover the case where assets have been transferred to a private company for adequate consideration which is represented by the shares issued to the vendor. In such a case we think the shares themselves should be valued and not the value of the assets transferred. The condition in the Queensland Act which requires that the income of the donee shall be not less than the income which the value of the shares would have produced if it had been invested in trustee securities is obviously an unfair test, as circumstances may arise which prevent a company earning income at this rate, as, for instance, in times of depression. The real test of the transaction depends upon the benefits received by the donor, and the provision should be applied only in those cases where it is clear that the donor has reserved an interest for himself which is greater than that proportion of the real earnings of the company which he would be entitled to receive by virtue of the shares which he holds. The English section is intended to deal particularly with the formation of private property or investment companies, as, for instance, the case where an individual forms a private company to which he transfers the whole of his property, receiving in exchange shares. Portion of these shares may be allotted to him personally and the balance, at his direction, to members of his family. The Articles of Association provide that he shall be Governing Director for life at a salary which will absorb virtually the whole profits of the company. This scheme ensures the same return to the vendor, and the same ultimate disposition of the assets, as would have resulted from a settlement of the property with a reservation of a life interest to him. But there was no evidence that companies of this type have been formed to any material extent in any of the States.

1124. We are not concerned here with the simple case of a transfer of shares or property without consideration or for an inadequate consideration. That case is sufficiently covered by the provisions relating to gifts. The kind of transaction dealt with under this heading is one under which the deceased, while ostensibly parting with shares in the company or with certain property, has really retained a part of the company's income by reserving himself an excessive salary or otherwise so as to give him in effect a life interest in the property or shares ostensibly parted with.

1125. We recommend that where at any time property was transferred by the deceased to a private company and he thereafter received benefits from the company disproportionate to his shareholding, the transaction be regarded as a settlement, and the value of the settled property be determined by reference to the assets of the company as at the date of death after deducting from the value so ascertained any consideration that may have been received for the transfer.

SECTION LVII.

DEDUCTIONS FROM THE DUTIABLE ESTATE.

1126. Under every Act duty is levied on the net estate after the deduction of all debts due and owing by the deceased at the time of his death. This statement is, however, subject to qualification in the case of debts payable out of the jurisdiction, or for which security out of the jurisdiction has been given. The latter aspect will be considered under the heading of " Double Taxation ".

Certain specific liabilities may be briefly considered.

Federal and State Land and Income Taxes.

1127. We think that no exception can be taken to the general principle that all taxes assessed but not paid prior to the date of death, or subsequently levied in respect of any period prior to death should be allowed as a deduction, irrespective of the time when the assessment was made.

1128. We recommend that a deduction should be allowed for Federal and State Land Tax payable in respect of ownership by the deceased of land at any date prior to his death and income taxes assessed in respect of income derived prior to his death.

Contingent Liabilities.

1129. From time to time there come under notice debts of such a character as to render them incapable of estimation as at the date of death, as, for example, the liability under a guarantee given by the deceased. The evidence we received indicated that the practice of the various Governments in regard to liabilities of this nature is not entirely satisfactory to the taxpayer.

1130. It is clear that a contingent liability, as such, cannot be allowed as a deduction, as no actual liability may ever arise. Even when the executors are called upon to meet a liability arising out of an obligation which was contingent at the date of death, some part of the liability may be attributable to the period after death. The test to be applied in each case must therefore be: To what extent did the actual liability arise from circumstances existing at the date of death? The practice under the various Acts differs.

In some cases contingent liabilities are specifically excluded from consideration. In others provision is made for their allowance if it can be shown that an actual liability arose within a specified period after the date of death or the grant of Probate or the payment of duty.

1131. We recommend that the amounts which the executors have paid or have become bound to pay in respect of a liability which was contingent at the date of death be allowed as a deduction up to the amount that would have been payable had the liability been determined as at the date of death.

Voluntary Debts.

1132. This expression covers obligations entered into by the deceased, or alleged to have been entered into by him, without adequate consideration. Provision has been made to disallow debts of this nature under the Acts of the Commonwealth and New South Wales, but the Acts of the remaining States contain no specific provisions which make it clear that such claims are to be disregarded.

1133. We recommend that no allowance be made for debts incurred by the deceased except to the extent to which they are incurred for full consideration.

Funeral and Testamentary Expenses.

1134. These payments are not strictly debts due and owing by the deceased at the time of his death, but accrue subsequently. They are allowed as a deduction in Queensland and South Australia. We received many requests that we should recommend that such expenses be allowed by all Governments. The allowance of these expenses is in accordance with the principle of a Succession Duty, in that the interests passing as successions are reduced by reason of their payment, and they are allowed on this basis in Queensland and South Australia. Under Estate Duty and Probate Duty systems, however, on principle, the deductions allowable should be restricted to obligations contracted by the deceased and should not extend to debts incurred after death. It is for this reason that no allowance is made by the Commonwealth or the States, other than Queensland and South Australia.

1135. In view of our recommendation that the system of Estate Duties be adopted, it would be inconsistent to recommend the allowance of testamentary expenses as a deduction. Funeral expenses, however, seem to stand on a special footing of their own. They arise directly out of the death, are incurred immediately afterwards, and their amount is readily ascertainable. They constitute a positive and inescapable diminution of the amount of the estate passing to the beneficiaries. **On these grounds we recommend that reasonable funeral expenses be allowed.**

State Probate and Succession Duties.

1136. As payments of this nature are not in the strict sense of the term debts due and owing by the deceased at the time of his death they fall into the same category as funeral and testamentary expenses. They are at present allowed as deductions under the Commonwealth Act, and **we recommend that this concession be continued, but limited to Duties levied by a State, either in respect of property included in the Commonwealth dutiable estate, or in respect of property not included in the Commonwealth dutiable estate, if payable out of that estate.**

SECTION LVIII.

VALUATION OF ASSETS FOR THE CALCULATION OF DUTY.

1137. The evidence of the Federal Deputy Commissioners and of the State Commissioners indicates that in valuing the assets each Department co-operates closely with the other in each State, and that as a general rule the valuations made by the State are adopted for Commonwealth

purposes. Where the amount involved is large a special valuation may be made at the joint expense of the Commonwealth and the State concerned. In some cases, however, differences occur in the values adopted for Commonwealth and State purposes, and particularly in regard to the following assets :—

Real Estate.

1138. We are informed that the greatest possible use is made of the information available to either the Commonwealth or the State Land Tax Departments in arriving at the value to be adopted for Probate. It is the practice in the Commonwealth to consult the Commonwealth Land Tax Department in regard to the value of real estate when that exceeds an amount which is exempt from Commonwealth Land Tax. Many witnesses expressed the opinion that, as far as possible, the values adopted for Land Tax purposes should be adopted also for Death Duties both by the Commonwealth and State Departments.

1139. Differences in the valuation of real estate may occur in New South Wales, because by law the State Department is bound to accept the valuation made by the Valuer-General. This is not binding on the Commonwealth.

Mortgages.

1140. Commonwealth Estate Duty Order No. 139 of the 26th April, 1923, provides that the value of a mortgage, for the purposes of the Estate Duty Assessment Act, is the amount it would realize in cash at the date of the deceased's death, i.e., how much would a purchaser give for it. The date of redemption and the rate of interest are both factors in the determination of this value.

1141. Some of the evidence we have received indicates that this Order is perhaps being too widely interpreted. In our opinion the test of the value of a mortgage is whether the security is sufficient to cover the amount advanced. If it is, we do not think that the rate of interest should be taken into consideration except in very unusual circumstances where the mortgage has been given for a very long period of years. Attention is drawn to the matter because in some cases it results in a difference between the values adopted by the Commonwealth and State for the same mortgage.

Life Interests, Remainders and Annuities.

1142. The necessity for the valuation of these assets may arise in connexion with Estate, Probate or Succession Duty. The valuation is dependent upon two main factors, namely, the expectancy of life and the rate of interest to be adopted. Different tables are used by the various Governments to ascertain the expectancy of life. The Commonwealth uses Australian tables, but the States use different tables, principally based on English experience. The rate of interest to be adopted also varies. South Australia uses 4 per cent.; the Commonwealth 4½ per cent.; New South Wales, Queensland and Tasmania 5 per cent. Victoria and Western Australia do not appear to have a definite rule, but Victoria generally uses 5 per cent. and Western Australia a rate based on the anticipated value of money during the period of the annuity.

1143. In these circumstances it is inevitable that a difference must arise between the valuations adopted by the Commonwealth and a State. The following instance may be quoted :—

The estate of X has an interest in reversion in the estate of Y which is subject to an estate for life in favour of Z now aged 79 years. The estate of Y is valued both for Commonwealth and State purposes at £6,535. X's interest in the estate of Y as respectively assessed is as under :—

Commonwealth Assessment.	£	*State Assessment.*	£
Value of the Estate	6,535	Value of the Estate	6,535
Interest at 4½ per cent. on £6,535—£294.075		Interest at 5 per cent. on £6,535 —£326.75	
Present value at 4½ per cent. of an Annuity of £294.075 during the life of a female aged 79 according to the Estate Duty Tables — £294.075 x 4.524	1,330	Present value at 5 per cent. of an Annuity of £326.75 during the life of a female aged 79 according to Carlisle's Mortality Tables—£326.75 x 4.795	1,566
X's interest as assessed ..	5,295	X's interest as assessed ..	4,969

1144. It is not unreasonable to ask that all Departments should employ the same set of Tables and that a common rate of interest should be prescribed by regulation. This might be based on the long-term rate of interest. There is no justification for the perpetuation of differences of this nature, and their reconciliation involves no sacrifice of principle and very little Revenue.

1145. A further complication is introduced in New South Wales where the Commissioner is empowered to take into consideration any contingency or event which has occurred at any time before the State assessment is actually made. The following example shows the difference in valuation which results from the application of this provision :—

The estate of A is entitled to the residual estate of B subject to an annuity of £100 in favour of C, a female, aged 49 at the date of A's death. C dies after A, but before the State assessment was made. The residual estate of B at the date of A's death was valued for Commonwealth and State purposes at £3,175. A's interest in the estate of B, as respectively assessed, is as under—

Commonwealth Assessment.	£	*State Assessment.*	£
Value of residuary estate of B	3,175	Value of residuary estate of B ..	3,175
Less—		*Less*—	
Capital value of annuity of £100 to C (a female aged 49) based on Estate Duty Tables, which show the present value at 4½ per cent. of an annuity of £1 per annum payable annually to a female aged 49 ..	1,356	Balance of annuity due to C and unpaid at the date of her death	40
Value of estate remaining ..	1,819	Value of estate remaining ..	3,135

It will be noted that the value of the interest of A would have varied in accordance with the age of C at A's death for Federal purposes, but the State assessment would remain constant as determined by the death of C, irrespective of her age.

1146. It is desirable that there should be uniformity between the Commonwealth and the States in the treatment of cases where a contingency or event has occurred before assessment. **The New South Wales provision seems to be a departure from strict principle, and as neither the Commonwealth nor any other State makes the same provision we do not recommend it for general adoption.**

Shares in Companies.

1147. Shares in a public company registered on a Stock Exchange are in all cases valued for Death Duties at the market value on the date of death or as near thereto as practicable. It is, however, more difficult to arrive at the value of shares in a private or proprietary company. The only Act that appears to deal specifically with this question is that of New South Wales which provides, in effect, that the valuation shall be made on the assumption that the Memorandum and Articles of Association satisfy the requirements of the Stock Exchange at the place where the share register is kept in which the shares the subject of valuation are registered. It provides also that regard shall not be had to any provision in the Memorandum and Articles relating to the valuation of the shares of a deceased member. In determining such value the responsible officer of the company is required to supply to the Commissioner, at his request, balance-sheets and accounts and such other information as the Commissioner may require for the purpose of ascertaining the value of the shares.

1148. The Queensland Act empowers the Commissioner in his discretion to adopt as the value of any shares or stock in any company such sum as, in his opinion, the holder thereof would receive in the event of the company being voluntarily wound up on the date when the succession took effect. The meaning of the section is not clear, but we are informed that it is the practice to value the shares on an assets basis, with no addition for goodwill, and to deduct the estimated costs of realization.

1149. The Acts of the Commonwealth and the other States do not deal specifically with the method to be applied in the valuation of shares, and in practice an attempt is made to arrive at a fair market value.

1150. Having regard to the increase in the number of private companies, it appears to us to be essential that a definite and uniform basis should be adopted by all Governments for the valuation of shares. The lack of such provisions was the subject of comment by some of the

State Commissioners. A case recently decided under the Act of New South Wales laid down the principle that the value to be adopted was the amount at which a bona fide purchaser, not anxious but willing to purchase, would be prepared to pay to a vendor not anxious but willing to sell, assuming the shares in question were registered on the Stock Exchange, and we think this basis might be generally adopted.

1151. We recommend that the Acts of the Commonwealth and of all the States should contain similar provisions reasonably precise in regard to the valuation of shares in private companies, and that these might follow the general lines of Section 127 of the New South Wales Act which appears to us to be equitable.

SECTION LIX.

DOUBLE TAXATION.

1152. The problem of double taxation which was discussed in Section XXI. of our Report in relation to Income Tax also arises in connexion with Death Duties. The causes of double taxation and the means suggested to obviate it will now be discussed.

Taxation in the State of Domicile of Personalty, Wherever Situate, Without Adequate Provision for Rebate.

1153. In Section LV. of this Report we recommend that the principle of an Estate Duty should be adopted by all Australian Governments as the basis for standardized legislation throughout Australia, and that each Government should include in the estate of a deceased domiciled in the jurisdiction personal property situate out of the jurisdiction. The inclusion of personalty situate out of the jurisdiction would obviously result in double taxation unless adequate provision is made for rebates in respect of such personalty. Although the principle of including the personalty out of the jurisdiction in the dutiable estate is in force in the Commonwealth and all States, except Victoria and Western Australia, the existing provisions for rebates are not uniform, nor are they in all cases adequate. It is provided in the Commonwealth Act that where Duty is paid outside Australia in respect of any part of the estate situate out of Australia there shall be deducted from the Commonwealth Duty either the amount of the Duty paid outside Australia or the amount of Duty payable under the Commonwealth Act in respect of that part of the estate, whichever is the lesser. The effect of this provision is to eliminate double taxation.

1154. The aspect of double taxation which more directly concerns taxpayers therefore arises between the States. As Victoria and Western Australia impose Duty only upon that part of the estate which is situate in the State, it follows that no provision for a rebate of Duty paid elsewhere is contained in the Acts of those States because the scheme of the Acts does not give rise to double taxation from the point of view now being considered.

1155. The Acts of New South Wales and Tasmania provide for a rebate in respect of Duty paid on personal property situate outside the State but within His Majesty's dominions. The South Australian Act provides for a rebate of Duty in respect of personal property situate outside the State when that personal property is situate and taxed in a reciprocating State, that is, a State which either does not tax property situate in South Australia or which grants a similar rebate in respect of such property. All the States of the Commonwealth (except Queensland), the United Kingdom, New Zealand and Trinidad are recognized as reciprocating States. The rebates provided in New South Wales, Tasmania and South Australia prevent double taxation by reason of the inclusion of personalty situate out of the State in most of the cases where it would otherwise arise. Those provisions, however, are not entirely adequate. **The rebate should not depend upon whether the personal property subject to Duty is within His Majesty's dominions, nor should it depend upon the question of reciprocity.** The fact that a State grants or refuses a rebate does not assist the Revenue of any other State, and the principle of reciprocity has no strict relevance in this connexion. The rebate should be granted as a recognition of the fact that the State where the assets are situate has a prior right to levy Duty on them. The State of domicile by including those assets in the dutiable estate gets the benefit of an increased rate on the whole estate, and should be prepared, in all cases, to allow a rebate of the Duty paid elsewhere.

1156. Whilst in Queensland personalty out of the State is included in the estate of a person dying domiciled in the State, the Act contains no provision for rebates in any circumstances. **This is the most glaring example of double taxation existing in any of the systems which we investigated. It cannot be defended on any ethical grounds, nor can the requirements of Revenue justify a system of taxation which is so obviously unfair.**

1157. This subject was discussed at a Conference of Taxation Officials held in 1928, at which all States, except Western Australia, were represented. The opinion of the Conference was expressed in the following Resolution :—

> "Resolved, that in the opinion of this Conference a satisfactory solution for the cessation of double Death Duties would be for each State to impose Death Duties upon personal property wherever the same shall be, and allow in respect of personal property situate outside such State a rebate of Duty of an amount equal to the Duty paid elsewhere, or to the Duty payable under the Act of the State in which the property is situate, whichever amount is the lesser."

Queensland dissented.

1158. In our opinion the principles expressed in the Resolution are sound and should be generally adopted. If the rebate suggested were granted by all Governments double taxation arising from the inclusion of personal property situate out of the jurisdiction would be avoided.

1159. We, therefore, recommend that wherever personalty situate out of the jurisdiction is included in the dutiable estate a rebate be granted of the lesser of the following :—

(a) the amount of the Duty paid out of the jurisdiction in respect of that personalty, or

(b) the amount of the Duty payable in the jurisdiction in respect of that personalty.

DETERMINATION OF THE SITUATION OF CERTAIN ASSETS.

1160. The recommendation contained in the preceding paragraph would not entirely obviate double taxation of assets. There is some justification for regarding certain forms of personal property as being situated and primarily taxable in more than one State. **In those cases where more than one State has some legal justification for regarding the same asset as being primarily dutiable, an agreement or compromise between the States is essential to obviate double taxation.** The assets referred to are Shares in Companies ; Interests in Partnerships, and certain Specialty Debts.

Shares in Companies.

1161. There can be little question that shares in companies are located at the place where they may be transferred, that is, where the share register on which they are entered is situated. Every Australian State adopts this rule and levies Duty on shares entered on a register in that State. But double taxation arises because some States levy Duty on shares which form part of the personal estate of a deceased person who at the time of his death was domiciled there, although the shares were not entered on a register in that State. This has been considered in connexion with the allowance of rebates and need not again be referred to.

1162. Some States also levy Duty on shares of a company which has assets in the State, although the deceased was not domiciled there and the shares were not entered on a register in that State. The argument that Duty should be imposed in such circumstances is based on an identification of the share with a proportionate part of the company's assets. The Duty is levied on the company for two reasons. The first is for convenience, for the personal representatives of a deceased person who had no assets in a State will not require to apply for Probate or Letters of Administration in that State. The Department, therefore, has not that means of knowledge that a death has occurred, nor the means of collecting any Duty that may be leviable. The second reason is that when the deceased is domiciled, and the shares are entered in a register, out of the State it is unconstitutional for the State to impose a direct Duty on the estate.

1163. At this stage it is desirable to summarize the provisions of the Acts of those States which impose an overriding Duty on shares.

1164. The *Succession and Probate Duties Act* 1904 (Queensland) requires a company carrying on business in Queensland to make a return within six months after the death of any member, showing the value of his shares. Duty is payable by the company on such value at a graduated rate. Where the company also carries on business outside Queensland, the Duty is levied at the rate applicable to the total value of the shares of the deceased on an amount which bears the same proportion to the total value as the assets of the company in Queensland bear to its total assets.

1165. The provisions of the *Companies (Death Duties) Act* 1901 (New South Wales) are similar, but the Act is limited to companies incorporated outside New South Wales and carrying on in that State the business of (*a*) mining for gold or other minerals or treating any such minerals, or (*b*) pastoral or agricultural production or timber getting.

1166. The Acts of both States give the company the right (so far as it can be given in such circumstances) to reimburse itself out of moneys payable to the personal representative in respect of the shares, or to recover the amount by action.

1167. It is interesting to note that proposals to obviate double taxation on shares were considered at a Premiers' Conference held in 1924, and that these were referred to a Committee of State Taxation Officers who unanimously passed the following resolutions :—

> " That in the opinion of this conference a satisfactory solution for the cessation of double Death Duties upon shares in companies held by deceased persons at the date of death would be for each State, irrespective of the domicile of the deceased, to refrain from directly levying Duty on shareholdings where the registers of such companies are situated in their State, and to levy on shareholders only in the State where the companies' work or business is actually carried on.
>
> " In the event of the works or business of the company being actually carried on in more than one State, Duty should be levied in such States upon the proportion which the assets in such State bear to the total assets of the company wheresoever situated."

1168. No steps appear to have been taken by any of the State Governments to implement this Resolution, but a later Conference of State Taxation Officers held in 1928 considered the whole subject of double taxation and adopted the Resolution quoted in paragraph 1157, which, for convenience, we repeat :—

> " Resolved, that in the opinion of this Conference a satisfactory solution for the cessation of double Death Duties would be for each State to impose Death Duties upon personal property wherever the same shall be, and allow in respect of personal property situate outside such State a rebate of Duty of an amount equal to the Duty paid elsewhere, or to the Duty payable under the Act of the State in which the property is situate, whichever amount is the lesser."

1169. It should be noted that the solution suggested by the Conference of 1928 differs materially from that suggested by the Conference of 1924.

1170. The Resolution of the Conference of 1928 was not acceptable to Queensland, which expressed its dissent in the following memorandum :—

> " The proposed basis for the settlement thereof as agreed to by all the States represented, other than Queensland, is most inequitable from a Queensland standpoint.
>
> " Certainly, it does not concern Tasmania, nor does it, as it so happens, affect the present method of taxation by South Australia, but it would deprive Queensland of the right to collect Duty in respect of a big proportion of its valuable *primary industries* (such as Pastoral, Agricultural, Mining, &c.), represented by semi-private companies incorporated outside and with their share registers also outside Queensland but within the Commonwealth.
>
> " In my opinion particularly as regards *primary industries* of the State affected as above-mentioned the Death Duties should be payable in the State or States where the assets of the company are physically situate in the proportion that such assets bear to the total assets of the company and the Duty so paid in such State or States rebated to the estate by the State where the share register is situate—(as such State collects Duty on the full value of the shares)—but not to a greater extent than the Duty payable in that State, where the share register is situate, upon such shares."

1171. In our opinion the imposition of an overriding Duty on shares in companies does not provide a satisfactory solution of the problem. It would be necessary for every State to impose such a Duty and this would add materially to the difficulties of administration, particularly in regard to the inclusion, for Duty purposes, of shares in companies which carry on business in every State. A very practical difficulty would arise in regard to the valuation of the assets in each State. The Commissioner in each State might consider that he was compelled to make a critical investigation into the value of the assets of the company, both in his State and elsewhere, and it is not unreasonable to assume that each would endeavour to secure to his State the highest possible proportion of the total value of the assets. The result would probably be that the estate would be taxed upon an amount which in the aggregate represented a greater sum than the true value of the shares. Thus overlapping would continue and the evil which the solution is intended to cure would remain. We may add that all these difficulties would be intensified in the case of a holding company which held shares in other companies that might also have assets extending over other States.

1172. The Acts of Queensland and New South Wales imposing overriding Duties on companies in the manner described are a source of much irritation. It is probable that their repeal would result in a very small loss of Duty. Provisions to the like effect were formerly included in the South Australian Act, but these were repealed, following the decision of the 1928 Conference previously referred to, and the Commissioner of Taxes stated in evidence that he did not think the Department had ever collected a penny in Duty under these sections while they were in force. The Senior Death Duties Assessor, New South Wales, stated that the revenue obtained from this source in that State is negligible, being less than £6,000 per annum. Information supplied by the Commissioner of Stamp Duties, Queensland, shows that the collections on this account have been as under—

Year ended—	£
30th June, 1931	25,929
30th June, 1932	20,374
30th June, 1933	15,641

The Duty collected in the last of these years represents less than 3½ per cent. of the total Duty collected in the form of Probate and Succession Duties during that period.

1173. We recommend—

(1) That shares in companies be deemed to be situate only in the State where the share register on which they are entered is located ;

(2) That a company which carries on business, or has assets, in a State but which does not maintain a share register in that State should not be required to pay Duty in respect of shares forming part of the estate of a deceased shareholder who at the time of his death was domiciled out of the State.

Interest in a Partnership.

1174. An interest in a partnership may be viewed either as a claim for a sum of money or as a share in the assets, the distinction being dependent upon the terms of the partnership deed, the provisions of the Partnerships Act and common law rights.

1175. If the interest be regarded as a claim for a sum of money it would be situate in the State where the claim would have to be proved, but if as a share in the assets it would be situate in the State in which those assets are to be found.

1176. It is probable that some double taxation occurs owing to this ambiguity. The matter should be clarified by a legislative enactment which would avoid all disputes.

1177. We recommend that an interest in a partnership be deemed to be situate in the State or States in which the assets of the partnership are to be found, inclusive of goodwill, if any, associated with that part of the business carried on in the State.

Specialty Debts.

1178. The common law rule relating to specialty debts is that they are situated where the deed is held. Following this rule all States include in the dutiable estate, as assets situated in the State, any specialty debts in respect of which the deed is in the State at the date of death. There is some justification for claiming that the situation of certain debts should be determined by another test. For example, in the case of mortgages the legislation in New South Wales is based on a claim to regard a mortgage debt as being situated where the property over which security is given is situated. Prior to 1931 this provision of the New South Wales Act automatically gave rise to double taxation where a mortgage was given over assets in New South Wales and at the date of death the deed was held in another State. The State in which the deed was held imposed Duty, applying the common law rule referred to. Duty was also imposed in New South Wales under the provision of the Act referred to because the security was in that State. Since the introduction in 1931 of the Estate Duty principle in New South Wales, and the enactment of a provision to grant a rebate in respect of property included in the dutiable estate which was situate in some other part of His Majesty's dominions and taxed there, it appears that double taxation no longer arises from this cause.

1179. We received evidence that difficulty may also arise in regard to life assurance policies. Where they are under seal, these are subject to the law referred to, and are dutiable in the State in which the policy was held at the date of death. It was suggested that they might also be properly dutiable in the State in which they were payable.

1180. Having regard to the present practice in the States, we recommend that all specialty debts should be regarded as situate where the deed is held at the date of death and that no other test of situation be imposed.

DOUBLE TAXATION ARISING OUT OF THE DISALLOWANCE OF LIABILITIES.

1181. Double taxation between the States also occurs because of the lack of agreement between the Acts of the States in regard to the deduction allowed in respect of liabilities which may be secured upon property within or outside the State, or in regard to unsecured liabilities which are payable elsewhere.

1182. The relevant clauses of the State Acts relating to the allowance of **secured** liabilities are as follow :—

New South Wales.—Debts secured solely on the dutiable estate are allowed. Where the debt is secured partly on the dutiable estate and partly on foreign assets, the portion of the debt which bears the same ratio to the total debt as the value of that part of the dutiable estate on which it is secured bears to the value of the whole of the security is allowed. Where the debt secured solely on foreign assets exceeds the value of those assets the Commissioner may allow the deduction of such amount as he considers equitable.

Victoria.—Debts payable in the State may be deducted, irrespective of the location of the security. Debts secured on an asset in the State but payable elsewhere may not be deducted.

Queensland.—If the deceased was domiciled in Queensland, debts secured on assets in the State are allowed. If the deceased was not domiciled in the State, debts secured on assets in the State are allowed only to the extent to which they exceed the value of the estate situated out of the State. If the debt was secured on assets partly in and partly out of the State, only so much of the debt as exceeds the value of such property out of the State is allowed, irrespective of the domicile of the deceased. Debts secured on assets out of the State are not allowed in any case.

South Australia.—Debts secured on real estate in the State are allowed wherever payable. Debts payable in the State are also allowed without regard to the situation of the security.

Western Australia.—Debts payable in the State may be deducted irrespective of the location of the security. Debts secured on an asset in the State but payable elsewhere may not be deducted.

Tasmania.—Debts secured on real estate in the State, or on personal estate, wherever situate, are allowed.

1183. The relevant clauses of the State Acts relating to the allowance of **unsecured** liabilities are as follow :—

New South Wales.—Debts payable to persons domiciled, or carrying on business, in the State, not being debts contracted in connexion with the business of the deceased located out of the State, are allowed. Debts contracted in connexion with a business of the deceased located in the State are allowed. The excess of other debts over foreign assets is also allowed.

Victoria.—Debts payable in the State are allowed, but debts payable elsewhere are not allowed. However, any excess of debts payable elsewhere over foreign assets is also allowed.

Queensland.—Debts owing to persons in the State are allowed. Debts due to persons resident elsewhere are not allowed, except to the extent of the value of any personal property situate out of the State in respect of which Succession Duty is payable.

South Australia.—Debts payable in the State are allowed, but debts payable elsewhere are not allowed. However, any excess of debts payable elsewhere over foreign assets is also allowed.

Western Australia.—Debts payable in the State are allowed, but debts payable elsewhere are not allowed. An excess of debts payable elsewhere over foreign assets is not allowed.

Tasmania.—Debts payable in the State are allowed, but debts payable elsewhere are not allowed.

1184. Consideration of the provisions of the Acts relating to secured and unsecured liabilities shows that it is not possible to determine any principle which is common to all of them. **In operation the principles applied by any State (except Queensland) might not produce serious inequity if they were adopted by all States, but the application of varying principles obviously results in double taxation which at times is very considerable.** The provisions of the Queensland Act must inevitably produce double taxation, and their adoption by the other States would materially increase the incidence of Death Duties payable in respect of an estate which extends over more than one State.

1185. The following examples are given to show the inequity that results from the lack of uniformity and fairness in the legislation of some of the States in regard to the deduction of liabilities.

Case A.—A man dies domiciled in Tasmania, having a net estate there of £50,000. He had also a pastoral property in Queensland valued at £80,000 subject to a mortgage of £40,000 raised in Queensland. For the purpose of ascertaining the Tasmanian Duty no part of the mortgage debt of £40,000 can be deducted from the value of the Tasmanian assets, because it is not secured on real estate in Tasmania. For the purpose of ascertaining the Queensland Duty no part of the mortgage debt can be deducted from the Queensland assets because the assets outside

Queensland exceed the debts situate outside Queensland. The result is that on a total net estate of the value of £90,000 the estate is taxed on £50,000 in Tasmania and on £80,000 in Queensland, no rebate being allowed by either State in respect of the Duty paid elsewhere.

Case B.—A deceased carried on a pastoral business both in New South Wales and Queensland. The total value of his assets is £100,000 equally divided between the two States, and he has obtained on the security of the whole of these assets one mortgage for £40,000. For the purpose of ascertaining the Queensland Duty no part of the mortgage debt can be deducted from the Queensland assets, because the debt does not exceed the value of the property situated outside Queensland on which it is secured. For the purpose of ascertaining the New South Wales Duty the debt would be allocated proportionately over the assets comprised in the mortgage, and a deduction of £20,000 would be allowed. The result is that on a total net estate of £60,000 the estate is taxed on £30,000 in New South Wales and £50,000 in Queensland, no rebate being allowed by either State in respect of the Duty paid elsewhere.

Case C.—A deceased who at the time of his death was domiciled in Western Australia had a net estate there of £10,000. His Victorian assets were valued at £20,000, but his liabilities payable in that State were £35,000. His estate would be subject to Duty in Western Australia on the net value of the assets in that State, namely, £10,000, although the estate itself would show a deficiency of £5,000, and would in fact be insolvent.

1186. Many other examples could be quoted, but these are sufficient to illustrate our statement that the lack of uniformity in the State Acts operates unfairly in the case of estates which have assets in more than one State. It is probable that the provisions of some of these Acts were drawn when interstate trading and investment had not assumed its present magnitude, but it is clear that in existing conditions revision is urgently called for. In our opinion the general principles that should be adopted are those expressed in the following recommendations.

1187. We recommend—

(1) That secured debts be allowed as a deduction from the value of the security wherever that value is included for purposes of Duty. Where the security is situate partly in one State and partly in another the debt be apportioned pro rata according to value over all the security.

(2) That unsecured debts be allowed as a deduction in the State where payable, unless contracted in connexion with a business or branch of a business, in which case they be allowed as a deduction where the business is carried on.

(3) That any excess of secured or unsecured debts payable out of the State over the assets upon which they are charged, or, if unsecured, out of which they are payable, be allowed as a deduction in the State in which the deceased was domiciled at the date of his death.

SECTION LX.

THE DUTY PAYABLE.

The Scale of Rates of Duty.

1188. The rate of Duty is determined in every case by reference to a graduated scale which is embodied in the Act. Some of the Acts contain different scales applicable to various classes of beneficiaries.

1189. The rate and progression of Duty is, of course, a matter for each Government to determine, and it is not our intention to compare the rates levied, or to express any opinion as to their comparative incidence. There are, however, certain anomalies which are due to the methods adopted. The scales of Duty are not in all cases equally efficient or even equitable. In fact it may be said that in some respects they produce very inequitable results.

1190. In each case the rate of Duty is progressive, but the progressions are not regular in all cases. For the purpose of determining the rate, the estate is divided into a number of "steps", and the following table shows the amount of the "step" at which the rate is increased :—

	Amount of the Dutiable Estate. £	Duty increases in respect of each. £
Commonwealth	1 to 72,000 ..	1,000
New South Wales	1 to 100,000 ..	1,000
Victoria—		
Passing to widow and children—		
	1,001 to 8,000 ..	1,000
	8,001 to 20,000 ..	2,000
	20,001 to 80,000 ..	4,000
	80,001 to 100,000 ..	5,000

	Amount of the Dutiable Estate.		Duty increases in respect of each.
Victoria—			
Passing to a stranger in blood—	£	£	£
	201 to	600 ..	100
	601 to	1,000 ..	200
	1,001 to	5,000 ..	500
	5,001 to	20,000 ..	1,000
Queensland—	1,001 to	4,000 ..	1,500
	4,001 to	10,000 ..	1,000
	10,001 to	30,000 ..	2,500
	30,001 to	75,000 ..	5,000

South Australia—The Duties increase by irregular "steps" very far apart. There is no systematic progression.

Western Australia—	£	£	£
	1,001 to	6,000 ..	1,500
	6,001 to	20,000 ..	1,000
Tasmania—			
	1,001 to	3,000 ..	500
	3,001 to	36,000 ..	1,000

In every instance Duty on an estate in excess of the maximum amount stated is at a flat rate.

1191. It will be noted that in some cases the amount of the "step" is considerable, and as the increased rate applies, not to the amount of the estate at which the rate changes, but retrospectively to the first pound, very serious anomalies occur at certain points where the addition of one pound to the dutiable amount may involve a very large increase in the Duty. The following table shows some of these anomalies, and in order to obtain a fair comparison reasonably similar amounts have been selected, so far as that is possible :—

The addition of £1 to a Dutiable Estate of the value shown results in additional Duty amounting to—	In the case of widow and children.	In the case of a stranger in blood.
	£ s. d.	£ s. d.
Commonwealth—		
£2,000	2 13 6	4 0 3
£10,000	13 7 0	20 0 6
£20,000	26 14 0	40 1 0
£70,000	93 8 8	140 3 0
New South Wales—		
£2,000	2 10 3	5 0 6
£10,000	25 0 11	25 0 11
£20,000	50 1 5	50 1 5
£70,000	140 3 10	140 3 10
Victoria—		
£2,000	44 8 2	6 2 1
£10,000	24 5 2	48 9 8
£20,000	48 10 5	121 2 5
£72,000	174 6 11	..
Queensland (where both are domiciled in the Commonwealth)—		
£2,500	12 10 5	50 1 8
£10,000	50 1 6	100 3 0
£20,000	100 1 11	200 3 10
£70,000	350 3 1	..
South Australia (Successions)—		
£1,999	25 0 9	..
£9,999	125 1 8	625 2 6
£14,999	281 6 10	..
£19,999	..	1,250 3 9
£74,999	937 12 8	..
Western Australia—		
£2,500	12 10 5	25 0 9
£10,000	20 0 9	40 1 5
£20,000	50 1 0	100 2 0
Above £20,000 there is a flat rate.		
Tasmania—		
£2,000	5 0 9	A flat rate of 15 %
£10,000	25 1 2	
£20,000	50 1 8	
£35,000	87 12 5	

NOTE.—Where no amount appears in a column no change in rates occurs.

1192. Where these anomalies occur in the case of the smaller estates they are to some extent due to the absence of any provision for the gradual diminution of the amount which in certain cases is exempt from Duty, or in respect of which a concessional rate is allowed. Thus, for example, in Victoria an estate passing to the widow and children not exceeding £2,000 is dutiable at one-half the scale rate. But the addition of £1 increases the rate on the whole estate and subjects it to Duty at full rates, that is, an additional Duty of £44 8s. 2d.

1193. The table, of course, illustrates the worst examples, but similar anomalies occur in every scale, though not to the same extent, and we think it will be generally recognized that a system of rating which may operate so inequitably calls for immediate amendment. Various remedies may be suggested. It is obvious, of course, that some anomalies must occur in any scale, but these can be minimized by the adoption of a scale in which the rate increases by a regular progression in small " steps ". A comparison between the increased Duty which occurs in the Commonwealth and New South Wales with that which occurs in South Australia will illustrate our meaning. In the first two cases the Duty increases with each additional thousand pounds, and the result is that the addition of £1 to an estate of £70,000 results in an increase of Duty of £140. But in South Australia the progression is irregular and the " steps " are very far apart, and consequently the addition of £1 to a succession of £19,999 results in additional Duty of £1,250.

1194. No Australian Government has adopted for Death Duty purposes the principle generally in operation for Income Tax rating whereby the tax increases fractionally for each additional pound of taxable income. It was suggested in evidence that the range of values of estates to be covered is too extensive to permit of its adoption. It is, however, in force in the Commonwealth Land Tax, where the values dealt with range from £5,000 to £80,000 while the tax under the scale of rates only fluctuates from 1d. to 5d. If the Commonwealth Estate Duty were levied on this principle the fractional increases in the rate of Duty with each pound of dutiable estate would not be as small as the fractional increases in pence with each pound of taxable value which at present occur in the imposition of Land Tax. Consequently there would be no difficulty in adopting the principle for Commonwealth purposes. The principle could be adopted also in the States, with some adjustment of their existing rates ; but without undue difficulty. It is preferable to the unqualified retention of the " step " system, as it adjusts the Duty more delicately to the size of the estate and entirely obviates the anomalies referred to. For these reasons we think that the principle should be adopted.

1195. An alternative method of overcoming the difficulties involved in the " step " system as at present applied is that employed in Great Britain, which has a scale similar in principle to those used in Australia. The Duty there cannot exceed an amount which is the sum of the Duty at the next lower rate, plus the excess in the value of the dutiable estate over the maximum amount to which that rate applies. To illustrate our meaning we take the following example :—

Let it be assumed that the Duty on an estate not exceeding £25,000 is at the rate of 9 per cent. and that the Duty increases to 10 per cent. when the estate exceeds £25,000. The dutiable value of an estate is £25,010. In accordance with the principles employed in the scales as used by all the States the difference in Duty would be as under :—

	£
£25,000 at 9 per cent.	2,250
£25,010 at 10 per cent.	2,501
Increased Duty due to the addition of £10 to the dutiable amount	251

If, however, the method employed in Great Britain were used the difference would be as follows :—

	£
£25,000 at 9 per cent.	2,250
Plus the addition to the dutiable estate £10	2,260
Increased Duty	10

Although under this system the total increase in the dutiable estate is taken from the taxpayer in Duty, it is obviously more equitable than the present system

1196. If the Governments, having regard to their present practice, do not see fit to adopt the system of increasing the rate of Duty with each increase of £1 in the value of the dutiable estate we think that they should adopt the alternative solution indicated.

1197. We recommend—

(1) That where the estate does not exceed a specified maximum, graduation in the rate of Duty be effected, as in the case of Commonwealth Income Tax and Land Tax, by a uniform increase of a fraction of a penny for each increase of a pound in the amount of the dutiable estate ;

(2) That where the value of the dutiable estate exceeds the maximum, a flat rate of Duty be imposed upon the excess.

1198. Alternatively, if the "step" system be retained, we recommend—

(1) That the "steps" occur at comparatively short intervals and be of equal amount ;

(2) That the amount of Duty leviable upon the dutiable estate of any amount shall be—

(*a*) the amount obtained by applying the appropriate rate of Duty under the scale, or

(*b*) the sum of the Duty payable on the highest estate to which the next lower rate of Duty applies, together with the amount by which the dutiable estate exceeds such highest estate,

whichever is the less.

1199. It appears to us to be unnecessary to provide separate scales of rates to be applied to property passing to different classes of beneficiaries. In Queensland only one scale is used, the rate being reduced by a percentage when the property passes to beneficiaries who are allowed concessions under the Act, and increased in the case of other beneficiaries who are subject to Duty at higher rates.

1200. We recommend that one scale of rates be adopted ; that concessions granted to certain beneficiaries, or additional Duty imposed on others, be given effect to by a percentage variation of the scale.

Discrimination in the Rate of Duty on the Ground of Domicile.

1201. The Commonwealth, Victoria, South Australia and Tasmania make no discrimination in the rate of Duty because of the domicile of either the deceased or a beneficiary. New South Wales imposes a higher rate of Duty when the deceased was not domiciled in that State. In Queensland the rate of Duty may be affected by the domicile either of the predecessor or the successor. When both are domiciled in the Commonwealth the lowest rate is imposed. If the predecessor was domiciled in, and the successor out of the Commonwealth, a higher rate is imposed. When both are domiciled out of the Commonwealth the highest rate is imposed. In Western Australia a lower rate is imposed when the estate passes to relatives who are domiciled in the State.

1202. The questions whether any discrimination should be made on the ground of domicile, and, if so, to what extent are entirely matters of policy to be decided by the Government imposing the Duty. But, in accordance with the principles we have enunciated in Section XXIX., we are of the opinion that there should be no discrimination in respect of rates between residents of Australia. **For that reason the principle adopted by Queensland is preferable to that adopted by New South Wales and Western Australia.**

Concessions to Certain Classes of Beneficiaries.

1203. The Acts of all the Governments recognize, to varying extents, the principle that property passing to certain classes of beneficiaries should be subject to the imposition of a lower Duty than that passing to strangers in blood. Differences exist in regard to the classes of beneficiaries who are favoured in this way, and in regard to the manner in which the concessions are conferred.

1204. In the Commonwealth and Victoria concessions are conferred on the widow, children and grand-children of the deceased. In New South Wales a concession in regard to the amount exempt from Duty is conferred upon any person dependent upon the deceased for maintenance and support at the time of his death, and a concession in regard to the rate of Duty is conferred on the widow of the deceased, or any of his children under the age of 21 years, where the beneficiary in question was dependent upon the deceased for maintenance and support at the time of his death. In Queensland there are two classes of favoured beneficiaries, namely the widow and lineal issue of the deceased on the one hand, and all other persons, except strangers in blood to the deceased, on the other. In South Australia and Tasmania there are also two classes of beneficiaries to whom concessions are granted, namely the widow, widower, descendant

or ancestor of the deceased on the one hand, and the brother, sister, descendant of a brother or sister, or any other collateral relation of the deceased on the other. In Western Australia a concession is granted to the parent, issue, husband, wife, and issue of husband or wife of the deceased.

1205. It will be seen, therefore, that under every Act a concession is granted to the widow and children of the deceased, except that in New South Wales it is limited to the case where the widow or children are actually dependent on the deceased at the time of his death. **We consider that a concession should be allowed in favour of those classes of beneficiaries who in the normal case were most probably dependent on the deceased, but that actual dependence should not be adopted as a test.** If dependence be adopted as a test there is no logical reason why it should be restricted to the widow and children. It should be extended to all persons who in fact were dependent on the testator. In the case of persons who were partially dependent upon deceased, determination of the facts of dependence or partial dependence is frequently a matter of difficulty. The evidence in regard to it is generally conflicting and unsatisfactory in matters where it is to the interest of one person to show dependence and of some other person to refute it. For the purposes of obtaining an exemption the evidence might be all one way, and it is hard to imagine that assistance would be given to the taxation officials to enable them to withhold it.

1206. It was suggested in evidence that no concession should be made in the case where the widow has private means and is not dependent for support upon the estate of the deceased. But although this test is imposed by the Act of New South Wales, it does not appear to us to be suitable for general adoption. As a matter of simplicity and expediency it is preferable that the concession should be allowed to the widow and children of the deceased, without inquiry.

1207. The concession might also be extended to the widower, in view of the fact that although dependence might be regarded as exceptional, yet where there is no dependence, the wife's estate has frequently been built up from the husband's means, and the widower is then only receiving from her estate assets which he himself created. In addition, the definition of children should be extended to include grand-children, as their benefits more frequently arise when they are regarded as representing their parents, as, for example, when the latter are deceased.

1208. **We recommend that a concession should therefore be allowed to the widow, widower, children or grand-children of the deceased.**

1209. There is some justification also for the granting of the concession to the collateral kindred of the deceased, but this principle has not been universally adopted in the Acts under consideration, and we feel that it is a matter which can properly be left to each Government to determine for itself. The extent of any concession granted is also a matter in regard to which lack of agreement between the Acts is of no serious moment.

1210. A consideration of the Acts shows that concessions are conferred on favoured classes of beneficiaries both by the allowance of a special exemption to the class, and also by imposing a rate of Duty which is lower than that imposed on beneficiaries who do not come within the class, except that in the Commonwealth and Western Australia the latter method only is used. In some of the States the concession in rate disappears when the estate exceeds a fixed amount, whilst in others the concession is preserved irrespective of the value of the estate. The method of conferring the rate concession is a matter for each individual Government to determine for itself. If, however, it is limited to estates not exceeding a fixed amount a difficulty arises in that when that amount is reached an increase of £1 in the estate causes an abrupt rise in the amount of Duty. This difficulty was discussed under the heading of "The Scale of Rates of Duty", and an adaptation of the solution there recommended in connexion with the "step" system would prevent anomalies of this nature arising.

1211. A similar difficulty also arises where the concession is granted by an exemption from Duty of estates not exceeding a fixed amount. That difficulty, however, is not peculiar to the exemptions granted to favoured classes of beneficiaries, but is common to all cases in which an exemption is granted, and is discussed under the next heading.

The Amount Exempt from Duty.

1212. The Commonwealth, Victoria and Queensland exempt from Duty all estates not exceeding certain fixed amounts. In Victoria and Queensland estates of a higher value than that fixed for general exemption are exempt when passing to favoured classes of beneficiaries. In New South Wales, South Australia and Tasmania, although no exemption is granted in respect of property passing to strangers in blood, exemptions are conferred on estates passing to favoured classes of beneficiaries.

1213. The questions whether an exemption is to be allowed, and, if so, what amount should be allowed, are entirely matters of policy to be decided by the Government imposing the Duty, and consequently no recommendation is made in regard to them.

1214. In the case of every exemption at present allowed, whether generally or to relatives of a particular class, the concession entirely disappears if the estate exceeds the amount fixed. For example, under the Commonwealth Act an estate not exceeding £1,000 in value is wholly exempt, but an estate of £1,001 is dutiable in full at the appropriate rate, namely, 1 per cent. The difference in valuation of £1 in these cases makes all the difference between total exemption and total dutiability. There are two methods of overcoming this anamoly. The first method which may be suggested is the application to Death Duties of the principle applied in the Income Tax legislation of the Commonwealth and the States, under which there is a gradual diminution of the statutory exemption as the income increases. While the adoption of this proposal would prevent the existing anomaly as between estates just under and just over the amount exempted, it would introduce difficulties of its own. No Government has adopted a diminishing exemption for Death Duties, and its adoption would involve the re-casting of the rates of Duty applicable to estates which would be entitled to an exemption. In addition it would also produce some complexity in the assessment of Duty which does not now exist. The second method is the application of the principle suggested in connexion with the "step" system. To take the example under the Commonwealth Act previously referred to in this paragraph, the estate of £1,001 would pay £1 Duty and the rate of 1 per cent. would not be imposed except on estates exceeding £1,010. While this method is not as equitable as the method of a diminishing exemption, it is simplier than that method, would prevent the more serious anomalies arising, and would have to be applied in a very limited number of cases.

1215. We recommend that where in any case estates not exceeding a fixed amount are exempt from Duty, the Duty imposed on estates exceeding that amount should not be greater than the excess of the estate over that amount.

Dispositions Exempt from Duty.

1216. The Acts of all the Governments contain provisions exempting from Duty property passing to certain institutions, being principally institutions directed to the relief of poverty or the advancement of education. The provisions may be summarized as follows :—

Commonwealth.—Property passing to religious, scientific or public educational purposes in Australia, or to a public hospital or public benevolent institution in Australia, or to a fund established and maintained for the purpose of providing money for use for such institutions, or for the relief of persons in necessitous circumstances in Australia is exempt from Duty.

New South Wales.—There is no provision for exempting dispositions by will or settlement in favour of any charitable or other objects, but gifts *inter vivos* are not included in the estate when made to a public hospital, or for the relief of poverty, or the promotion of education in New South Wales, or for any purpose directly or indirectly connected with military or naval defence, or the amelioration of the condition of past or present soldiers or sailors or their dependants, or for the promotion of any other patriotic objects. Where the value of a gift is included, the subject-matter of it having gone out of existence, the exemption is limited to gifts made to a public hospital, or for the relief of poverty, or the promotion of education in New South Wales.

Victoria.—No duty is payable in respect of any public charitable bequest or public charitable settlement. "Public charitable bequest" means a devise or bequest or legacy to or for certain public institutions situate in Victoria enumerated in the Act. "Public charitable settlement" means a settlement of property on or for any of the public institutions mentioned.

Queensland.—Property subject to a trust for any charitable or educational institution in Queensland is exempt from Probate and Succession Duties.

South Australia.—Legacies consisting of books, prints, pictures, statues, gems, coins (not being current coins of the realm) medals, specimens of natural history, and other specific articles given or bequeathed to or in trust for any university, or any institution under the control of the Government or board appointed or partly appointed by the Government in order to be kept and preserved by that university or institution and not for the purpose of sale are exempt from Duty.

Western Australia.—Legacies consisting of books, prints, pictures, statues, gems, coins (not being current coins of the realm) medals, specimens of natural history and other specific articles given or bequeathed to or in trust for any institution under the control of the Government or board appointed or partly appointed by the Government, in order to be kept and preserved by such institution and not for the purpose of sale, and any legacy whatsoever bequeathed to or in trust for any university are exempt from Duty.

Tasmania.—Property or estate the subject-matter of a devise, bequest, legacy, settlement or gift in favour of any charitable object is exempt. "Charitable object" is defined to include certain institutions in Tasmania enumerated in the Act.

1217. It will be observed that there is no semblance of uniformity in regard either to the dispositions or the institutions in respect of which exemption is granted. **We see no reason why some exemption should not be granted with the object of encouraging dispositions for worthy objects. In our opinion conditions throughout the Commonwealth are such that substantial uniformity can and should be reached in regard to the exemption from Duty of dispositions in favour of certain types of institutions.**

The Basis for the Calculation of Duty.

1218. It may be accepted as a recognized principle of Estate Duty that in the case of a person who at the time of his death was domiciled in the jurisdiction, the rate of Duty is determined by reference to the aggregate value of his dutiable estate, and that in the case of a person who at the time of his death was domiciled elsewhere the rate of Duty is based only on the value of his assets within the jurisdiction. This principle is observed by the Commonwealth and New South Wales.

1219. In Victoria and Western Australia settlements are not aggregated with the other dutiable estate, but are separately assessed at the rate of Duty applicable to the value of the property comprised in each settlement.

1220. In Queensland in the case of a person who at the time of his death was domiciled in the State, his realty situate out of the State, although not forming part of the dutiable estate, is included with it for the purpose of determining the rate of Duty. In the case of a person who at the time of his death was not domiciled in the State the rate of Duty to be applied to the Queensland estate is determined on the aggregate value of his total estate wherever situate.

1221. In South Australia the rate of Duty is determined by the amount of each separate succession.

1222. In Tasmania in the case of a person who at the time of his death was not domiciled in the State his personal property situate out of the State, although not forming part of his dutiable estate, is included with it for the purpose of determining the rate of Duty.

1223. We recommend that the rate of Duty be determined by reference only to the amount of the dutiable estate.

Quick Successions.

1224. It happens at times that a person who has succeeded to an estate on which Duty has been paid, himself dies within a short time of the death of his predecessor, so that the same estate is again subjected to Duty in a short space of time. The diminution in value of estates so affected is considerable, and provision has been made in England and Tasmania to mitigate the hardship arising from quick succession.

1225. The Tasmanian Act provides that where the aggregate net value of the estate of a deceased person does not exceed £4,000 no Duty shall be payable in respect of any real estate comprised therein—

(1) which within five years before the death passed to the deceased from his spouse, father, mother or child, and was subjected on so passing to Duty under the Act, and

(2) which passes or the proceeds of which pass to the spouse or child of the deceased.

1226. The English provisions are much wider, and fall into two distinct classes. One provides for a total remission of Duty in respect of certain limited estates where the death arose out of active service by the deceased as a soldier or sailor against an enemy. A similar provision in Section 9 of the Commonwealth Act was restricted to the last war, and is now exhausted. The other provision is a general one. It enacts that where the Commissioners of Inland Revenue are satisfied that Estate Duty has become payable on any land or business passing on the death of any person, and that subsequently within five years Estate Duty has again become payable on the same property or any part thereof passing on the death of the person to whom the property passed on the first death, the Duty payable on the second death shall be reduced as follows:—

Where the second death occurs within one year of the first—by 50 per cent.;
Where the second death occurs within two years of the first—by 40 per cent.;
Where the second death occurs within three years of the first—by 30 per cent.;
Where the second death occurs within four years of the first—by 20 per cent.;
Where the second death occurs within five years of the first—by 10 per cent.

1227. No provision of this nature is contained in the Commonwealth Act or the Acts of any of the States other than Tasmania, but in Queensland Duty in respect of real property is payable by four half-yearly instalments, and in respect of an annuity by four annual instalments. Should the beneficiary die before the Duty is fully paid the unpaid instalments cease to be payable, except where the successor was competent to dispose of his interest by will.

1228. In some cases equity would appear to demand that some concession be made in respect of estates falling to be taxed twice within a short space of time, and this is particularly so where by reason of abnormal circumstances, as, for example, the existence of a state of war, the normal expectancy of life is upset. From the other point of view no attempt has been made to adjust the Duty where an estate has been held out of the taxable field for a much longer time than would be expected under the normal life tables.

1229. The Committee on National Debt and Taxation (Great Britain) 1927, dealing with the question of quick successions, said—

> "To a certain extent variations equalize out in the long run. This point, however, must not be pressed too far. There are so many variable factors in the history of estates, and the rates of Duty are (to judge from the past) so liable to variation, that the future cannot be trusted to make amends for any present inequality. Nevertheless it is fair to observe that quick succession may often be due to the first of the two persons deceased having enjoyed the estate for an exceptionally long period. He may have built up a business over a long term, and have died at the age, say, of 80, leaving his property to his son, then aged 50, who may have died within the next five or ten years, being succeeded in turn by his son, a young man of 25 or 30 with a life expectation of 40 or 35 years. Against the repetition of the burden within five or ten years must be set the long freedom of the estate from Duty during the life of the first deceased, and the prospect of a further good period of immunity."

1230. To endeavour as a matter of general principle to adjust the Duty according to the length of time that assets have been held by the deceased would involve an entirely new view of the incidence of Death Duties, and would also involve serious complexities which do not at present exist, and we do not recommend such adjustment. If, however, any Government desires to grant a concession in respect of quick successions the concession can best be effected by a variation of the rates of Duty. The absence of agreement on rating provisions between the various Acts would be of little moment, as it would not adversely affect the administration of the Acts or the estates to which they apply.

1231. We regard the treatment of quick successions as a matter of policy, which can best be left to each Government to deal with in imposing the rates of Duty, and we make no recommendation as to whether a concession should or should not be granted.

The Adjustment of Duties between Beneficiaries.

1232. Under the provisions of all the Acts in force in the Commonwealth it is left open to a testator to provide how the Duty payable in connexion with his estate shall be borne by that estate. He may throw the payment of the whole of the Duties payable on to a fund provided for that purpose, or on to residue, or otherwise as he directs. Where, however, no provision is made by a testator, or where there is an intestacy, the Acts contain provisions as to how the Duty shall be borne as between the persons entitled to the estate. The effect of these provisions may be summarized as follows :—

Commonwealth.—The Duty is apportioned by the administrator among all the beneficiaries in proportion to the value of their interests. In the case of specific bequests or devises of a value not exceeding £200, the Duty which would otherwise be payable is again apportioned among all the beneficiaries in proportion to the value of their interests. These principles are also applied to effect the adjustment of Duty payable in respect of property which passed from the deceased by gift or settlement.

New South Wales.—The Duty is payable in the same manner as the debts of the deceased. But where property included in the estate is vested in any persons other than the administrator the Duty payable in respect of it must be paid to the Administrator by the persons entitled thereto, in accordance with the value of their interests in the property.

Victoria.—The Duty is payable primarily out of the residue of the estate. Where there is no residue or the residue is insufficient, the administrator must deduct from every interest created by the will, in proportion to the value of the interest, such an amount as may be necessary to provide for the Duty. Residue in the section includes property as to which there is an intestacy. The Duty on property passing by settlement or by gift is payable out of the property subject to the settlement or gift.

Queensland.—Succession Duty is charged on each separate succession, and is payable by the successor. Probate Duty is payable by the administrator as a testamentary expense in the same order as the debts are payable.

South Australia.—Succession Duty is payable by the administrator, who must adjust the Duties so as to throw the burden upon the respective properties on which the Duty is charged.

Western Australia.—The administrator must deduct from each interest created by the will or arising from an intestacy an amount equal to the Duty upon that interest. The Duty on property passing under settlements or deeds of gift is payable out of the property subject to the settlement or gift.

Tasmania.—The administrator must deduct from each interest created by the will or arising from an intestacy an amount equal to the Duty upon that interest. The same principle applies to the adjustment of Duty payable in respect of property passing by settlement or gift.

1233. Regarding a Succession Duty as a tax upon the interest to which a beneficiary succeeds, it may be proper to throw such a Duty on to each individual succession. An Estate Duty, however, is in realty a Duty on the whole estate. So far as the Revenue is concerned, it is immaterial whence it is paid, but it is necessary, for the protection of the personal representative and for the prevention of litigation in regard to estates, to provide how the Duty should be borne by the beneficiaries *inter se* when no express provision is made by the testator. Such provision should be drawn to effect a twofold object: First to cause as little trouble to the personal representative and dislocation to the assets of the estate as possible, and, secondly, to give effect to the probable wishes of a testator as far as possible in regard to the assets out of which the Duty should be paid. The provisions of some of the Acts fail to achieve these objects. For example, a considerable body of litigation has arisen in regard to the interpretation of wills in the light of the section of the Commonwealth Act. The fact that the Duty is not a testamentary expense, and, under the provisions of the section, is not (in the absence of any different disposition in the will) payable as such expenses are payable, undoubtedly leads to its imposition on the beneficiaries in a manner which is frequently contrary to the wishes of the testator. Where a testator's attention is drawn to the incidence of the Duty at the time of making his will, he can make such provision for it as he wishes, and under any system this should be so. Where, however, his attention is not directed to the payment of the Duty, one must conjecture how he would have provided for it had its existence and incidence been brought to his mind.

1234. The evidence given by representative witnesses indicated that in the normal case a testator would expect the Duty payable in respect of the assets actually forming part of his estate at the time of his death to be paid out of residue to the relief of beneficiaries to whom specific or general pecuniary benefits had been devised or bequeathed.

1235. Much dissatisfaction was expressed with the operation of the provisions requiring the apportionment of Duties among all beneficiaries. In our opinion, it is a proper assumption that if a testator's mind were directed to the question of paying Duty on the assets actually forming part of his estate, he would normally require it to be paid out of residue. If the case were pressed further, as, for example, if his attention were directed to the possibility that the residue might prove insufficient to meet the charges imposed upon it by the will or by law, it is not unreasonable to assume that he would regard the Duty as a debt or testamentary expense and expect it to be paid accordingly. The personal representative always has to ascertain the order in which debts are payable, and to adjust their payment among the beneficiaries. In the normal case no additional trouble would be caused him if he were required to treat the Duty as a debt, as it is in fact, or a testamentary expense.

1236. Where Duty is charged in respect of assets which do not form part of the actual estate at the time of death, such as assets comprised in a settlement or parted with by gift, it is more difficult to make a general assumption as to what direction the testator would have given in respect of that Duty. All the Acts now provide that Duty in those cases is to be ultimately paid out of the property the subject of the settlement or gift, and we see no reason for departing from existing uniformity in that regard so far as settlements are concerned. The case of gifts seems to stand on a somewhat different footing. Where a person makes a gift to a friend, it would be a rather far-fetched assumption that either the donor or the donee contemplated that upon the donor's death within one, two or three years, a claim should be made upon the donee for the payment of Duty on the gift. It seems to us that if by reason of the operation of the law the gift is treated as still part of the donor's estate for the purpose of Death Duty, the Duty should be paid in the same way as if it were in fact part of the estate.

1237. We recommend that, subject to any different provision in the will—

(1) the Duty payable in respect of assets actually forming part of the estate of a deceased person or gifts deemed to be part of his estate, should, as between the persons interested in the estate, be payable out of the assets in the same order as the other debts are payable, provided however, that where under this recommendation assets specificially disposed of by a testator have to bear the Duty in whole or in part, gifts should rank with those assets for the purpose of bearing an appropriate part of the Duty ; and

(2) the Duty payable in respect of property comprised in a settlement forming part of the dutiable estate should be payable out of that property.

1238. Estate Duty is, of course, primarily payable by the personal representative of the deceased, and the recommendations in the last preceding paragraph are directed to enable him, having paid the Duty, to adjust the burden as between the persons beneficially interested in the estate. In many cases the fact that the personal representative has to find the whole of the Duty payable in the first place may impose hardship on the estate. This hardship arises principally where property comprised in a settlement forms part of the dutiable estate but is not in the hands of the administrator. He is generally given a right to recover as a debt from the trustees or other persons in whom the settled property is vested the Duty attributable to that property. This provision in our opinion does not go far enough. The administrator should be freed from the primary liability for the Duty on the settled property if he finds that that primary liability imposes a hardship on the estate.

1239. Accordingly we recommend that, where an estate includes property which passed from the deceased under a Settlement—

(1) the trustees or persons in whom the property is vested should be required to give notice to the Commissioner of the settlement within a limited time of the death ;

(2) the Commissioner may if he thinks fit and shall if so required by the administrator apportion the Duty payable between such property and the rest of the dutiable estate ;

(3) when such apportionment is made the Duty payable in respect of the settled property should be payable by the trustees or persons in whom that property is vested and the administrator should be relieved from liability for it ; and

(4) in the absence of apportionment the administrator should be given the right to recover the Duty as a debt from the persons ultimately liable.

SECTION LXI.

OBJECTIONS AND APPEALS.

1240. Under the Commonwealth Act an assessment is issued based on all the facts available to the Commissioner at the time of assessment. The administrator then has a right to lodge an objection against the assessment. The objection is considered by the Commissioner, together with any evidence which the administrator may submit in support of it, and is either allowed or disallowed in whole or in part. The Administrator has a right of appeal to the Supreme Court of a State or the High Court against the total or partial disallowance of an objection.

1241. In the case of the States, other than Tasmania, no provision is made for an objection to an assessment. If the administrator is dissatisfied with the assessment he may appeal to the Supreme Court of the State. The Tasmanian Act provides for objection and appeal on the same lines as the Commonwealth Act.

1242. Objections and appeals are based either on questions of law or on questions of fact, and the question of fact involved in the great majority of cases is the valuation of assets included in the dutiable estate. The Acts of Victoria, Western Australia and Tasmania contain special provisions directed to the settlement of disputes as to valuations. If there is a dispute as to the valuation of an asset the Commissioner appoints an independent valuer who makes a valuation which is communicated to the administrator. Agreement may then be reached upon this valuation, failing which the Commissioner may summon before him the administrator and his valuer and the valuer appointed by the Commissioner and examine them on oath. The Commissioner then determines the value and the administrator may appeal from his determination.

1243. The practice of requiring a formal objection to an assessment, which is almost universally followed in the Income Tax laws throughout the Commonwealth, and which has been recommended by us for general adoption in the administration of the Income Tax, should, in

our opinion, also be adopted for the purposes of Death Duties. It crystallizes the issues in dispute between the administrator and the Department, and the consideration of the objection by the Commissioner frequently obviates the necessity of an appeal to the Courts.

1244. We recommend that the right of objection to an assessment be given to the administrator, and that the provisions of the several Acts relating to objections be brought into reasonable agreement with the relevant provisions of the Income Tax Assessment Acts.

1245. Where an objection relates to a question of valuation we think it desirable, so far as possible, that it should be settled without recourse to the Court. In the case of the Commonwealth the Valuation Boards constituted under the Land Tax Assessment Act might be utilized for this purpose. Their decision should be final, except on questions of law. It would be an advantage if the States also agreed to refer to the same authority all questions of valuation in respect of which the parties are unable to agree. Alternatively, the State Commissioner should be given power to appoint an independent valuer, and, in the event of agreement not being reached to summon before him the interested parties and their witnesses, so as to obtain the fullest information before giving his decision on an objection. If the parties are unable to reach agreement, the administrator should have the right of appeal.

1246. If the appellate tribunal recommended by us in paragraph 954 of our Report dealing with Income Tax is constituted, an appeal from the disallowance of an objection by the Commissioner on a point of law should lie to that tribunal, and an objection from the decision of an independent valuer (as distinct from the Valuation Boards) should also be decided by the same authority.

SECTION LXII.

VARIOUS MATTERS RELATING TO ADMINISTRATION.

The Amendment of Assessments.

1247. Amendment of assessments becomes necessary for the following reasons—

(*a*) The discovery of additional assets ;

(*b*) The discovery of additional liabilities ;

(*c*) An increase in the value of an asset or a decrease of a liability due to non-disclosure or incorrect answers to questions and involving responsibility on the part of the administrator for the inaccuracy of the original assessment ;

(*d*) An increase in the value of an asset or a decrease of a liability where the Department had been supplied with information sufficient to enable it to have arrived at a correct assessment in the first instance.

1248. The provisions of the various Acts as to the times within which amendments can be made are summarized in the following table :—

—	Imposing additional Duty.	Granting refunds of Duty.
Commonwealth	One year, but Commissioner may, upon notice, extend the period for six months	Within the time allowed to the Commissioner
New South Wales ..	At any time	Three years from payment of Duty
Victoria	At any time	Six years from payment of Duty.
Queensland	Within two years	Unlimited in certain cases
South Australia ..	At any time	At any time
Western Australia ..	At any time	At any time
Tasmania	Within three years	Within three years

1249. It will be observed that the practice throughout the Commonwealth and the States is not uniform. In some of the States there is no time limit for the amendment of assessments. We consider that the assessment should become final and binding on the Department and the estate within a limited time. Administrators must wind up estates and distribute the assets within a reasonable time of death, and even if they are relieved from personal liability for additional Duty arising from the amendment of an assessment it is not desirable that the Department should follow the assets of the estate into the hands of beneficiaries to whom they have been distributed. There should, therefore, be some time limit, except in those cases where the estate has escaped Duty through fraud or evasion. In those cases the administrator can properly be made personally liable for any increased Duty.

1250. In considering what time limit should be imposed, it must be realized that the time limit in general operates against the Revenue. Experience of the provision in the Commonwealth Act has shown that assets are not infrequently discovered more than a year after the assessment, and these assets entirely escape Duty. Cases in which liabilities are discovered outside the time allowed for amendment are of less frequent occurrence, but where they do occur the estate cannot obtain a refund of the Duty overpaid. The evidence given indicated that the period fixed in the Commonwealth Act is too short, and that a period of three years would afford adequate protection to the Revenue without adversely affecting the administration of estates. The time limit suggested cannot be enforced where a Succession Duty is imposed and collected as in South Australia. In that State it is necessary to re-open assessments on the vesting of a succession which was contingent at the date of death, and this might take place at any time. It should be pointed out that the lack of uniformity between the Commonwealth and South Australian systems causes a loss in Revenue to the Commonwealth. The Commonwealth allows a deduction of the State Succession Duty from the value of the estate. The Succession Duty is calculated in the case of contingent interests by applying the highest scale of rates applicable on any possible vesting of the interest. As we have pointed out, this provision almost invariably involves a refund of Duty by the State, but that refund is, in general, made more than twelve months after the death, and the Commonwealth assessment cannot then be amended to reduce the allowance which has been made for Succession Duty.

1251. We recommend that the period within which amendments may be made in an assessment be limited to three years after payment of Duty on the original assessment, except in the case where too little duty was paid because of fraud or evasion. In this case amendments should be made at any time, and the amount of Duty which has been avoided (together with any additional Duty imposed by way of penalty) should be recoverable from the estate, or from the beneficiaries, or from the administrator personally, in that order.

RESEALING OF PROBATE : DUTY ON AND ADMINISTRATION OF SMALL ESTATES.

1252. We received evidence urging the introduction of a uniform scheme for dealing with small estates without a grant or the reseal of a grant of representation. It was pointed out that in many cases a deceased may have assets of small value in a State, other than the State of domicile, and that the expense of re-sealing Probate was unduly large in comparison with the value of those assets. Similarly, even where all the assets are in the one State, if their total value is small, the expense of obtaining a grant is out of proportion to the value of the assets.

1253. If the assets in an estate are of such a nature that they cannot, under the law of the State, apart from the Act imposing Death Duty, be dealt with without a grant of representation, the difficulty which exists does not arise from the provisions for the imposition of Duty. In these cases the questions of re-sealing or dispensing with the necessity for re-sealing a grant, and of the economical administration of small estates, are questions of the domestic law of each State, and are dissociated from the imposition of Death Duties. To that extent we are of the opinion that the questions go beyond the terms of reference under our Commission, and we do not make any recommendation in regard to them.

1254. In all State systems, however, the imposition of Death Duty is closely connected with the grant of probate or administration, and each system presupposes that, in general, a grant will be obtained in the State. We consider that where the estate is small the imposition and collection of Duties should not make it compulsory to obtain a grant in the State. Provision is made in some of the State Acts, either generally or in certain limited cases, to permit of the payment of Duty and discharge of the estate without a grant of representation being obtained. These provisions enable the personal representatives to deal with assets in the estate without obtaining or re-sealing a grant, and so facilitate the administration of estates in many cases. The provisions, of course, do not enable the representative to administer assets as to which the general law of the State requires that a grant should be obtained.

1255. Where, as in some of the States, an exemption from Duty is granted in respect of estates not exceeding a certain amount, it would be convenient if the Commissioner could be authorized to furnish a certificate to the effect that no Duty is payable.

1256. We recommend that, in respect of estates not exceeding a fixed value, provision should be made in every Act for the collection of Duty and discharge of the estate in respect of Duty, without a grant being obtained or re-sealed in the State, and for the issue to the person administering the estate of a certificate of payment, or a certificate that no Duty is payable.

THE PRESENT ADMINISTRATION OF THE DEATH DUTIES ACTS.

1257. We have previously stated that Death Duties were imposed many years before Income Tax. Hence they were at their inception administrated by Departments which were not then and are not now concerned with the collection of Income Tax. In New South Wales, Queensland, and Western Australia the administration of Death Duties is still entirely divorced from the administration of the Income Tax Acts, but in Victoria, South Australia and Tasmania the administration of both sets of Acts is under the control of the Commissioner administering the Income Tax Acts.

1258. There are many advantages to be gained from the administration of the State Acts relating to Income Tax and Death Duties by the same Department. The Income Tax Departments have information relating to the income of all taxpayers, and, in the case of a business, information relating to machinery and plant, book debts, and other business assets. When it becomes necessary to value the shares of companies not listed on the Stock Exchange, this information is of great assistance in enabling the Department to arrive at the value to be assigned to the shares of such companies. If, as in some of the States, the Income Tax Department is also vested with the collection of Land Tax it has, in addition, records and valuations of lands which form part of the estate of the deceased.

1259. The following actual cases are quoted in support of this statement :—

Case A.—The Income Tax returns of a company revealed that the deceased had parted with 4,000 shares shortly before his death, and inquiry showed that they had been given away.

	£
The Probate statement showed—5,000 shares at £1	5,000
An Assessment was made on—9,000 shares at £1 2s. 6d. ..	10,125

Case B.—Income Tax check showed that the deceased had been sole proprietor of a business within twelve months of his death but had converted the business into a company with a capital of £3,500 in £1 shares. He retained only one-fourth of the shares, the balance being made the subject of gifts.

	£
The Probate statement showed—875 shares at £1	875
Duty was assessed on—3,500 shares at £1	3,500

Case C.—A company refused to supply accounts to its shareholders. Through utilizing the Income Tax returns the value of the shares was raised from £1 0s. 6d. to £2 per share, the result being :—

	£
Probate statement—1,918 shares at £1 0s. 6d.	1,963
As passed—1,918 shares at £2	3,836

1260. The advantages in the assessment of Death Duties of having recourse to Income Tax returns of the deceased and the companies or persons with whom he was associated are obvious. In those States where the administration of the Death Duties Acts and the Income Tax Acts are under separate Departments steps have been taken, in general, to confer those advantages on the Departments administering the Death Duties Act by giving them access to the records in the possession of the Income Tax Department. While this is a step in the right direction, the right of access is not as effective as having possession of the records.

1261. We recommend that the administration of State Death Duties be placed under the control of the Department administering Income Taxation.

1262. The next question to be considered is whether provision can and should be made to overcome the duplication of administration arising from the existence of separate State and Commonwealth organizations for the assessment of Death Duties. It was pointed out in regard to Income Tax that agreement had been reached between the Commonwealth and each of the States for the collection of the taxes of the Commonwealth and the respective States by one Department. There is no similar arrangement between the Commonwealth and any State in regard to the collection of Death Duties, and it follows that there are separate Commonwealth and State offices in each State administering the respective Acts. In addition, the Commonwealth Central Office in Melbourne deals with those estates which have assets in more than one State.

1263. In reality, however, duplication between the Commonwealth and States in regard to the assessment and collection of Death Duties is more apparent than real. The greater portion of the work incidental to the assessment of Death Duties is performed by the States, and it is necessary for the Commonwealth to await the issue of a State assessment in order that the amount of State Duty payable may be determined and allowed as a deduction in the Commonwealth

assessment. Before this stage is reached many of the questions which arise have been decided by the State, and variations in the items and the valuations returned by the administrator are thus disclosed to the Commonwealth Department before the assessment for Commonwealth Estate Duty is issued.

1264. The principal reason for amalgamation is to effect a saving in cost both to the Governments and to the estates of deceased persons. It is, however, probable that there would be no material reduction in the present cost of Commonwealth and State administration. The expense at present incurred by the Commonwealth does not exceed £7,000 per annum, and in the event of amalgamation the whole of this amount could not be saved. The amalgamated office would require a staff almost as large as is now engaged in the two separate offices, and the net saving to the respective Governments would be negligible.

1265. There is, however, more reason to believe that amalgamation would reduce the costs incurred by estates. Matters relating to Death Duties are almost invariably handled by Solicitors, and the necessity for reference to separate offices, involving the preparation of distinct forms, separate requisitions, and interviews and correspondence with two Departments increases costs. There is no doubt that much of this work would be eliminated if the offices were amalgamated; **but while the present diversity in law and practice as between the Commonwealth and the States continues, it is doubtful whether any considerable saving would be effected. If the Acts were made reasonably uniform an amalgamation of offices would be of real benefit to estates.**

1266. In Section XXII. of the Report dealing with Income Tax, we discussed the assessment and collection of tax by the States, by the Commonwealth, or, alternatively, by a joint authority. The remarks therein set out apply equally to the assessment and collection of Death Duties. **If our recommendation that a joint authority be constituted by agreement between the various Governments for the purpose of assessing and collecting all direct taxation be carried into force, the joint authority would administer both Commonwealth and State Death Duties.**

1267. The next matter to be considered is whether the Commonwealth Central Office should be retained for the collection of Duties on the estates of deceased persons which extend over more than one State. It has been suggested that this Office should be abolished and that the accounts should be filed and the assessment made at the Taxation Office in the State in which the deceased person was domiciled, or, if he were domiciled out of Australia, at the Taxation Office of the State in which most of his assets are to be found. Many of the considerations which relate to the maintenance of Central Office for the collection of Income Tax due by individuals and companies whose operations extend over more than one State apply with equal force to the maintenance of a Central Office for the collection of Estate Duty payable by estates whose assets extend over more than one State. **After careful consideration we have arrived at the same conclusion in regard to Death Duties as in regard to Income Tax, namely, that the Central Office should be continued for the collection of Commonwealth Estate Duty on those estates.** This office has information relating to Income Tax which is not available as a whole to any single State, and deceased persons whose assets extend over more than one State would normally have furnished their Commonwealth Income Tax returns to that office.

Form of Return.

1268. We received no evidence that the forms at present in use for the assessment of Death Duties are unduly complex. The forms are generally compiled and lodged by Solicitors or other persons with a knowledge of the requirements of the Department and of the law on which those requirements are based. While the existing law remains unchanged it does not appear that any simplification in the forms is necessary or practicable.

1269. The principal evidence received with regard to forms was directed to the possibility of preparing a combined form for Commonwealth and State purposes. Unless and until amalgamation of collecting offices is effected a combined form would serve no good purpose. We assume that amalgamation of offices would be consequent upon the enactment of uniform legislation, and in these circumstances the preparation of a combined form would present no difficulty. **The practicability of introducing a combined form of return for Commonwealth and State purposes, therefore, depends upon the introduction of uniform legislation and the amalgamation of the collecting offices.**

LAND TAX.

SECTION LXIII.

THE HISTORY OF LAND TAX LEGISLATION IN AUSTRALIA.

1270. The history of Land Tax legislation in Australia begins in 1877, when the Parliament of Victoria imposed a tax on "landed interests." The origin of this legislation is described in Rusden's *History of Australia*—Vol. III., pages 413–4, from which the following quotation is taken :—

> "The Act (that of 1860) had afforded facilities for acquiring land under false pretences, and plundering the State. There were honourable exceptions. The fraudulent may have been a minority. But some poor men who had no intention to retain land, selected it and sold it as soon as possible, thus enriching themselves at a loss to the State. Some rich men largely availed themselves of the Act, and acquired by questionable means large properties, of which it was the professed object of the Act to prevent the creation. By rich and poor, with the aid of the Government, the State was defrauded."
>
> "It was contended that the only way to mete out justice was to pass a 'progressive land tax,' starting at a high point, and rising by leaps and bounds in a manner which would make lucrative tenure of large estates impossible. The adopted phrase was that it was necessary to 'burst up the large estates.'"

1271. The Act was passed in 1877. It provided that valuers should classify the land in such a manner that all freehold estates over 640 acres in extent, and valued at a sum greater than £2,500, whether in one block or in separate blocks, not more than five miles apart, should be taxed at the rate of 1¼ per cent. upon their capital value, after deducting therefrom the sum of £2,500. There was a proviso that in the case of a person possessing more than one estate only one such exemption should be made. The value of an estate for the purposes of the Act was not the market value, but a statutory value according to the (sheep) carrying capacity of the land. There were four classes of land, as follows :—

Class.	Land Capable of Carrying.	Deemed to be of a value per acre.
		£
1	2 sheep or more to 1 acre	4
2	3 sheep to 2 acres, and less than 2 sheep to 1 acre	3
3	1 sheep to 1 acre, and less than 3 sheep to 2 acres	2
4	Less than 1 sheep to 1 acre	1

1272. Land Tax Acts were soon enacted or projected in other States. Tasmania imposed tax at a flat rate upon the assessed *annual value* of real property, in 1880. Four years later South Australia imposed tax at a flat rate on the unimproved value of land. An attempt was made to impose the tax in New South Wales, in 1886, and the Bill was passed by the Legislative Assembly, but shelved by the Legislative Council. In 1888 the Government of Sir Henry Parkes introduced a Land Tax Bill of a similar kind, but this also failed to become law. In 1895 a further attempt was made by the Government under Mr. Reid to pass a Land Tax in conjunction with an Income Tax. The Legislative Council objected, and the dispute led to a general election. The Reid party returned with a majority, and promptly introduced legislation which became operative on the 12th December, 1895. A Local Government Act passed in 1906 required local authorities to levy a general rate on the unimproved value of lands within their boundaries, and the operation of Land Tax in New South Wales was thereafter limited to lands which are not subject to this rate. In effect, the Act now applies only to lands in the Western Division. In Western Australia it was not until after three unsuccessful attempts and an appeal to the country that a Land Tax Act was passed (1907). In Queensland the fight was still more protracted, and after a failure in 1905 nothing further was done until after the Commonwealth had entered the field.

1273. The Land Taxes originally imposed by all these Governments were at a flat rate, and, except in the case of Victoria, it would appear that their main object was to produce Revenue, for in every case the Act imposing Land Tax also imposed for the first time a tax on income, or in some cases on dividends. But in the early years of Federation it became obvious that public opinion was changing and inclining to the view that the tax should be at

a progressive rate increasing with the area held. Tasmania was the first State to impose the tax in this form, though to a very limited extent. A similar measure was four times rejected in South Australia, and once in Victoria (1909). Notwithstanding this, the agitation continued, both in the Commonwealth and States where its advocates insistently demanded it as the only useful form of Land Tax. In November, 1908, the first Fisher Ministry came into office and, meeting the House in May, 1909, announced, through the medium of the Governor-General's speech, its intention to introduce a Land Tax of this nature. The paragraph relating to the matter read as follows :—

> "My advisers recognize that the effective defence of Australia requires a vast increase of population, and that a comprehensive policy of immigration is urgently called for, but that this is impossible without increasing the facilities for settling a large population on the land. Deeming this matter to be one of extreme urgency, it is proposed to bring forward, at the earliest possible date, a measure providing for the progressive taxation of unimproved land values, which while providing Revenue, will, it is anticipated, lead to the subdivision of large estates, and that extensive areas will be thrown open for settlement, and so offer to immigrants those inducements which are necessary to attract them in large numbers."

In accordance with this intimation the Prime Minister the same day moved the first reading of "A Bill for an Act relating to the Imposition, Assessment and Collection of a Progressive Land Tax upon the Unimproved Values." The Bill was not acceptable to Parliament, and a change of Government quickly followed, but in June of the following year a general election resulted in the defeat of that Government and the second Fisher administration took office. No time was lost in re-introducing the Bill, which was passed by both Houses and assented to on the 17th November, 1910.

1274. It is clear that the agitation in the Commonwealth sphere also affected some of the States. Victoria repealed its Act of 1877 and imposed tax at a flat rate on unimproved values. The Bill was assented to on the 26th December, 1910, and some of its provisions resemble those of the Commonwealth Act. A few days later Tasmania, which had successfully applied "annual value" and "capital value", altered the basis to unimproved value. The effect of these amendments was to make unimproved value the basis of assessment in the Commonwealth and all States that had adopted Land Tax up to that date.

1275. Queensland, the last State to impose Land Tax, did so in 1915. The Treasurer in introducing the Bill stated that the tax was graduated "in order that it would have a tendency to make it unprofitable to hold large aggregations of land in any part of the country. So far as the graduated scale applies to country lands, the idea is to prevent the aggregation of large country estates, and so far as the graduated scale applies to city lands, the idea is to extract from the large land-owners a revenue which they can afford to pay." The principles enunciated by the Treasurer were expressed in the Act. Many of its provisions appear to be based on those of the Commonwealth Act, but the principles of the latter have not been applied to the same extent. In 1922 the Queensland Act was amended to provide for a diminishing exemption of £1,500 in respect of land used by the owner for agricultural, dairying, or grazing purposes. This exemption is not allowed to companies or absentees.

1276. In 1931 Western Australia exempted improved land used solely or principally for agricultural, horticultural, pastoral or grazing purposes.

1277. The foregoing summary indicates the nature of the original legislation of each Government and the significant alterations that have been made in its principles, and we may therefore proceed to consider the nature of the existing legislation with a view to its simplification and standardization.

SECTION LXIV.

THE NATURE OF EXISTING LEGISLATION AND THE EXTENT TO WHICH STANDARDIZATION AND SIMPLIFICATION ARE PRACTICABLE.

1278. A number of witnesses sought to put before us in detail their views upon aspects of land taxation which seemed to us to be outside the scope of our commission. We did not feel justified, for example, in entering upon an examination of the questions whether it was improper to tax land at all, whether the Commonwealth should withdraw from that field of taxation, whether land should bear the whole burden and every other form of taxation be abolished, whether the scope of the tax should be extended by lowering the exemption, or whether a flat rate should be substituted for a progressive rate or vice versa. However important those questions may be, we considered that it was not contemplated that we should deal with them. Our inquiry is more limited in its scope.

1279. Under the Commonwealth and the State Acts alike the tax where it exists is based upon the unimproved value of the land, an expression which in every case has practically the same meaning. Where the land is in its virgin state, its unimproved value is its value in that state—the price which it might reasonably be expected to bring if sold. Where money or labour has been expended upon its improvement so as to increase its value, the unimproved value is the value which it would have had if those improvements had not been made. Whether improvements have been made on any given parcel of land or not, its taxable value includes that part of its value which arises from the increase of population, from the construction of roads and railways, and from all the other conveniences which come into being as the community grows. Consideration is given to every factor which goes to give value to the land except operations by the owner, or by a series of owners, on the land itself.

1280. It is not necessary to refer to the evidence to realize that the propriety of a tax of this kind is the subject of strongly held and widely conflicting opinions. On the one hand it is denounced as a capital levy, discriminating arbitrarily and unjustly against those whose capital happens to be invested in one special class of property, as a discouragement of operations of pastoral and other industries on the scale best adapted for carrying them on economically and profitably, as a double tax in cases where profits are made which are subject to income tax, and as a tax imposed in disregard of the principle of " ability to pay " in cases where the land is heavily mortgaged, or is the site of a business which is conducted at a loss. On the other hand it is advanced as a special merit of the tax that by imposing obstacles in the way of the aggregation of large areas in single hands it encourages the growth of a population of yeoman owners in country districts, and of small individually owned businesses in the cities, and that it constitutes some return to the community as a whole from those who enjoy the unearned increment resulting from the growth of the community and its communal activities.

1281. Whatever may be the merits or demerits of these respective contentions, they are greatly accentuated when the tax is imposed, as under the Commonwealth Act, at a progressive rate with a high exemption. Where the unimproved value of a person's holding does not exceed the amount of the exemption it is free from tax. Where the unimproved value of his holding exceeds the exemption the excess only is taxed, and the rate of tax increases with every pound of increase in value. It follows that if a merchant desires to extend his business by taking in an adjoining site, he incurs an additional tax, not only on the new site, but on his original holding. The same result follows if he acquires land to establish a branch business in another city, or if he buys a cattle-station in another State. In the case of each holding, the amount of tax depends on the value, not of that holding, but of the aggregate amount of land owned by him.

1282. With the questions arising out of this position it is not our function to deal. Our task we conceive to be the humbler one of taking the tax as actually imposed under the existing laws and examining the machinery by which it is assessed, with a view to recommending any amendments which might tend to its standardization or smoother working.

1283. A comparison of the Acts relating to Land Tax shows that they may be classified under two main headings :—

(1) Those which impose tax at a *flat* rate—
  (*a*) without exemption—as in South Australia and Western Australia ;
  (*b*) with a low exemption—as in New South Wales and Victoria ;

(2) Those which impose tax at a *progressive* rate—
  (*a*) without exemption—as in Tasmania ;
  (*b*) with a low exemption—as in Queensland ;
  (*c*) with a high exemption—as in the Commonwealth.

1284. Where tax is imposed at a flat rate, either without exemption or with a low exemption, it may be inferred that the primary object is to obtain Revenue by the most expeditious and convenient method. Hence the Act is simple. If no exemption is allowed the manner in which the land is held does not affect the yield of the tax, for all land will be taxed at the same rate. Where an exemption is allowed, provision must be made to prevent a taxpayer obtaining more than one exemption by the adoption of expedients to divest himself of legal ownership while retaining the use and enjoyment of the lands or the income which they produce. However, if the exemption be low the loss of Revenue resulting from the adoption of such expedients is not great and is controlled by the practical consideration that it is very often less expensive to pay the tax than to legally avoid it. But the restrictive influence of this consideration diminishes as the exemption increases, and when it is fixed at a high amount there is a material inducement to the taxpayer to make dispositions which change the legal but not

the actual ownership, as, for instance, by the creation of partnerships, companies or trusts consisting of or comprising nominee members who act under his direction and return to him all their interests in the income from the lands. The greatest inducement occurs when a high exemption is allowed in conjunction with a progressive rate of tax, for in that case it is clearly to the advantage of the taxpayer to arrange his landed interests in such a manner that he will obtain more than one exemption and at the same time reduce the value of each separate holding to an amount that will be either exempt or taxable at a fraction of the rate applicable to his aggregate interest. An Act which imposes tax at a progressive rate and allows a high exemption must therefore contain many provisions which are not required in an Act which imposes tax at a flat rate without exemption or with only a low exemption. Without these safeguards an astute person might arrange his affairs in such a manner as to leave no tax, or very little tax, payable by him.

1285. While definite information is available concerning the number of persons subject to Commonwealth Land Tax, exact information concerning the number subject to State Land Tax in some of the States is not readily available, but the numbers shown in the following table may be regarded as approximately correct. For convenience we show also the amount of Land Tax collected by each Government during the year ended the 30th June, 1933 :—

—	Number of Taxpayers.	Amount of Tax.	Average per Taxpayer (Approximately.)
States—		£	£ s. d.
New South Wales	300	1,968	6 11 0
Victoria	160,000	503,752	3 3 0
Queensland	20,000	442,584	22 3 0
South Australia	134,000	306,198	2 6 0
Western Australia	75,000	130,963	1 15 0
Tasmania	40,000	92,823	2 12 0
Total	429,300	1,478,288	
Commonwealth	24,000	1,650,311	68 15 0

The table shows material differences in the number of taxpayers and in the yield and incidence of tax. These are due to the operation of the following factors :—

(1) The nature of the tax, that is, whether it is at a flat or progressive rate, and, if progressive, the rate of progression and the maximum rate. Thus the Commonwealth tax which is at a progressive rate with a high maximum averages £68 15s. per taxpayer, while that of Victoria which is at a low flat rate averages only £3 3s. per taxpayer.

(2) The partial or total exemption of certain lands. This is most strikingly exemplified in New South Wales, where State Land Tax is not levied on land within the boundaries of a Shire or Municipality which levies a rate on the unimproved value of rateable land in its area. This limits the operation of the Act to lands in the Western Division, and reduces the yield of tax to a negligible amount. The effect of exempting specified classes of land is also reflected in the number of taxpayers in Queensland and Western Australia.

(3) The amount of the exemption. The effect of a low exemption is best exemplified in Victoria, where there are 160,000 taxpayers. In South Australia where there is no exemption there are 134,000. But the allowance of an exemption of £5,000 by the Commonwealth reduces the number to 24,000, or approximately 5 per cent. of the total number subject to State Land Taxes.

1286. The standardization of the Land Tax Acts of the Commonwealth and States and the collection of both taxes by one authority have been considered from time to time by Conferences of Ministers or Officials. During 1914 a Conference of State Premiers discussed the question of uniform valuations and the establishments of one valuing agency to secure uniformity in the valuation of land for the purposes of Federal and State Land Taxes and Municipal and Water Rates, but nothing appears to have been accomplished. The Premiers' Conference held in 1916, (referred to in Section XVI.), re-affirmed the desirability of adopting uniform valuation for Commonwealth and State purposes, and resolved that all Governments should direct their

leading taxation officers to prepare a uniform scheme for Land Tax, and that the necessary legislative or administrative steps to give effect to that Resolution should be taken as soon as possible. Accordingly, a Conference of Taxation Officers was held in March, 1917, and its report stated :—

> " The Conference has decided upon uniform definitions with respect to ' improved value ', ' unimproved value ', and ' valuation of improvements ', and has also come to an agreement regarding other essential differences between the Acts of the Commonwealth and the States. Adoption by the respective legislatures will enable Federal and State Land Tax to be levied on common values provided that the valuations are made by one authority."

It does not appear that action was taken by any of the Governments concerned to give effect to this recommendation.

1287. In 1921 an agreement was made between the Commonwealth and Western Australia (referred to in paragraph 288) for the amalgamation of the Commonwealth and State Land Tax Departments in Western Australia. The agreements made between the Commonwealth and the remaining States during 1923 related only to Income Tax, and separate Commonwealth and State organizations for the assessment and collection of Land Tax are still maintained in every State excepting Western Australia.

1288. Reference to the table showing the number of taxpayers affected by both Commonwealth and State Land Taxes set out in paragraph 1285 shows that the number subject to both Commonwealth and State Land Tax is too small to bring about any such general desire for standardization of the legislation relating to Land Tax as undoubtedly exists in regard to Income Tax. But even if that desire were more urgent, **a comparison of the principles of the Commonwealth Act with those of any of the State Acts will indicate that uniformity cannot be attained without a radical alteration either in the principles of the Commonwealth Act or of all the State Acts. The adoption of either alternative would so completely change the incidence and yield of tax, either of the Commonwealth or of all the States, that we have no hesitation in expressing the opinion that none of the Governments would give the slighest consideration to any proposal to do so. For these reasons we have arrived at the same conclusion as that which we reached in respect of Death Duties, namely, that a general standardization of the legislation relating to Land Tax to the same extent as in the case of Income Tax is neither practicable nor essential. There are, however, certain matters in regard to which agreement is possible, as, for example :—**

(1) **Uniform definitions relating to " improved value ," " value of improvements," and " unimproved value. "**

(2) **Agreement in regard to the date as at which the valuation is to be made and the interval between valuations.**

(3) **Co-ordination in regard to the machinery for valuation.**

1289. If agreement can be arrived at in regard to these matters, we think that the maximum benefit which might be expected to result from standardization will have been attained. **Further relief might be given to the taxpayer by a simplification of certain provisions of the Commonwealth Act, which, though essential to its structure, might be applied in a simpler manner without infringing the principles of the Act or materially affecting its incidence.** We shall refer to these subsequently.

SECTION LXV.

VALUATION.

General Considerations.

1290. Regarded merely as an instrument for producing Revenue, a tax on unimproved value operates equitably as between one taxpayer and another in proportion as it measures the value of their taxable property by a uniform standard. In the case of business sites in a capital city this uniformity may be regarded as being almost completely achieved. If a shop on the site is pulled down, and all the other structural improvements cleared away, whether this is done in fact, or whether by a slight effort of imagination it is conceived to be done, we arrive at a block of bare land which for practical purposes is in its primitive condition. Possibly there was some scrub or timber there a century ago which had to be removed before the building was commenced, but if that work had to be done to-day the cost would be so infinitesimal in proportion to the present value of the land as to be negligible. In such cases, assuming two sites to be equally attractive, and to be alike in all other respects, their unimproved values will probably be proportionate to their respective frontages and depths.

1291. Even in city lands, however, there are exceptional cases in which a new feature presents itself for consideration. There may be two building allotments for sale side by side, practically identical in every condition that goes to constitute their value, except that one of them is traversed by a gully that will cost £500 to fill before building can be commenced. If the other one is bought for £5,000, this one may be expected to bring £500 less. Then when the filling is completed, there will be two similar adjoining properties of equal value, for which each of the owners has paid the same price. But for taxation purposes, the one is valued at £500 less than the other, and under the present law this will be so till the end of time. However many changes of ownership there may be, any owner who can show that at some time in the history of his property expenditure of this kind was incurred by one of his remote predecessors is entitled to the benefit of that fact as reducing the taxable value of the holding.

1292. The example we have given illustrates a distinction which exists in fact, but is ignored by the present taxation laws, between two classes of improvements, those which may roughly be described as structural—buildings, fences, dams, drains, plantations and so on; and those which merge in the land and, while altering its original condition, cease to exist as entities distinguishable from it. When we come to deal with country lands, the distinction becomes very marked and very important. A great part of the value attached to land which has been brought into use for pastoral and agricultural purposes has been given to it by improvements of the second class—clearing, ringbarking, the eradication of noxious growths, the use of fertilizers, and operations of that kind. One broad practical distinction between the two classes is that structural improvements are capable of being physically removed from the soil, and may be valued separately from it upon inspection; while those of the other class have become part of the inherent constitution of the land itself, and the ascertainment of their value, and of the extent to which their value has been exhausted, requires an investigation of the past history—possibly the very remote history—of the holding. This investigation may be very difficult and expensive, and becomes increasingly so with the lapse of time, changes of ownership, and subdivision of the land.

1293. Here again, as in the case of the city allotments mentioned in our previous illustration, we come to the apparent anomaly of two owners of similar blocks of equal quality and value being taxed upon different amounts, although the cost has been the same to each of them—in the one case the price paid for the land, in the other the lower price of the land together with the cost of the improvements necessary to bring it into profitable use. In fact, the price paid may have been the same in both cases, if both owners bought after the improvements had been made. That would not affect the difference between their rates of tax.

1294. Various suggestions have been made for rectifying this anomaly, and incidentally for simplifying the task of valuation and the administration of the law. Some authorities consider that no allowance for improvements that merge in the soil should be made except to the owner who effected them; others that the inquiry into the past condition of the land should not go back for more than some fixed period, say ten or twenty years, so that the value of all non-structural improvements made before that time should be deemed to be exhausted or to have merged in the unimproved value; others again that some higher standard than unimproved value should be adopted for taxation purposes, for example, the stage at which land is cleared and ready for building or for the plough or for effective pastoral occupation, disregarding all improvements which do not carry it beyond that stage. In Denmark agricultural land is assessed at the value it would have in an ordinary state of cultivation if it belonged to a farm of medium size.

1295. All these suggestions involve an alteration in the basis of the tax. If non-structural improvements were wholly or in part disregarded, the taxable value of the land, especially in country districts, would be materially increased. This would not necessarily involve a proportionate increase in the tax paid by individual taxpayers, as the same aggregate amount of tax could be derived from a lower rate; although as such an alteration of the law would operate chiefly in respect of pastoral and agricultural land, it might be necessary to consider whether urban land should be separately treated in order to redress the balance. Another question that might be considered in connexion with any proposal to alter the law with respect to improvements is whether the alteration should be introduced gradually, by making it apply only to land of which a taxpayer became the owner after the alteration.

1296. These are matters, however, involving political, economic and financial questions which do not fall within the province of this Commission. While, therefore, we think they are worthy of serious consideration, we abstain from making any recommendation with respect to them, and we proceed to deal with the law as it stands.

The Meaning of Unimproved Value.

1297. The main practical problem that arises in the administration of any Land Tax Act is that of determining the unimproved value of a given parcel of land. Unimproved value, as defined in the Commonwealth Act, means, stating it shortly, the price which the fee simple of the land might be expected to realize if offered for sale on such reasonable terms and conditions as a bona fide seller would require, assuming, in the case of improved land, that the improvements did not exist. How is this price to be ascertained? The Judicial Committee of the Privy Council has expressed the opinion that the problem presents no difficulty. "What the Act requires is really quite simple. Here is a plot of land; assume there is nothing on it by way of improvement; what would it fetch in the market?" (Toohey's Case, 1925 A.C. 439). In a later case before the High Court of Australia, the learned Justices differed in their interpretation of the Privy Council decision; but by a majority judgment they decided that to ascertain the unimproved value there must be excluded from consideration not only visible structural improvements, but everything done to or upon the land in the shape of improvements of any kind effected by the operations of successive owners, the benefit of which continues as a factor in the then present value of the land. (McGeoch's Case, 43 C.L.R. 277.) This confirmed the view of the law that has always been acted upon in the administration of the Act.

1298. Even with this elucidation, however, the departmental valuers engaged in applying the Act have not always found their task as simple as it seems to their Lordships of the Judicial Committee. Difficult questions still present themselves for consideration. It is sometimes thought that the unimproved value of land is the value that it would have if it were still in its primitive condition as virgin country, or as it was when first alienated by the Crown. The law has never been so interpreted. If it were so, then land occupied many years ago by a cedar forest, burnt off at a time when the timber had no commercial value, would to-day be liable to assessment for tax at an unimproved value much greater than its full capital value; and, on the other hand, the owner of land infested with prickly pear would be debarred from having that fact taken into consideration in mitigation of his tax, because prickly pear was unknown here in the time of Captain Cook. In a country where the condition of land has undergone so many vicissitudes, the unimproved value to be assigned to a property may depend very much upon the period in its history that is selected as the starting point. For example, the owner of a block of land in a building area may find that it contains a deposit of valuable clay that he is able to dispose of profitably; but the excavation renders the land unfit for building purposes. He fills it in, and restores the land to the condition of the surrounding area. How should the unimproved value of his land be measured—as at the time before the excavation, or while it was still open, or after it was filled? Should it make any difference in the subsequent assessment if the filling was done, not by the original owner, but by a purchaser from him?

1299. A good illustration of a problem of this kind is supplied by the case of land in districts where floods are liable to be followed by a thick growth of red-gum seedlings. The owner of one property may by prompt action eradicate them at a cost of a few shillings an acre. His neighbour delays taking any steps, and finally sells the land when it is covered by a forest of saplings, the destruction of which costs the purchaser say £5 an acre. The two properties are then in their former similar condition. If the cost of the timber destruction is disallowed to the new owner as an improvement, he naturally feels that the so-called unimproved value upon which he is taxed has really been created to a large extent by his own work and expenditure, and that the impost is in the nature of a capital levy. If, on the contrary, it is allowed, and the taxable value of his land reduced accordingly, his neighbour finds his land being taxed at a valuation of £5 per acre more than the similar adjoining area. It is hard to disabuse him of the feeling that he and his successors in title have a substantial grievance, and that a higher tax is being imposed upon them for all time as a penalty for his better husbandry.

1300. The existence of anomalies, of course, does not necessarily call for an alteration of the law. It is impossible to frame a law under which no anomalies would arise; and it may be that the provisions of the present Act represent the deliberate choice of the Legislature between alternative classes of anomaly. However that may be, the position cannot be met by mere drafting amendments; any alteration of the law must represent an expression of policy, selecting and defining the subject matter which it is intended to tax, and must inevitably to some extent increase or diminish the burden upon some classes of taxpayers.

Definitions.

1301. The definitions in the several Acts are aimed at the same objects, and are for the most part practically to the same effect. There is a special provision in the New South Wales Valuation of Land Act including amongst improvements to land some that are in fact effected off the land, but are for its beneficial use. It is a question of policy for the Commonwealth and

the other States whether they should adopt a similar provision. In so far as the definitions are the same in substance it would be an obvious advantage to have them expressed in identical language. There seems to be a consensus of opinion amongst those concerned in administering the Acts that the Commonwealth definitions are generally satisfactory. We have therefore adopted them as a basis for the following draft, which, while preserving their substance, presents them in a form which is perhaps somewhat simpler, and is designed to facilitate the introduction of any amendments that may be thought desirable :—

"*Capital Value*" or "*Improved Value*" in relation to land, means the capital sum which the fee-simple of the land might be expected to realize if offered for sale on such reasonable terms and conditions as a bona fide seller would require, including in such capital sum any added value given to the land by a hotel, wine or other licence.

"*Improvements*" in relation to land means improvements made thereon or appertaining thereto, whether visible or invisible, and includes such destruction of suckers or seedlings as is incidental to the destruction of timber or mallee, and also includes the destruction of vegetable growths or of animal pests.

Provided that :—

(*a*) an improvement which has not been made, or the cost of which has not been borne or recouped, by the owner or a predecessor in title of the owner, or by a lessee or occupier of the land, shall be deemed not to be an improvement ;

(*b*) an improvement which has to any extent lost its utility shall to that extent be deemed not to be an improvement ;

(*c*) an improvement consisting of the destruction of vegetable growths or animal pests shall be deemed to have lost its utility to the extent to which other such growths or pests, as the case may be, afterwards come into existence on the land ;

(*d*) the destruction by any person of vegetable growths or animal pests which come into existence on the land during his ownership shall be deemed not to be an improvement except to the extent, if at all, to which it restores the utility of a previous improvement in the nature of the destruction of such growths or pests, which has or is deemed to have in whole or part lost its utility.

"*Unimproved Value*" in relation to unimproved land at any time means the capital value of the land at that time.

"*Unimproved Value*" in relation to improved land at any time means the value that would be the capital value of the land at that time, assuming that at that time the improvements did not exist.

Provided that the unimproved value at any time shall in no case be less than the sum that would be obtained by deducting the value of improvements from the capital value at that time.

"*Value of Improvements*" at any time means the added value which the improvements give to the land at that time, irrespective of their cost, and includes the added value given to the land by any hotel, wine or other licence.

Provided that the value of improvements at any time, except the added value given by a licence, shall in no case exceed the amount that would reasonably be involved in effecting at that time improvements equivalent in their efficiency to the existing improvements.

1302. It may, perhaps, not be out of place here to emphasize the exact nature of the subject-matter of the valuation under the existing law. It is not the value of the land to the taxpayer, but its value as a piece of property independently of the actual conditions under which it is held. "Here is this piece of land in this position ; how much would a buyer pay to-day to become the owner of it in unfettered fee simple ?" In the hands of the present owner it may be subject to a mortgage, or to an unprofitable lease, or to restrictive covenants or easements materially reducing or even extinguishing his beneficial interest in it ; none of these things necessarily affects the valuation upon which his tax is to be based. In this respect Land Tax differs in its essential nature from Income Tax and Death Duties.

The Process of Valuation.

1303. The process of valuation for purposes of the tax is perhaps the feature of the administration of the law that evokes the most criticism. It is essential to bear in mind that the value of land is not a matter of ascertainable fact, like its geographical position, its area, or its physical characteristics, but is purely a matter of opinion. The value is determined, said Griffith C.J., "not by inquiring what price a man desiring to sell could actually have obtained for it on a given day, i.e., whether there was in fact on that day a willing buyer, but by inquiring: What would a man desiring to buy the land have had to pay for it on that day to a vendor willing to sell it for a fair price but not desirous to sell?" (Spencer's Case 5 C.L.R. 441). In the same case Isaacs J., said: "To arrive at the value of the land at that date, we have, as I conceive, to suppose it sold then, not by means of a forced sale but by voluntary bargaining between the plaintiff and a purchaser willing to trade, but neither of them so anxious to do so that he would overlook any ordinary business consideration." Essentially the process is the same as that by which one learns the market value on any day of wheat or butter or fencing wire. The practical difference, and the thing that makes the valuation of land more difficult, is that with land there is not, as in the case of the commodities mentioned, the same general uniformity in the nature of the subject-matter, and the same continuous volume of transactions, to supply a sound basis for the estimate. Where the land in a district is fairly uniform in the conditions that go to constitute its value, where there is a reasonably constant demand for it, and where it changes hands frequently, the prices paid supply the best measure that can be had of its value. Any fluctuations in value from time to time are reflected in the selling price.

1304. Where the conditions are not uniform, the operation of deducing the value of one parcel of land from the prices obtained for other parcels presents more difficulty. Everyone is familiar with the wide disparity between the value of similar city blocks in the same street, due to the greater popularity of one side over the other from a shopping standpoint, or to a concentration of professional or business sites in a particular block, or even to the operation of some whim of fashion. A corner site has a special value of its own for obvious reasons. These are all matters that must be taken into consideration when using sales in any locality for the purpose of deriving a standard to be applied in fixing values in that locality. The comparison is one that can never be made mechanically; it demands on the part of the valuer a trained judgment that can be acquired only by experience. Taking the actual transactions, he must determine how far their conditions are comparable to the case of the land he is valuing, and after eliminating in any case those factors which are peculiar to that case, he must use his judgment in applying the result to make the necessary comparison.

1305. Where there is insufficient evidence of sales near enough in time and locality to form a reasonable basis of comparison, the valuer must find other grounds upon which to base his estimate. He naturally puts to himself the questions which an intending buyer would ask before committing himself to a price. For example, in the case of a pastoral property, he would inquire how far it was from a railway, how many sheep it would carry, and all the other information that would enable him to judge of the return he might reasonably expect from his investment. In the case of a block of city offices, he would wish to know what net rental they would be likely to produce.

1306. A complaint was made by some witnesses that sufficient weight was not given by valuers to the productivity of the land. On examination it appeared that some at least of the witnesses had failed to take into account the distinction between what the land was capable of producing and the return that was actually being derived from it. Obviously a block of land might be of great value, and yet be producing a very inadequate return to its owner. If a choice building site in the heart of a city is occupied by a dilapidated out-of-date structure, no one could reasonably suggest that the rent obtainable for it is a true measure of the value of the site. It was also claimed that too much weight was given to "freak" sales, that is, to cases where an exceptionally high price was paid for a piece of land because, for example, its possession was so essential to the buyer that it was comparatively immaterial to him how much it cost him. It is impossible, of course, in the absence of an exhaustive examination with skilled assistance, to determine whether in any given case a complaint of this kind is well founded, but we are satisfied that all the departmental valuers are thoroughly seized of the importance of scrutinising the circumstances of every sale which comes under their notice, and of making allowance for all factors that are likely to affect its applicability as a measure of true value.

1307. We were very much impressed by the excellent field books of the Federal Department, with their minutely particularized description of each parcel of land that is subject to tax, and of all the factors that are taken into consideration in estimating its value; and also by the

carefully compiled instructions issued to the valuers for their assistance in the discharge of their duties. We are not able to suggest any modifications of the general principles that are applied in making the valuations. Assuming that their application is entrusted to a staff of competent valuers, we do not think that any change in the system would produce better results. It would no doubt be an advantage to have the departmental instructions considered periodically by a conference of the valuation staff, with a view to any revision in detail that experience might suggest as desirable.

MACHINERY FOR VALUATION.

1308. The Commonwealth Taxation Department maintains a valuation branch under a Chief Valuer, the organization providing for a staff of valuers in each State under a Senior Valuer, all being ultimately responsible to the Commissioner of Taxation.

1309. In New South Wales, where the State Land Tax operates only in respect of lands in the Western District, the valuation is entrusted to the Department of the Valuer-General. This Department was established in 1917 under the provisions of the *Valuation of Land Act* 1916, the only Act passed in Australia to give effect to a resolution of a Premiers' Conference that each State should establish a Bureau of Valuations.

1310. In Western Australia the Taxation offices of the Commonwealth and State were amalgamated in 1921 under the agreement referred to in paragraph 288 of this Report. Since that time valuations for both Commonwealth and State purposes are made by the Commonwealth valuers.

1311. In the remaining States valuations for State purposes are made by the State Land Tax Departments.

1312. It will thus be seen that in all the States except Western Australia there are in existence separate staffs engaged in the making of valuations for Commonwealth and State Land Tax purposes. In these circumstances it is inevitable that disparities will be found between the valuations of the same land by the different authorities. In some cases these disparities are very considerable. The explanation sometimes given to us was that the Federal valuation had been made on an actual examination of the land by the valuer, while the State had for the time being accepted the owner's valuation, pending an opportunity for checking it. In other cases the difference was sufficiently accounted for by the fact that the valuations had been made at different times, during a period when the market for land was fluctuating. The lack of uniformity in the statutory definitions is also a source of occasional discrepancies. But, generally speaking, it is not necessary to seek for any extrinsic cause for differences that must of necessity arise between estimates independently made by different valuers in respect of matters which are essentially matters of opinion and not of fact.

1313. It is, of course, highly desirable from every point of view that these differences should not exist. However impossible it may be to determine with accuracy the price that a parcel of land would actually bring if it were sold, obviously the same land cannot have two different values in the same sense of the word at the same time. When a value has been attributed to it by a competent authority after adequate investigation, that should be its value for all taxation purposes, whether Commonwealth or State, until there is reason for altering it. The fields of taxation may be different, the amount of exemption may vary, the tax may be on a higher or a lower scale, it may be at a flat rate or a progressive rate, but so long as the same land is being taxed it should be taxed at the same value. This end can be achieved only by having one authority in each State to determine land values both for Commonwealth and State purposes, and the question arises whether it is practicable to provide for the creation of such an authority.

1314. If all the valuations were made by the Commonwealth, it would ensure the application of uniform principles throughout all the States. The system is working very well in Western Australia, where, within the limits of the respective Acts, uniform values are arrived at for Commonwealth and State purposes. We are informed that many of the Road Boards in that State have also adopted the Federal valuations for rating purposes. The Western Australian arrangement is part of the general amalgamation in regard to Income and Land Taxation. In the other States amalgamation up to date has been limited to Income Tax, which has been placed under the control of the State and not the Commonwealth. Further, for Commonwealth Land Tax purposes there is a high exemption of £5,000 unimproved value. As in some of the States there is no exemption, and in others a small exemption, it follows that the number of Commonwealth taxpayers is only a small proportion of the number of State taxpayers. According to the Sixteenth Annual Report of the Commonwealth Commissioner of Taxation, the total number of Commonwealth taxpayers as at the 30th June, 1932, was only 24,357. Whilst

the total area of land owned by these taxpayers is considerable, the actual number of valuations to be made by the States is much more numerous than those by the Commonwealth. **The Land Tax activities of the Commonwealth Department do not, therefore, in our opinion, warrant a general transfer to that Department of the responsibility for valuation for Commonwealth and State Land Tax purposes throughout Australia.**

1315. Alternatively, the valuations for Commonwealth purposes might be undertaken by the State Taxation Departments. While such an arrangement would overcome the existing duplication and lack of uniformity in values, there are certain disadvantages in the proposal. Valuations by the States as compared with the Commonwealth are affected by two considerations, namely, the larger number of taxpayers and the lower rate of tax imposed. From the figures set out in paragraph 1285, it will be seen that the total collections by all States was less than that made by the Commonwealth, although the State tax is spread over a much larger number of taxpayers. The work involved in the valuation by the States of so many holdings, combined with the lower rate and yield of tax, does not permit the State Departments to undertake in all cases the detailed inspection and classification made by the Commonwealth valuers, and in some of the States reliance is placed to a large extent upon temporary or part time valuers, which militates against the proper co-ordination of values in the various districts. **Under existing conditions, therefore, the acceptance by the Commonwealth of State values would not provide a uniform standard of valuation for the assessment of Commonwealth Land Tax, and we do not recommend the adoption of this proposal.**

1316. The creation of a Department for the purpose of uniformly determining Land Tax values for Commonwealth and State purposes was recommended at the Premiers' Conference in 1916 and at a subsequent Conference of Taxation officials in 1917. As has been shown, New South Wales established a Valuation Department in 1917. In 1921 a Bill was introduced into the South Australian Parliament providing for the establishment of a Valuer-General's Department somewhat similar to the New South Wales Department, but the Bill was not passed.

1317. We have already in an earlier Report recommended the constitution of an independent body which any of the Australian Governments might employ to control the administration of all or any of its Taxation Acts. If such a body were called into existence, one of the Departments under its control might well be a Department for the valuation of land, preferably dissociated from the Department charged with the collection of any tax. This would provide the machinery to fix for both Commonwealth and State purposes the value of all taxable land within the Commonwealth. It would bring the administration under a single control, and would secure a very necessary uniformity both in the principles upon which the work of valuation was to be based and in their practical application. It would relieve the community of the expense of duplicated Departments and overlapping valuations, and would tend to diminish the discrepancies and anomalies that are the occasion of so much annoyance and dissatisfaction to the taxpaying public. Such a Department would be in a position to supply to any Government, or municipal or other public body, valuations for resumption or rating purposes. Whether it should be compulsory or not to accept these valuations, and how far they should be conclusive, are matters which each Legislature concerned would determine for itself.

1318. The example set by the establishment of the Valuer-General's Department in New South Wales might with advantage be studied in this connexion. The local Governmen valuations made by the Department now cover more than half the State, and new areas are yearly being brought within its scope. We were informed by Mr. Legge, the recently retired Valuer-General, that the fees paid by the local Government authorities enable this work to be done practically without cost to the State. In Appendix No. 8 to this Report we give extracts from a memorandum supplied to us by Mr. Legge, which will be found to give interesting and valuable information as to the operations of the Department.

1319. In the absence of a single controlling authority such as we have suggested, a limited measure of uniformity in valuation can be achieved by co-operation between the Commonwealth and State Departments. The practice of exchanging information as to values, already to an increasing degree in force, might with advantage be extended ; or possibly a working arrangement could be arrived at under which the work of valuation would be divided between the Departments on some basis of classification of the taxable properties. The object to be steadily kept in view is that so far as possible any one property should be subject to one valuation and one only for the purpose of both taxes.

DATE OF OWNERSHIP.

1320. Under the Acts of the Commonwealth and Queensland the person taxed as owner of land for any financial year is the person who owned the land at midnight on the 30th June immediately preceding the financial year. In New South Wales the time fixed is the 31st December; in Western Australia noon on the 30th June; in Victoria noon on the 31st December; in Tasmania noon on the 31st March, and in South Australia noon on the 14th November. **We recommend that the tax should be assessed under all the Acts in respect of the ownership as at midnight on the 30th June immediately preceding the financial year for which the tax is levied.**

PERIODS BETWEEN VALUATION AND TIME OF VALUATION.

1321. The Commonwealth Act provides for valuation in triennial periods. The value, when assessed, cannot be increased in respect of any subsequent year of the triennial period; but it may be reduced.

1322. Under the Acts of the States valuations may be made yearly, if necessary, except in South Australia where valuations are made at intervals of five years. The first triennial period under the Commonwealth Act commenced with the financial year beginning on the 1st July, 1927. Valuations made during the three years period following that date could not be applied until the financial year beginning on the 1st July, 1930. Valuations are being made every day by the Department, but if they cannot be applied until the next triennial period it is necessary to review them again at that date. The official evidence shows that many of the valuations so made between triennial periods have had to be scrapped or materially modified, thus resulting in a waste of time and effort.

1323. Because of the delay in the application of departmental valuations caused by the operation of the provisions relating to the triennial valuations, many values showing increases over the 1927 values were applied in assessments which issued to taxpayers early in 1931, based on values for the second triennial period commencing on the 30th June, 1930. The receipt of these assessments by taxpayers at a time when the depression was being severely felt throughout Australia caused much discontent. If the valuations had been revised during the triennial period so as to make the assessment represent as nearly as may be the correct value as at the date of assessment the basis of the assessed values would more readily have been understood.

1324. If the principle of triennial valuations is sound, and the values adopted for the first year of the triennial period be retained for the full three years, then it is difficult to justify provisions in the Commonwealth Act providing for revision during the triennial period by way of reduction. We do not suggest, however, that both parties should be bound to the triennial values; in our opinion the triennial period should be abandoned. The economic conditions prevailing in Australia during the past few years have, we think, clearly shown that it provides too rigid a basis for practical application.

1325. Another disadvantage of the system is the difficulty it presents in providing for co-ordination as between Commonwealth and State values. In Western Australia, where the Federal and State Valuation Departments were amalgamated in 1921, discrepancies in values after amalgamation resulted from the operation of the quinquennial period in the State Act. In 1930 the Act was amended to eliminate the quinquennial period and provide for annual valuation. Values have since been kept in line because as a result of falling values it has been possible to review values annually under both Acts. But as soon as values rise the benefit of such uniformity will be lost, as State values will be subject to annual review, whilst under the present Commonwealth Act review will be limited to triennial periods. As a necessary step in providing for uniform values it would be necessary either for the Commonwealth Government to abandon the triennial period or for all State Governments to adopt that basis. We received no evidence which would justify a recommendation that the latter course should be adopted.

1326. In addition to the normal fluctuations which affect land values generally, there may be at any time changed conditions in certain areas, or with respect of individual parcels of land, which call for a corresponding adjustment of valuations. The work of valuation is continuous, and its results should be continuously reflected in the records, so that the valuation at any time upon which a tax is based should represent as nearly as possible the actual value of the land at that time. The New South Wales Valuation of Land Act gives the Valuer-General express power to amend valuation rolls whenever it is necessary by reason of change in the ownership, occupation or boundaries of the land, or any alteration in the improvements thereon, or whenever in his opinion any sufficient cause renders amendment necessary. He may make a new valuation at any time with respect to any parcel of land, or any portion or the whole of any district; and he is required to make such new valuation whenever necessary, in order that the rolls shall, as nearly as may be, represent correct values and ownership of all the lands entered therein.

1327. We recommend that provisions corresponding to those of the New South Wales Act be adopted by the Commonwealth and by all the States, and that the value upon which the tax is assessed for any financial year should be the value of the land on the date which determines its ownership for taxation purposes, that is the 30th June, immediately preceding that year.

Amendment of Assessments.

1328. Up to 1927 the Commonwealth Act provided that, where the Commissioner had assessed a taxpayer without making a departmental valuation, he could amend the assessment within two years by applying a departmental valuation. Some of the State Acts contain a similar provision.

1329. The provision was deleted from the Commonwealth Act at the time of the introduction of the triennial period of valuation. The reason in support of its repeal was that the power to make retrospective re-assessments left land owners in a state of uncertainty regarding their liability to taxation, and seriously interfered with the adjustment of sales and transfers of land. With this view we concur. We consider that with the valuation data in the possession of the Land Tax Departments they should be in a position to determine the value to be assessed at the time of making the assessment, and the revenue will be sufficiently protected if they have the right of annual review as recommended by us.

1330. We therefore recommend that none of the Acts should contain a provision for retrospective re-assessment as a result of the application of a departmental valuation.

1331. In regard to the amendment of assessments for other reasons, we are of the opinion that the provisions of the Land Tax Acts should follow the same general principles that we have recommended in respect of Income Tax. Where the Commissioner is of the opinion that there has been an avoidance of tax by the omission of any land or interest in land he should have power to amend the assessment at any time. In all other cases we think that no amendment should be made either by the Commissioner or at the request of the taxpayer after the expiration of three years from the date when the tax assessed was originally due and payable.

Objections and Appeals.

1332. Where a taxpayer's objection to a valuation is disallowed by the Commissioner, an appeal lies under the Commonwealth Act to a Valuation Board, consisting of a Chairman and two other members, appointed by the Governor-General. There are thirteen Valuation Boards at present operating throughout the Commonwealth. They are all presided over by the one full-time Chairman, Mr. W. J. Lambert, and the other members in each case are part-time members selected from persons having local experience in land valuation.

1333. In New South Wales the appeal from the Valuer-General lies to the Land Valuation Court, prescribed over by a Judge who has the status of a Judge of the Supreme Court.

1334. In Victoria the appeal lies to an Assessment Court, consisting of a County Court Judge or Police Magistrate and two other persons with a knowledge of land and improvements. On questions of law a special case may be stated by the Assessment Court to the Supreme Court.

1335. In Queensland the appeal lies to one member of the Land Court—a Court constituted by three laymen. There is an appeal from him to an Land Appeal Court, which consists of two members of the Land Court with a Supreme Court Judge as President.

1336 In South Australia the appeal lies to a specially constituted local Court of full jurisdiction, consisting of a Special Magistrate and two Justices skilled in the valuation of land and property.

1337. In Tasmania the appeal lies to a specially constituted Court of Review consisting of a Judge of the Supreme Court or a Commissioner appointed to hold a Court of requests.

1338. We think that the most satisfactory tribunal for reviewing land valuations is one constituted on the principle that is applied in the appointment of the Federal Valuation Board, that is to say, a tribunal entirely composed of persons whose qualifications include wide practical experience in the valuation of land. In our opinion this principle might with advantage be adopted by all the States. The questions of law that arise are comparatively few, and when they do arise, their final determination should be assigned to the ordinary Courts of law. But subject to this we do not think that a Law Court is a satisfactory tribunal for the ascertainment of land values. Neither the constitution of Courts nor their procedure is adapted to that end. The facts which they are called upon to determine in ordinary actions are almost invariably bygone facts, the investigation of which of necessity depends upon the examination of witnesses and

the weighing of their evidence. To find out what happened on the occasion of a motor accident for example, it is necessary to hear the accounts given by persons who witnessed it, and then arrive at a judgment upon a consideration of their credibility, that is, the impression they convey not only of their truthfulness, but of their powers of observation and the accuracy of their recollection.

1339. It is only by a clumsy adaptation of this procedure that it can be applied to cases where the matter for determination is purely one of opinion, and such a procedure would never be applied outside a Court. A person hesitating, for example, between two opinions on a point of medical diagnosis, or as to the quality of a sample of cigars, or as to the design of a bridge, would not dream of calling in an arbiter who knew nothing of medicine or tobacco or engineering, and leaving him to decide the matter upon the relative weight which he attached to the conflicting opinions of witnesses. The Chairman of this Commission, who has had considerable experience as a Judge upon trials, both with and without juries, involving the valuation of land, may perhaps be allowed to say frankly that he cannot conceive of any prudent purchaser or mortgagee accepting the verdict given on such a trial as a basis upon which he would act in buying the land or advancing money upon it. The success of the Land Valuation Court in New South Wales does not seem to be really in point in this connexion, as the learned Judge who at present presides over that Court has had many years of unique experience of land valuation, both at the bar and on the bench, and is an acknowledged expert on land values. A tribunal with a constitution like that of the Valuation Boards is better qualified than any ordinary Court can be to judge of the weight of all the various factors that go to give land its value.

1340. It would be a great advantage, from the point of view of uniformity of practice and consistency of decisions, if, by agreement between the Commonwealth and the States, the same Boards in each State were empowered to act as tribunals of review in respect of all objections whether to Commonwealth or State valuations. In the absence of an agreement to this effect we recommend that a Board or Boards similar in constitution to the Commonwealth Valuation Boards should be appointed by each State.

SECTION LXVI.

PRIMARY AND SECONDARY TAXPAYERS.

General Considerations.

1341. Perhaps the essential difference between the scheme of the Commonwealth Land Tax Assessment Act and that of any of the State Acts is that the Commonwealth imposes tax both upon the primary and the secondary taxpayer, whereas the States usually tax only the primary taxpayer. Usually the primary taxpayer is the legal owner, that is, the person or entity in whose name the title of the land is registered. The secondary taxpayer is the person who has an equitable or beneficial interest in land. Under the Commonwealth Act any of the following persons is deemed to have an equitable or beneficial interest in land, and is liable as a secondary taxpayer :—

(*a*) A shareholder of a company which owns land ;
(*b*) A lessee of land under a lease entered into after the date of the commencement of the *Land Tax Assessment Act* 1910 ;
(*c*) A beneficiary in a trust estate which owns land ;
(*d*) A member of a partnership which owns land, or other joint owner of land ;
(*e*) A seller of land where the purchaser has taken possession but has not paid 15 per cent. of the purchase money ;
(*f*) A mortgagee in possession of land in the circumstances provided in the Act.

1342. Under the Commonwealth Act every taxpayer is assessed both on his primary and secondary interests in land. His assessment will show the full unimproved value of any land owned by him in his own right, together with the unimproved value of any equitable or beneficial interests owned by him in any other land. Each person assessed (other than an absentee), whether as a primary or secondary taxpayer, is entitled to a deduction of the general exemption of £5,000 from the aggregate unimproved value of the land included in his assessment.

1343. The assessment of primary and secondary taxpayers in respect of their interests in the same land necessitates provisions to prevent double taxation. This is accomplished by giving a rebate to the secondary taxpayer. No rebate is allowed to the primary taxpayer, because he is not liable to double taxation in respect of the land. The secondary taxpayer is allowed a rebate of the lesser of two amounts, namely, the part of the primary tax which is attributable to the unimproved value of the primary taxpayer's beneficial interest in the land, or the part of his own tax which is attributable to that value. The effect of the rebate provisions is that the Treasury retains tax on the unimproved value of the equitable or beneficial interest at the higher of the two rates assessed on it, but tax is not collected twice on the same interest.

1344. The provisions of the Commonwealth Act relating to the taxation of primary and secondary owners have been subjected to a great deal of criticism. A number of witnesses expressed the opinion that either the legal owner, or the equitable or beneficial owner should be taxed, but not both. Because the States generally adopted this practice it was claimed that the administration of their Acts was much simpler than that of the Commonwealth Act.

1345. If either the primary or the secondary taxpayer only were taxed the administration of the Commonwealth Act would be considerably simplified, but we have shown in Section LXIV. of this Report the problems which arise under the Acts of the Commonwealth because of the conjunction of a progressive rate of tax with a high exemption, and that without the safeguards provided by the Commonwealth Act " an astute person might arrange his affairs in such a manner as to leave no tax, or very little tax, payable by him." Among these safeguards are the provisions for the taxation of both the primary and the secondary taxpayer. Although these are not required in the State Acts, we consider that they are essential to the scheme of the Commonwealth Act. If they were not included in the Act it would be necessary to entrust the Commissioner with a wide discretion to deal with arrangements which, in his opinion, had been entered into for the purpose of avoiding or reducing tax, and this alternative would, in our opinion, be more objectionable to taxpayers than the inclusion of specific clauses.

1346. We see no reason to recommend any alteration in the methods at present used by the Commonwealth for assessing secondary interests, except that we think the application of the principle might be limited in the case of shareholders in companies, and lessees, to the extent, and in the manner suggested, in the paragraphs which follow.

Shareholders in a Company.

1347. Under the Commonwealth Act a company is assessed as a primary taxpayer in respect of land owned by it. The shareholders are assessed as secondary taxpayers, the land being deemed to be owned by them in the proportions of their interests in the paid-up capital of the company. For this purpose no distinction is made between preference and ordinary shareholders.

1348. The Act originally provided that the interest of every shareholder in the lands of the company should be added to his other landed interests. As this imposed a great deal of unprofitable work on the Department the Act was amended in 1927, and now provides that a shareholder shall not be separately assessed in respect of his share interests where his individual interest in the unimproved value of the lands owned by a company does not amount to more than £100, or where his aggregate interests in land owned by one or more companies do not amount to £500.

1349. A number of witnesses took strong exception to the taxation of shareholders in respect of their secondary interest in the lands of a company. It was claimed that shareholders, and particularly those who invest in public companies, purchase shares not with the object of acquiring interests in land, but as a means of profitably employing their capital. As a rule they cannot individually control the policy of the directors in regard to the acquisition or disposal of land. Those who become liable to Land Tax because of the inclusion of their secondary interests object to pay additional tax because of their notional interest in lands which they can neither enjoy nor dispose of, and resent the increase in their personal tax which occurs when the company in which they hold shares acquires more land. A complaint is also made against the complexities involved in the assessment. Not only are the calculations of an intricate nature, but they are based upon unimproved values of lands owned by a company which the shareholder is usually unable to check. Another ground for complaint is that the assessment issued to the shareholder in respect of his own landed interests does not as a rule include his secondary share interests, which are subsequently assessed in an amended assessment issued at a later date. The delay which occurs in connexion with the issue of assessments relating to share interests is, however, unavoidable, for many companies have landed interests in more than one State, and information regarding the valuation to be placed upon the lands which they hold must be obtained from each of these States before the company can be assessed. Even when the whole of the lands owned by a company are situate in the same State, shareholders may reside in other States, and the information must be transmitted to the latter before the shareholder can be assessed. Finally, some witnesses were not satisfied that reductions made in the assessment of a company are invariably carried into the assessment of a shareholder. The Department maintained, however, that in most cases the effect of an adjustment upon the tax payable by the shareholder would be negligible, but that where warranted the shareholder's assessment would be amended.

1350. Though a number of witnesses took exception to the present practice, they could not agree upon the remedy which might be applied. A witness representing both the Federated Graziers and Pastoralists Association of Australia and a number of Accountancy and Secretarial Institutes, suggested that the company should be exempt and that the shareholders as beneficial owners alone should be taxed. The adoption of this suggestion would result in the exemption of all companies and a majority of the shareholders, for as each would be entitled to an exemption of £5,000 it follows that very few would be liable for Land Tax, unless, of course, the whole incidence of the tax were altered by a reduction in the present exemption. The proposal, therefore, does not commend itself to us.

1351. Some witnesses suggested that the shareholder should be exempt and that the company alone should be taxed. Considered only from its effect on simplification this proposal has some merits, but it would be at variance with the general structure and scheme of the Act and would we fear offer a ready means of avoidance. Other witnesses, while accepting in theory the principle underlying the taxation of shareholders as secondary taxpayers, considered that in practice its application should be limited.

1352. Two suggestions were made, each worthy of consideration—

(1) That the limits of £100 and £500 inserted in Section 39 by the proviso to sub-section (2) might be increased to £500 and £1,000 respectively;

(2) That share interests should be included only in the case of shareholders of private companies.

1353. It is probable that more time is spent in determining whether a shareholder is liable to assessment as a secondary taxpayer than in making the actual assessment. The object of the limitations in the Section is to eliminate as far as possible the large amount of unproductive departmental work involved in examinations which do not result in any increase of the amount of tax payable. This object would be only imperfectly attained by increasing the limitations. The work would no doubt be to some extent reduced, but it would still be necessary to examine the holdings of very many shareholders who in the result would not be brought within the taxable field. It does not follow that a shareholder who has a secondary interest of a given amount in one company, or a larger aggregate interest in several companies, is necessarily liable to Land Tax. For that reason this test, irrespective of the amounts that may be fixed, does not appear to be satisfactory.

1354. The proposals to limit the application of the Section to shareholders in private companies involves different considerations. **We have previously expressed the opinion in those portions of our Report which relate to Income Tax and Death Duties that there is an essential difference between a public and a private company. In the majority of cases the shareholders of a private company have a substantial interest in it and are in a position to influence its policy. If, therefore, they choose to utilize the company to acquire land, it is not unreasonable that they should be regarded and taxed as secondary owners of that land. If the operation of the Section were limited in this manner it would then be unnecessary to investigate the share interests of thousands of shareholders in public companies, and this, we think, would overcome a great deal of the dissatisfaction that now exists.**

1355. The adoption of this suggestion might result in the exemption of a limited number of shareholders who hold a large number of shares in a certain class of public company. But it is reasonable to assume that where the secondary interests of a taxpayer in the lands held by a company are considerable the company is itself taxable at a high rate which in the majority of cases would be higher than the rate applicable to the individual shareholder as a secondary taxpayer. In such cases the Revenue will collect tax at the rate applicable to the primary taxpayer, that is, the company. The elimination of the secondary interests of the taxpayer will reduce the rate of tax payable on his primary interests in land which he holds in his own right. The alteration in the incidence of tax as regards any shareholder will therefore depend upon the amount of his primary interests in land, and each case must be considered on its facts. The information available does not enable us to estimate with any degree of accuracy the extent to which the Revenue would be affected if the operation of Section 39 were limited to the shareholders of private companies.

1356. A schedule included in the Sixteenth Annual Report of the Commonwealth Commissioner of Taxation shows, in respect of each year, the additional tax due to the inclusion of share interests. These amounts are subject to amendment in respect of assessments made after the publication of the Report, but it would appear that the amount approximates 3 per cent. of the total tax assessed. On this assumption the total amount of tax that may be expected from this source during the financial year 1933–1934 would probably not exceed £40,000.

Information is not available as to how much of this amount would be received from the shareholders of private and public companies respectively, but we think it is probable that the greater portion would be collected in respect of share interests in private companies. If that conclusion be correct, the object sought to be attained by the application of Section 39 would be substantially achieved if the operation of that Section were restricted to the shareholders of private companies. The adoption of this course would have an important effect upon simplification, and in our opinion the advantages outweigh any probable disadvantages.

1357. Therefore, we recommend that Section 39 of the Commonwealth Land Tax Assessment Act be retained, but that its application be limited to shareholders of private companies as defined in the Income Tax Assessment Act 1934.

Lessor and Lessee.

1358. Under the Commonwealth Act a distinction is made in respect of leases entered into prior or subsequent to the commencement of the Act. Leases entered into before that date cannot be numerous, and their number is diminishing by effluxion of time. For that reason and also because we do not recommend any change in the present practice of determining the value of these leases, we shall not discuss them further. In the case of a lease entered into after the commencement of the Act, the lessee's estate is the present value, calculated at 4½ per cent. per annum, of a sum equal to 4½ per cent. of the unimproved value of the land, payable annually throughout the unexpired period of the lease. The existence of the lease does not affect the assessment of the owner of the fee simple, who is assessed on the full unimproved value of the land leased at the rate applicable to his aggregate landed interests. The lessee is assessed on the value of the lessee's estate also at the rate applicable to his aggregate landed interests, and is entitled to a deduction of the tax payable in respect of the leasehold estate either by him or the owner, whichever is the less. Where, however, the owner is exempt the value of the lessee's estate is calculated in a different manner, and in such cases is the amount (if any) by which 4½ per cent. of the unimproved value of the land exceeds the reserved rent calculated over the unexpired period of the lease at 4½ per cent.

1359. The States do not tax the interest of a lessee to the same extent as the Commonwealth. In New South Wales a lessee is taxable on his interest in the lease only where the term of the lease is not less than 30 years. In Victoria the lessee is liable as if he were the owner, but only so far as in the opinion of the Commissioner the interest of the legal owner of the fee simple is lessened by the covenants of the lease. In Tasmania the interest of a lessee is taxed where the term of the lease is not less than ten years, and the rent is less than the annual rent that could reasonably be demanded for the use and occupation of the property.

1360. While we think that the principles adopted by the Commonwealth for the determination of the lessee's interest are necessary to the scheme of its Act, we have considered whether the work incidental thereto might be reduced by exempting certain classes of leases, as, for example, those entered into for a short term. But we think that without further qualification this course could not be adopted without encouraging lessors and lessees to enter into leases for a lesser period. Some of these might be bona fide arrangements, but others might be merely arrangements which would leave the way open for an astute person to control and use large areas of land for the period of the lease without liability to Land Tax. It appears to us, therefore, that consideration must be given not only to the period of the lease but to the unimproved value of the land leased. Examination of a number of assessments submitted to us leads us to believe that both the Department and the taxpayer would benefit, without seriously affecting the yield or the incidence of the tax, by the exemption of leases of land of a comparatively small unimproved value where the term of the lease is short. This would, in effect, be equivalent to the exemption allowed to the shareholder of a company where his landed interests in that company do not exceed a specified minimum.

1361. We recommend that the interest of the lessee be exempt in cases where the unimproved value of the land does not exceed £1,000 and where the term of the lease does not exceed three years.

Re-valuation of Land During the Currency of a Lease.

1362. An alteration in the valuation of a freehold during the currency of a lease affects the Land Tax payable both by the lessor and the lessee. A suggestion was made that where this results in the payment of a greater tax by the lessor some part of the increase should be borne by the lessee. It was not suggested, however, that the lessee should benefit when the lessor's tax was reduced.

1363. The suggestion does not commend itself to us. When the lease is entered into each party knows his liability to Land Tax, and, no doubt, takes into consideration the probable variation in value which may be anticipated during the currency of the lease. The rent fixed is influenced to some extent by these factors. **In our opinion no part of any additional Land Tax imposed upon the lessor in consequence of the revaluation of the leased property during the currency of the lease should be borne by the lessee.**

Perpetual Leases.

1364. In the case of Clark, Tait and Company *v.* the Federal Commissioner of Land Tax (43 C.L.R. 1), it was held that the expression " unexpired period of the lease " used in Section 28 of the Act referes to a duration of time with a certain end. The formula prescribed by the Section is, therefore, inapplicable to a case where the tenure of the land is of uncertain duration. It is obvious that a perpetual lease has no definite period, and the decision in the case cited suggests that in such cases the value of the leasehold estate for the purposes of the Act is not calculable. **The practice of the Department has been to regard 100 years as the unexpired term of a perpetual lease, and we recommend that the relevant Section of the Act be amended to give this practice legislative effect.**

SECTION LXVII.

THE JOINT ASSESSMENT OF COMPANIES.

1365. The rate of Land Tax payable by a company is determined, as in the case of an individual, by the aggregate value of its landed interests. It follows, therefore, that provisions must be made in the Act to nullify arrangements which are intended to divide the landed interests of an individual or group of individuals between a number of separate companies each of which would, in the absence of such provisions, be entitled to a separate exemption and a separate assessment.

1366. Section 40 of the Commonwealth Land Tax Assessment Act is designed to prevent the avoidance of tax by the formation of separate companies which consist substantially of the same shareholders. The Section reads :—

> " 40. (1.) Any two or more companies which consist substantially of the same shareholders shall be deemed to be a single company, and shall be jointly assessed and liable accordingly, with such rights of contribution or indemnity between themselves as is just.
>
> "(2.) Two companies shall be deemed to consist substantially of the same shareholders if shares representing not less than three-fourths of the paid-up capital of each of them are held by or on behalf of shareholders of the other. Shares in one company held by or on behalf of another company shall for this purpose be deemed to be held by shareholders of the last-mentioned company."

1367. Prior to the decision of the High Court in the case of Burns, Philp and Company Ltd. *v.* the Federal Commissioner of Land Tax (43 C.L.R. 58), the Department construed the words " shares in one company held by or on behalf of another company shall for this purpose be deemed to be held by shareholders of the last-mentioned company " as an authority to aggregate the landed interests of a subsidiary company with those of the holding company by whom or on whose behalf the statutory proportion of the shares of the subsidiary was held. But in the case cited this presumption was upset. The facts were as follows. Burns, Philp and Company Ltd. held 50.2 per cent. of the paid-up capital of the Queensland Insurance Company Ltd., and its shareholders held 29.5 per cent. of the paid-up capital of the Insurance Company. Shareholders in Burns, Philp and Company Ltd. therefore held 79.7 per cent. of the paid-up capital of the Queensland Insurance Co. Ltd.—actually, or by force of the provision that shares " held by or on behalf of another company shall for this purpose be deemed to be held by shareholders of the last-mentioned company." The Queensland Insurance Company Ltd., however, held no shares in Burns, Philp and Company Ltd. and its actual shareholders held no more than 33 per cent. of the paid-up capital of Burns, Philp and Company Ltd.

1368. The interpretation of the Section was exhaustively considered in this case, and we quote from the judgment of Isaacs, J. :—

> " Section 40 of the Land Tax Assessment Act 1910–1926 creates three presumptions of law, all designed to reduce legal artificialities to terms of business realities. But they cannot be carried further than the Legislature has stated them.

"The first is a *substantive* presumption creating liability to aggregation where there is technically separate but really united ownership. It is contained in sub-section (1.), and by it two or more companies are deemed to be one for the purposes of taxation. The condition is that the several companies consist substantially of the same shareholders. That condition in itself is merely as to personnel, and is a pure question of fact. It is irrespective of the interests held by the corresponding shareholders. Evasion, however, would be simple if the legislation stopped there. A comparatively few shareholders in each company might hold practically all the interests in both.

"Sub-section (2.) then adds a second presumption of an *evidentiary* character, making a certain quantum of interest conclusive of identity of personnel in two companies. It says: 'if not less than three-fourths of the paid-up capital of each of them is held by or on behalf of shareholders of the other.' The word 'shareholders' is indefinite as to number. The necessary quantum of interest in company A may be held by one or more shareholders in company B, and in either case, so far as company B is concerned, the presumption is satisfied. If, conversely, the same fact can be proved as to the interest in company B being held by shareholders in company A, the presumption is completely satisfied, and then sub-section (1.) operates, because the statutory evidence exists.

"But it may be that the shareholders of company B who own the controlling interests in company A neither register their own names nor those of any nominees, but procure company B itself to be registered as the shareholder. In that event, evasion is further prevented by the third presumption. It is *interpretative* merely. It is as if it said "'shareholders' shall include the company of which they are shareholders." The shares in company A which are held by company B are deemed to be held by 'shareholders' of the latter company. It does not go further."

1369. The High Court held that in this case the Section could not be applied because it could not be shown that shares representing not less than three-fourths of the paid-up capital of each of these companies were held by or on behalf of shareholders of the other.

1370. The effect of this decision is that the landed interests of holding and subsidiary companies cannot be aggregated for the purposes of the Section, where the subsidiary company holds less than the statutory proportion of the shares of the holding company, although the holding company may hold all the shares of the subsidiary. In practice a subsidiary company rarely holds any shares in the holding company. The amount of Revenue lost is not very considerable, because under Section 39 of the Act a holding company may be assessed as a secondary taxpayer. But if that Section be amended, as we suggest, by exempting shareholders in public companies from their liability to pay tax as secondary taxpayers in respect of their interests in the land of the company, this would no longer be possible, for under the definition proposed the subsidiary of a public company would itself be a public company. In that event the holding company could not be assessed as a secondary taxpayer in respect of its interests in the land of the subsidiary, nor could the landed interests of the holding and subsidiary companies be aggregated. If, therefore, it be possible to avoid aggregation by the creation of a subsidiary company or companies which hold either no shares or less than the statutory proportion of shares in the holding company, a simple means of avoidance is provided, and we think it was not the intention of the Legislature that the landed interests of companies so related should not be aggregated for the purposes of Land Tax.

1371. In our opinion the test should be based not on a specified proportion of the paid-up capital, but on the general consideration of control. Therefore, we recommend that for the purposes of the Act the landed interests of all companies, whether public or private, which are controlled by or on behalf of the same individuals should be aggregated. The test should be that which is applied for the purposes of Commonwealth Income Tax in sub-section (2.) (c) of Section 31A, namely, that a company shall be deemed to be under the control of any persons where the major portion of the voting power or the majority of the shares is held by those persons or is held by those persons and nominees of those persons or where the control is, by any other means whatever, in the hands of those persons, with a further provision that where a company holds shares in another company those shares and the voting power attaching to them shall be deemed for the purposes of the test to be held by the persons who control the holding company.

SECTION LXVIII.

MISCELLANEOUS.

Exempt Bodies.

1372. All the Governments exempt from tax lands owned by certain bodies, although there is little similarity between the provisions of the various Acts. We recognize, of course, that the conditions of exemption are essentially for each Government to decide, and that complete agreement is neither essential nor even important. There is, however, no reason why some definite principles should not be formulated in the hope that they may be generally accepted.

1373. The exemptions of this nature allowed by the Commonwealth are the most liberal, and it will be of interest to analyse the provisions of Section 13 of the Commonwealth Act in an attempt to discern principles. The first qualification is that the land must be owned by or in trust for an authority, institution or society which comes within the designated category. In some instances ownership is sufficient, and no regard is had to the use to which the land is put, as, for example, in the case of land owned by a State or by a municipal, local or other public authority of a State, a State Savings Bank, a friendly society, trades union, or building society. In other cases exemption is granted only where the institution carries on a specific activity—as for a religious, charitable or educational purpose, or for the purposes of athletic sports or the holding of agricultural shows, the essential test in such cases being that the activity is not carried on for the pecuniary profit of individuals. In the remaining cases exemption depends upon the condition that the land is used or occupied by a person or society **solely** as a site for the purpose specified in the sub-section, as, for example, a church, a minister's residence, public library, and the like.

1374. In administration certain anomalies arise. The first occurs when an institution which has been granted exemption on the grounds of ownership without restriction on the use to which the land may be put uses its land for purposes which appear to be at variance with those which may be regarded as the normal function of that institution. For example, it may have been the intention of the Legislature to confer exemption upon an institution in respect of lands owned by it, on the assumption that such lands would be used primarily as sites for buildings for the use of members only. But because the Act imposes no restriction upon the use to which the lands may be put the exemption is allowed, although it may be questioned whether the Legislature intended that such institutions should be free from taxation if they enter into ordinary business competition with people who pay taxes.

1375. The second anomaly occurs where an institution, exempt on the grounds that the land is used and occupied **solely** as a site for a specific purpose, is deprived of the exemption if a portion of the land or premises is used for some other purpose. The revenue derived from that use may be negligible, but under the present provisions of the Act it is sufficient entirely to deprive the institution of the concession.

1376. The effect of the anomalies cited may be contrasted. In the first place an institution which may have large funds is exempt even though it uses its lands to compete with taxpayers. In the second, an institution equally deserving of exemption, but which is not so favourably circumstanced, is deprived of its concession merely because it finds it necessary to let a portion of the land or buildings which it occupies.

1377. The symmetry of Section 13 of the Commonwealth Act appears to have been disturbed by the insertion of amendments which for the sake of clarity might have been grouped in such a manner as to follow the clauses to which they more properly relate. The Section might, with advantage, be re-drafted and clarified, and in the course of so doing an attempt should be made to arrive at certain basic principles. **We do not conceive it to be our duty to recommend either an extension or a restriction of the exemptions at present allowed, but we suggest that if it be thought desirable to limit the exemption now granted to institutions which use their lands in competition with other taxpayers, consideration might be given to the proviso to sub-section (3.) of Section 9 of the Land Tax Act 1928 (Victoria) which provides that land vested in certain institutions shall be deemed to be taxable while the same is leased or occupied for any private purpose by any person or corporation other than the persons or corporations specified in the Section We think, however, that the Act should be amended to remove the second anomaly to which we have referred, and we recommend that the limitation now contained in Section 13 which requires that the land shall be used and occupied solely as a site for the purpose specified in the Section be modified to provide that if a portion of the land or premises in question is used for some other purpose the exemption be allowed to the extent to which the exempt body occupies the site for its own particular purposes.**

Mutual Life Assurance Societies.

1378. Section 41 of the Commonwealth Act groups under the heading of "Mutual Life Assurance Societies" two classes of societies which are essentially different, namely, Mutual Life Assurance Societies whose profits accrue solely for the benefit of their policy-holders, and companies, having a share capital, which are carried on in part for the benefit of shareholders.

1379. We shall first consider Mutual Life Assurance Societies. The Section exempts land owned by these societies (not being land of which the society is mortgagee in possession or which it has acquired under or by virtue of a mortgage). No regard is had to the location of the policies.

1380. As originally enacted the section provided that land owned by a Mutual Life Assurance Society should be deemed to be owned by the society as trustee for the several Australian policy-holders as beneficial owners in severalty in proportion to the surrender value

of their policies. Provision was made for the exemption of the beneficial interest of the policy-holder where it did not exceed £20. In the First Annual Report of the Commissioner of Land Tax (1912) it is stated that in practice it was found that this limitation would exclude the vast majority of policy-holders from consideration as taxpayers. Before a person would be deemed taxable at all the surrender value of his policy in one prominent company would require to be approximately £2,400, and in addition he would require to own land of an unimproved value of at least £4,980. The area of taxation and the prospective Revenue being so strictly limited by these conditions, and the trouble of arriving at the value of any individual interest so great, the Government decided to eliminate from the Act the provision for taxing land represented by life insurance policies. An amendment which gave effect to this decision and brought this part of the Section into the form in which it now appears was made in 1911.

1381. Whether Mutual Life Assurance Societies should be entirely exempt from Land Tax is, of course, a matter of policy to be decided by each Government. The exemption is allowed only by the Commonwealth and not by any of the States.

1382. A Life Assurance Company which divides part of its profits among its shareholders is in a different position. Where a company is so constituted there appears to be no justification for exempting that proportion of land which represents the landed interests of its shareholders. This concession is not allowed to the shareholders of other companies. It is interesting to note that the Section as originally enacted provided that in the case of a society which has shareholders who are entitled to receive a share of the profits of the society a proportion of the land owned by the society corresponding to the share of the profits of the society which the Australian policy-holders are entitled to receive should be deemed to be owned by the society as trustee for those policy-holders. The effect was to impose tax on Australian policy-holders, where the addition of their beneficial interests to their own lands made them liable to pay tax, and to exempt absentee policy-holders. In the amending Act of 1911 this basis was altered, and exemption was granted of the proportion of the land owned by the society corresponding to the proportion of the total assurances of the society which is represented by its Australian policies. But in our opinion the amended basis is not logical, for it will, we think, be apparent that the proportion of the Australian policies to the total policies can have no relation to the respective landed interests of the policy-holders and shareholders. We can see no reason why a company which carries on its business in the interests of its shareholders should be exempt merely because the whole or part of its business is transacted with Australian policy-holders.

1383. It appears to us that the exemption allowed to companies of this type should be limited. The problem is to determine an equitable method of allocating the landed interests of the company between its policy-holders and its shareholders. An allocation either by reference to the amount, or the share, of the profits which the policy-holders are entitled to receive cannot be regarded as satisfactory, for it breaks down when no profits are earned. It would appear more logical to make the allocation on the basis of the funds of the company which belong to, or are set aside for the benefit of, the policy-holders and the shareholders, respectively. Then, if it is desired to allow exemption only in respect of the interest of Australian policy-holders, the amount ascertained by the application of the formula as representing the landed interests of the policy-holders should again be allocated to ascertain the proportion attributable to the Australian and ex-Australian policy-holders, respectively. The expression "policy-holders" should be construed to mean life assurance policy-holders only.

1384. Consideration might also be given to the extent to which exemption should be allowed either to Mutual Life Assurance Societies, or to Life Assurance Companies, who derive rents from exempt property in competition with land-owners who are subject to tax. A number of witnesses expressed the opinion that the exemption granted to Life Assurance Societies or Companies should be limited to the properties they use for the purposes of their own business, and that they should pay Land Tax on so much of the land as is represented by the proportion of space let to the general public in competition with taxpayers. It is unnecessary to refer further to this aspect, which has been generally discussed in paragraph 1377 in so far as it relates to other exempt bodies.

Annuities and Prior Charges on Land.

1385. Cases arise where land is subject to annuity or other prior charges which may absorb most, and in some cases all, of the income from the land. Where annuity charges were created prior to the 1st July, 1910, the Commonwealth Act follows as a deduction from the unimproved value of the land a sum which bears the same proportion to the capital value of the annuity as the unimproved value of the land bears to its improved value. But if they were created after the date stated no such deduction is allowed, and a number of witnesses asked that the Act should be amended to allow the same deduction in respect of charges since created.

1386. It may be argued that if the concession were allowed to a beneficiary who acquires land in these circumstances it would be difficult to refuse a similar concession to a mortgagor or a purchaser on time payment. A distinction may fairly be drawn between these cases.

The beneficiary does not acquire the land by his own volition. But a legal owner who encumbers his land, or a purchaser on time payment, acts voluntarily and with full knowledge of the provisions of the Land Tax Assessment Act.

1387. It is difficult to suggest an amendment which might safely be made without facilitating the avoidance of Land Tax by the creation of annuities and charges which would reduce the taxable interest of the maker. The only suggestion which we are able to make is that the Board constituted under Section 66 of the Act to consider cases of serious hardship should be specifically empowered to grant relief to beneficiaries under trusts which they have not created, if it can be shown that their interests are seriously encumbered by such charges.

Vendor and Purchaser.

1388. Under Section 37 of the Commonwealth Act the vendor remains liable for tax until possession of the land has been delivered to the purchaser and at least 15 per cent. of the purchase money has been paid. The Section provides, however, that the Commissioner may exempt the seller if he is satisfied that the agreement for sale has been made in good faith, and not for the purpose of evading the payment of Land Tax, and that the agreement is still in force. We are informed that when these conditions are complied with the Commissioner is bound to release the vendor even where he remains in possession of the land.

1389. In our opinion the vendor should continue to be liable to pay tax on the land while he remains in possession and in enjoyment of the rents and profits, notwithstanding that any of the other conditions required by this Section have been complied with.

1390. The provisions of the Acts of Victoria and Queensland resemble those of the Commonwealth Act. The provisions of the Acts of the other States vary, and in some cases appear to be inadequate to meet abnormal conditions such as those arising as the result of the economic depression. **We suggest, therefore, that these States should consider the advisability of adopting provisions based on those of the Commonwealth Act as amended in accordance with our suggestion.**

Mortgagee in Possession.

1391. Under the Commonwealth Act a mortgagee who has entered into possession does not become assessable until he has been in possession for three years.

1392. Some witnesses suggested that land held by a mortgagee in possession should not be aggregated, for the purposes of Commonwealth Land Tax, with other lands owned by the mortgagee. We are unable to recommend the adoption of this suggestion. The mortgagee in possession is allowed three years within which to dispose of the property, and during this period it is not aggregated with his other landed interests. If he chooses to retain it for a longer period there does not appear to be any good reason why he should not thereafter be liable to assessment. **Where, however, by reason of the operation of moratorium or emergency legislation, the mortgagee's power of sale or right to foreclose is held in obeyance, we recommend that the mortgaged land should not be aggregated with his own land until a reasonable time after he acquires the power of sale or right of foreclosure.**

1393. Under all the State Acts, except that of South Australia, a mortgagee becomes liable to pay tax as soon as he enters into possession, no period of grace being allowed as in the case of the Commonwealth. In South Australia tax is levied on the owner of the land, a term which by definition does not include a mortgagee. In Queensland and Tasmania, where tax is imposed at a graduated rate, the tax payable by the mortgagee in possession is also increased by the aggregation of the mortgaged property with his other interests as in the case of the Commonwealth. In the remaining States, where tax is imposed at a flat rate, the mortgagee in possession is not prejudiced by the aggregation of the mortgaged property with his other holdings. This, however, does not apply in South Australia where no tax is levied on a mortgagee.

The Statutory Exemption.

1394. The statutory exemption to be allowed is, of course, a matter for each Government to decide, but we have previously shown that it materially affects the scheme of any Land Tax Act. In South Australia, Western Australia and Tasmania no statutory exemption is allowed, either to residents or absentees. In the other States a small exemption is allowed, except in Queensland where absentees are taxed without deduction. Under the Commonwealth Act absentee individual owners of land are not allowed any exemption.

1395. Most of the evidence we received on this point was directed towards revision of the exemption allowed under the Commonwealth Act. Some witnesses suggested that it be increased in cases where the land is used for grazing, farming or factory purposes; others, that it should be reduced to a comparatively low amount, in conjunction with an alteration in rate. But neither of these courses could be adopted without materially affecting the structure of the Commonwealth Act and the incidence of tax, and we do not propose to discuss them.

1396. Several Deputy Commissioners of Land Tax, however, suggested that a small exemption should be allowed to absentees, purely for administrative reasons. We were informed that land agents have gone abroad and sold to absentees suburban allotments of relatively small value, and also that travellers visiting Australia have been induced to buy blocks of similar character and value. The Department finds great difficulty in collecting the tax on these properties from the absentees. There is a departmental ruling that an assessment is not to issue where the amount of tax involved is less than 2s., and we think this principle might be extended, and that an exemption might be allowed to absentees in respect of land having an unimproved value of less than a specified amount. The same argument might be applied in the case of those States which allow no exemption, either to residents or absentees. It appears to us that in many cases the collection of the tax on small areas is unprofitable, and that the States concerned would probably reduce their costs of administration by granting a small exemption, without any material loss of Revenue.

1397. In the interests of economy, we recommend that a small statutory exemption be allowed under the Commonwealth Act to absentees, and that those Governments which do not at present allow any exemption, either to residents or absentees, give consideration to the allowance of a small statutory exemption in order to remove from the assessment field lands of a small unimproved value.

Refund of Tax.

1398. Section 49 (3) of the Commonwealth Act provides that whenever Land Tax has been paid subject to objection the amount of tax in dispute shall be refunded to the taxpayer at the expiration of six months from the date of payment if the matter has not then been finally determined, and shall not be repayable until the matter has been finally determined. There may be some justification for this Section in cases where the Department delays the determination of an objection. But where the taxpayer appeals after the determination of the objection the Department has no control over the matter after it has transmitted the objection to the proper tribunal. **In our opinion the Section should be amended to provide that tax shall be refunded only in those cases where the Department has delayed the determination upon an objection for more than six months.**

ADDENDUM TO REPORT ON INCOME TAX.

Income Tax Board of Review.

1399. In paragraph 942 of our Third Report we quoted figures purporting to show the number of cases decided by this Board during the years ended the 30th June, 1931 and 1932 respectively. The Chairman of the Board has pointed out that such comment may convey a wrong impression as to the actual work done by the Board, and has supplied us with the information and explanation contained in the following extract from his letter :—

" I am taking the opportunity of summarizing the work performed by the Board for the years 1931 to 1933, inclusive.

Number of requests for reference to Board—vide Annual Reports of Commissioner of Taxation :

Year ended 30th June, 1931— 73.
Year ended 30th June, 1932—105.
Year ended 30th June, 1933—Not known, but references actually received by Board—75.

Number of cases decided or dealt with by the Board :

Year ended 30th June.	Cases decided	Cases withdrawn or allowed after hearing commenced.	Cases withdrawn or allowed after being set down for hearing.	Total dealt with.
1931 ..	40 ..	7 ..	4 ..	51
1932 ..	60 ..	13 ..	6 ..	79
1933 ..	62 ..	16 ..	9 ..	87

" The figures taken from the Commissioner's Annual Reports relate only to cases decided during the year of receipt. It will be readily understood, however, that it is not possible to hear all references during the year in which they are received. In some of the cases—not infrequently after considerable time has been spent in taking evidence, &c.—adjournments are granted, generally at the request of the taxpayer. Occasionally, following suggestions by the Board, a conference is held and a mutual agreement arrived at between the taxpayer and the Commissioner, resulting in a settlement which involves a withdrawal of the reference.

"Frequently a taxpayer lodges objections to assessments for more than one year, and there have been single references to the Board covering up to eight years. It is moreover common for objections to be based on a number of distinct grounds; but a reference covering several years and distinct grounds of objection is counted as only one case in the figures quoted herein.

"Apart from the work of dealing with objections to assessments, the members of the Board are called upon to inquire into and report upon applications for relief submitted under Section 95 of the Income Tax Assessment Act and Section 66 of the Land Tax Assessment Act. The number of such applications referred to the Board was 58 in 1931, 73 in 1932, 86 in 1933 and from the 1st January, 1934, to date, 87."

THE FORM OF THE LEGISLATIVE PROVISIONS (INCOME TAX).

1400. Upon the completion of those parts of our Report dealing with the subject of Income Tax we prepared in the form of a Bill a set of draft clauses framed to give effect to our recommendations. For the sake of uniformity it is very desirable that where in respect of any subject matter the Commonwealth and States or any of them apply the same principle of law it should be expressed in the same words, and the draft was designed to provide model clauses which might be generally adopted with this object. The draft was submitted for consideration to a conference of Commonwealth and State Commissioners of Taxation which sat in Canberra and Melbourne in May and June, 1934, at which the members of this Commission were privileged to be present. As a result of the very full discussion that then took place, a number of amendments were made in the draft; and we now submit it in its amended form in the hope that in all cases where there is agreement upon any substantive provisions to be included in the several Acts, the model clauses will be found to supply an acceptable formula for their uniform expression.

1401. It is our pleasing duty to acknowledge the very great help we have received from the two gentlemen who have been intimately associated with us throughout the whole course of the operations of the Commission, Mr. J. A. Neale, the secretary, and Mr. E. D. Roper of the New South Wales bar, who was appointed to assist the Commission. We have already in an earlier report expressed our appreciation of Mr. Neale's services, and it is unnecessary to repeat here what we then said. Mr. Roper has given us invaluable assistance in the consideration and framing of our Reports, in dealing with the many constitutional and other legal problems that presented themselves, and in the drafting of the model Bill, which is the culmination of these Reports which deal with the subject of Income Tax. Our special thanks are due to Mr. L. S. Jackson, Acting Commissioner of Taxation, who in the absence of Mr. Ewing, due to his unfortunate illness, has placed the resources of the Department and his own wide experience freely at our disposal, and has left undone nothing that could make our task easier. We desire also to make grateful acknowledgment of the generous co-operation that has been extended to us by the Federal Deputy Commissioners and the State Commissioners of Taxes throughout the Commonwealth, and by the senior members of their staffs. It would be impossible for us to over-rate the value of their practical assistance and helpful advice and criticism.

The presentation of this Report completes the discharge of the duty assigned to us under the Commission which we had the honour to receive from Your Excellency.

DAVID G. FERGUSON (Chairman).

EDWIN V. NIXON.

J. A. NEALE (Secretary),

Melbourne, 19th October, 1934.

APPENDIX 8.

(See Paragraph 1318).

EXTRACTS FROM MEMORANDUM EXPLAINING THE OPERATION OF THE DEPARTMENT OF THE VALUER-GENERAL, NEW SOUTH WALES.

The Department of the Valuer-General was inaugurated in 1917 when, following a Conference of the Premiers of Australia, at which a Resolution was adopted that each State should establish a Bureau of Valuations, the necessary legislation was passed and the Valuation of Land Act No. 2 1916 (N.S.W.) became law. The particular title adopted for this office was chosen by the Honorable Arthur Griffith, then Minister for Public Works, in order more easily to distinguish it from other Departments bearing somewhat similar names, such as the Tourist Bureau, Surveyor-General's Office, Registrar-General's Department, &c.

In 1916, attached to the Department of Public Works, there was a small branch carrying on general valuation work for the various Government Departments under the direction of the Government Land Valuer. In New South Wales there was, and is, no Land Tax in general operation as existed in all the other Australian States where, in addition to Local Government rates, there is both a Federal and a State Tax upon the unimproved capital value. The Land Tax formerly in force in New South Wales practically ceased with the inception of Local Government in 1906 when most of the settled areas were divided into the present shires upon much the same basis as the small urban municipalities; the only part remaining subject to the Land Tax being the Western Division—mostly a sparsely settled area wherein there are no contributions otherwise for rating purposes, and but little for taxation—most of the holders being exempted by reason of the easy terms of the enactment. The Western Division valuations have not been revised for some years except in special cases.

At the commencement the new Valuation Act was placed under the control of the then Government Land Valuer, Mr. E. J. Sievers, who was appointed Valuer-General and he, with his staff of fourteen officers (until then engaged on resumption work principally) commenced the huge task of recording what was then estimated at from one to one and a half millions of valuations. For 1918 the first list of 6,400 valuations was issued to the Municipality of Manly. In the next year four districts had been completed, and in the years next following 9, 18, 36, 56, 71, 81, 92, 105, 119, 135, 144, 153, 157 and 162 at the end of the last financial year were completed.

In the whole State there are about 320 municipalities and shires—each a valuation district—so that at this date rather more than one-half has been completed, and a total of 787,000 valuations approximately, has been recorded.

The staff employed has increased from fourteen males to 77 males and about 56 females, of which 36 are field officers.

As a basis for the work of the Department's field officers the practice is to obtain from the books of the local authorities a copy of the entries relating to lands and valuations. These are entered into the field books and the Department's officers then inspect and report upon every property in the district revising, and, where necessary correcting the entries as obtained from the local authorities' books. These are then referred to the Department's clerical staff in the Registrar's Branch, checked with the maps and other data available in the Head Office of the Department and eventually recorded in the Roll.

The revenue from zero in 1917 has increased to about £42,400 per annum, whilst the total expenditure from £10,000 per annum for the resumption branch alone has increased to about £46,600—the deficiency between receipts and expenditure covering the cost of all land resumptions and dealings on behalf of other Government Departments and from which either no revenue or only partial payment is received. The revenue is based on the charge of six pence (6d.) per annum for all valuations supplied to Water Boards and Municipal Councils to whom Valuation Lists are supplied.

A new list is supplied every three years—supplementary lists recording changes of various descriptions are supplied once a quarter during the triennial periods.

The charge for the shires is somewhat greater per valuation than the charge to the municipalities having in view the larger areas embraced, and it is more a matter of arrangement with the Shire authorities based on the cost of the work and the amount of upkeep involved. This position was brought about by an amending clause in the Local Government Act, which gives the Shire Councils the option of employing their own valuer or accepting the Valuer-General's list and making payment for the same. The Municipalities have no such option and there are more requests from these authorities than can be coped with. The choice of valuers being with the Shire Councils, it is necessary for the Department to be able to show them that it can do the valuation work both cheaper and better than it can be done otherwise. The ability to do this will be realized when it is recognized that in place of a new man breaking ground new to him at each period, the Department, having made good records, has only to keep them up to date, and in accordance with the changes in values.

The City of Sydney, some 40,000 valuations, has not yet been undertaken since it presents some difficulties and will require a special staff. Preparations are in hand, however, so that at an early date that work can be put in hand. The early operations of the Department covered all the suburbs of Sydney and Newcastle.

In some isolated districts where expert valuers could not be obtained by the local authorities urgent calls for assistance were received, and in many instances the work has been completed, although as a general rule the expansion of the work has followed a radial method from a few centres.

Among the Municipalities, apart from the question of the occasional errors that unfortunately will occur though zealously guarded against, there is a general appreciation of the work from the local Councils. In the Shires and outlying districts the local prejudices are more difficult to combat, but each year a few more Shires ask to be supplied with the Department's values.

The principle followed in the choice of valuers is generally that of a person with local knowledge to carry out the work under contract, assisted or followed by an officer of the Department to see that the proper methods are followed as laid down by the Valuation Court. The valuers are chosen from amongst those who have had previous practical experience as valuers for Local Government purposes or in real estate agency work, or who have been trained from the Department's own staff.

The contracts are usually based upon remuneration for the valuer's services upon an estimated time basis, at about £600 per annum. The maximum rate of progress for a valuer is 100 per diem for small suburban tenements mixed with vacant lots, reducing in number according to the increase in size ; in rural districts six (6) per diem of small farms under 100 acres. In thickly settled suburban districts where revaluation and upkeep are only necessary an efficient officer can maintain 50,000 valuations, probably eight (8) separate municipalities or districts. In the more scattered parts these officers are provided with an allowance to cover motor transport.

After valuation a copy of the entries recorded on the Department's Roll for the respective districts is issued to the Council of the local Municipality or Shire and another copy to the Water and Sewerage Board operating in such district, while a Notice of Valuation is issued to each landholder in such districts, who, if he is not satisfied, may lodge an objection. All objections to valuations by either land-owners or Councils of Municipalities or Shires are made directly to the Department which investigates the representations so submitted and then communicates the decision thereon to the objector. In practice it is found that this practical dealing with the matter disposes of the very large majority of the objections, only a very small percentage becoming appeals which are referred to the Land and Valuation Court for determination. The valuations of a district having been recorded on the Roll it is the duty of the valuing officer stationed in such district to keep such valuations up-to-date, altering them where circumstances warrant it. Considerable alteration is also occasioned by land transactions from time to time, such as the subdivision of a large block into allotments or the disposal of portion only of an allotment. This is known as upkeep work and entails constant watchfulness on the part of both the valuing staff and the clerical officers. At least once in every three years a fresh copy of the entries in the Valuation Roll is furnished to the appropriate Shire or Municipal Council but, in the intervening years, the original list, as modified by the supplementary lists containing the alterations above referred to, constitutes its valuation book.

In addition to the work of valuing lands in certain new districts each year, the valuations already made must be kept up to date and revised at least triennially. This revision (due to subdivisions, sales and other transactions represents a large and ever-increasing work, and largely augments the numbers and amounts of the valuations in each district. This is particularly so in those districts where there is marked development—a remark which applies to practically every district in the metropolitan suburban area.

Thus, in say the twelfth year of the Department's operations, not only have the lands in certain new districts to be valued but those in the districts valued in the third, sixth and ninth years to be revalued. In other words, in addition to 16 new districts valued that year 32 districts have to be revalued. Every district added to the list thus constitutes a liability which recurs triennially.

INCOME TAX.

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DEATH DUTIES.

LAND TAX.

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