Legislative Council

Thursday, 25 November, **1976**

Stamp Duties (Amendment) Bill (first reading)—Superannuation (Amendment) Bill (first reading)---Question without Notice—Stamp Duties (Amendment) Bill (second reading)—Dairy Industry Authority (Amendment) Bill (first reading)—Public Hospitals (Amendment) Bill (first reading)—Special Adjournment.

The President took the chair at 2.28 p.m.

The Prayer was read.

STAMP DUTIES (AMENDMENT) BILL

First Reading

Bill received from the Legislative Assembly and, on motions by the Hon. D. P. Landa, read a first time and ordered to be printed.

Suspension of Standing Orders

Suspension of certain standing orders agreed to on motion by the Hon. D. P. Landa.

SUPERANNUATION (AMENDMENT) BILL

First Reading

Bill received from the Legislative Assembly and, on motions by the Hon. D. P. Landa, read a first time and ordered to be printed.

Suspension of Standing Orders

Suspension of certain standing orders agreed to on motion by the Hon. D. P. Landa.

QUESTION WITHOUT NOTICE

WORKERS COMPENSATION PAYMENTS

The Hon. J. J. MORRIS: I ask the Vice-President of the Executive Council and Minister for Planning and Environment whether he is aware of the serious problem facing workers receiving payments from insurance companies in respect of entitlements under the Workers' Compensation Act and accident pay provisions of awards and

industrial agreements. Is it a fact that they have deducted from such payments Pay-as-you-earn taxation instalments at the rate of 35c in the dollar plus 23 per cent Medibank levy despite the fact that a general rebate form and Medibank levy exemption form may have been lodged with the employer?

Will the Minister take action to ensure that the Government Insurance Office and other insurance offices are required to supply such forms and information concerning their completion, together with workers' compensation claim forms, so that workers who are unaware of the necessity to complete such forms may avoid the grave hardship caused by these unnecessary and unexpected deductions?

The Hon. D. P. LANDA: I appreciate that as a result of the procedure required of employees, as outlined by the honourable member, unexpected hardship can be caused. The honourable member would probably be aware that this matter comes squarely within the administration of the Government Insurance Office and of the Treasury. I undertake to investigate the problem the honourable member has raised. I appreciate the interest he has demonstrated not only for members of his union but also for other employees who from time to time are forced into a position of hardship and discomfort because of the requirements of the applications they have to make.

STAMP DUTIES (AMENDMENT) BILL

Second Reading

The Hon. D. P. LANDA (Vice-President of the Executive Council and Minister for Planning and Environment) [2.35]: I move:

That this bill be now read a second time.

This bill will introduce a new era of compassion and equity into the administration of death duties in this State. It incorporates major changes in the death duty laws which are perhaps the most important in the period of over a hundred years that the tax has been in force. In that time, family life and the role of women in society has greatly changed. Marriage is now very much a partnership and women make a major contribution to the accumulation of family assets. In recognition of this, the Government undertook to provide a complete exemption from death duty of property passing to a surviving spouse. The bill gives effect to this.

The second major change proposed in the bill is to stem the loss of revenue from duty avoidance schemes. For too long this State has tolerated a situation in which some taxpayers are able to gain unfair advantages over others through the adoption of such schemes. Tax avoidance is by no means new but the past twenty years have seen a tremendous growth in duty avoidance measures. The provisions I shall shortly outline will negate devices to avoid duty which are based on the principle that companies do not die but can be made to continue almost for ever.

The use of tax avoidance measures is now so widespread and has assumed such significance that our death duty laws can no longer be regarded as meeting the test of equity. Each year, death duty is being paid by a relatively smaller number of estates. Each year, the revenue loss makes it more difficult to grant reasonable concessions. The Government is determined to ensure that death duty operates as equitably and as humanely as possible. This is the essential purpose of the two steps we are taking—the exemption for a surviving spouse and the closing of loopholes.

I turn now to the particular provisions of the bill. In the first schedule, amendments are made to section 101D and section 112D to exempt from duty property that passes to the surviving spouse of a deceased person. The exemption will apply to all property, both personal and real, which the deceased person owned at the time of death. It will also extend to notional property such as gifts and settlements which, under the Act, form part of the dutiable estate. Any property passing to the spouse when the deceased did not leave a will is also covered by the concession. In relation to life estates, the Commissioner of Stamp Duties will apportion the value of the estate between the spouse and the other beneficiaries on an actuarial basis that has regard to the life expectancy of the spouse. In this case, the exempt amount will be the value, as calculated, of the latter's interest. The concession will apply also to the interest of a surviving spouse as remainderman.

It is important to note that the exemption for spouses will apply irrespective of the value of the estate. Though it could be argued that some maximum value should be set at which the concession would cut out, the Government believes that this would not be consistent with the principles adopted in this bill. In addition, the complete exemption proposed should remove a great deal of the incentive to take advantage of schemes of tax avoidance which this bill also aims to deal with. No longer will taxpayers be able to claim that the heavy duties on property passing to the surviving spouse necessitated the use of such measures.

The amendments to close loopholes in the death duty provisions of the Stamp Duties Act are contained in schedule 2 and deal primarily with company devices, unenforceable debts, the granting of options and the tracing of property. By far the most common tax avoidance schemes made use of are those related to family or controlled companies. There are a number of ways in which a reduction in the value of a person's estate can be achieved with, at the same time, a corresponding increase in the intended donee's estate. These schemes are founded on the principle that companies do not die and that the transactions and arrangements entered into by a company as a separate legal entity are not those of the shareholders or directors who, in reality, decide what the company shall or shall not do.

The provisions of this bill are designed to penetrate the company disguise and as a result apply the normal tests concerning liability to duty to dispositions and transactions as if they had been carried out by the deceased in his own right. The amendments aim to bring within the dutiable estate, in accordance with the basic principles of the Act, gifts or other dispositions of property which are made through such companies. Although the objectives are quite straightforward, the amendments are necessarily wide-ranging to overcome the various schemes in operation. A large part of the bill is devoted to defining the various acts, omissions and circumstances which will now give rise to a charge for duty in accordance with the existing provisions.

The two main definitions relate to disposition of property and controlled company, but definitions of associate and associated operations are also of considerable importance. The longstanding definition of disposition of property has been extended. Paragraph (e) of the definition which refers to the diminution in value of one estate and the increase in another, has been recast. The revised terms of the paragraph, together with other ancillary provisions—in particular new subsections (12) and (13)—are designed to make it operate effectively, as was the original intention. Two new paragraphs, (f) and (g), have been added. These specify that distributions of dividends, payments of interest, share and debenture issues, and grants of options are to be dispositions of property where made by a controlled company.

The definition of controlled company specifies the circumstances in which a company will be so regarded. In essence, a controlled company is one that is under the control of not more than five persons. There are extensive supporting provisions that outline the circumstances in which a company is deemed under the control of not more than five persons. These provisions also treat related persons and nominees of others as a single person. The aim of these definitions is to ensure that companies subject to the control of a few persons come under review to see whether a scheme of duty avoidance is involved. Having regard to the well known Gorton and Robertson schemes which operate through company structures, together with the many refinements of these schemes, the provisions in the bill are largely directed to bringing into the dutiable estate the amount by which a person's estate or wealth is diminished and another's increased. This can occur consequent on some disposition of property by the company, or by reason of certain resolutions passed, or by the operation of the company articles where these touch on the rights of shares.

The terms of new subsection (13) deem the diminution in value to be property and to be regarded as personal property located in New South Wales. The provisions of this subsection also establish the time of the diminution and what is to be taken into account to calculate the dutiable value. A common situation is where a person, by reason of his control and the rights or powers held within a controlled company, is in a position to acquire property such as dividends and increase his own wealth, but chooses not to do so. In other cases, he has the power to decide whether to have a dividend paid to others even though he cannot declare the dividend in his own favour. Where property passes to another person in these circumstances, a distribution will be regarded as a cash gift and all associates of the company, including directors and shareholders under the new definition, will be classified as donors with an adjustment for any consideration that has passed. When a distribution is made to all shareholders in proportion to the paid-up capital of their respective holdings, the provision will not have any application. To avoid casting the net too widely, the commissioner is vested with discretionary powers. In exercising his discretion he will have regard to the rights and powers of the deceased, the increase in the value of the property disposed of, the nature of the interests of all the company associates and any other relevant circumstances. New subsections (15) to (18) in which dividends are dealt with include provisions relating to share issues, options to take unissued shares and to straightforward gifts by the company. Interest payments are also covered, although the commissioner will not be concerned with these if they are made in the course of a normal commercial transaction.

Another important feature of the bill is the provision aimed at valuing the rights and powers of a person in control of a company, especially when these rights and powers are not reflected in any shares held by that controller. Numerous companies have been formed in which a person is given substantial, if not sole, control. In some instances he does not even hold shares. In others, the shares held are of a special class, often with only limited rights. It is difficult to imagine these shares not having a high value. Nevertheless, under accounting procedures, influenced no doubt by judicial decisions, such shares are likely to be valued at a nominal figure despite the power that the holder possesses over the affairs of the company. To meet this situation, subsection (19) together with subsections (20) to (22) have been specially included in the bill to enable the commissioner, in his discretion, to assess as dutiable property the net assets of the company having regard to all the relevant facts.

Where appropriate, the provision will apply where the deceased was associated with a company at his death and also where the company was wound up within three years prior to his death. This will enable a person with the majority of the voting power or who is able to gain that power in relation to any disposition of property

by the controlled company, to be dealt with in the same way as a person with a general power of appointment over property. The amendments are also directed at debts allowed to become unenforceable through the lapse of time or for other reasons. In these situations the creditor will be considered as having made a disposition of property.

It is not intended that normal commercial transactions be caught up in these provisions, nor will there be a liability for duty where an unenforceable debt has been repaid even though there was no legal obligation to do so. Provision is made also to cover option arrangements, which have become common in recent years as a way of avoiding death duty. The agreement, often by a controlled company, to grant a person an option to take up shares at a future date, is invariably drawn so that it is exercisable only by the optionee in his lifetime. The amount paid for the option in these circumstances will be liable for duty less any part of the option taken up before death.

It will be seen from what I have said that the object of the proposed amendments is to define the circumstances in which a disposition of property is deemed to have taken place, the persons by and to whom the disposition has been made, the value and the time such disposition is deemed to have been made. These are all necessary to determine whether the property in question is to be treated as dutiable within the longstanding provisions of the Act relating to gifts of property. Honourable members will recall that gifts by a deceased person made within three years of his death are liable to duty.

I turn now to other proposed amendments in the bill. Some years ago the court gave a decision in what is known as Drew's case which has effectively prevented the commissioner from tracing property. This has led to gifts frequently being made in cash so that other forms of property that are the intended gift can be acquired. To enable such gifts to be brought within the ambit of the legislation, the bill includes new provisions under which the proceeds of sale or conversion of property comprised in the original gift or other disposition and all investments representing or substituted for it are deemed to be the property to which the relevant provisions will apply in the future. If the property cannot be identified, its value--or in the case of money, the amount of money—is included in the dutiable estate. In valuing the property, the commissioner may make allowance for any depreciation that the property would have been subject to had it remained under the ownership of the deceased.

Some schemes of this type have related to the purchase of annuities. Because of the deficiency highlighted in Drew's case, arrangements are often entered into whereby a son is paid a lump sum of money purportedly in return for an annuity in favour of the parent. The payment is usually determined on the basis of information supplied by a reputable insurance company but the security and recognized safeguards normally expected are not provided for. The real purpose is to transfer property out of the father's estate, and is a particularly effective device where the annuitant is in ill-health. The transaction is not a true business arrangement, but as the lump sum can no longer be identified at the date of death, it has not been possible up to the present to bring it within the scope of the Act. The proposed amendments will change this situation. However, I stress that normal commercial transactions with a recognized insurance company will not be caught up in these provisions. With the inclusion of the new company provisions, it is proposed to extend the existing section 102 (2) (d), under which a gift made outside three years of the date of death may be dutiable if the donor has retained some possession, enjoyment or benefit out of the gifted property. Under the proposed amendments, this link will be extended to gifts by a controlled company having regard to the deceased person's association with the company during the three years prior to his death.

A new subparagraph 102 (2) (da) is also added which will bring in Gorton-type gifts made beyond three years where the donor. within three years of death, could have increased, decreased or transferred the benefit of the gift previously effected. Section 102 (2) (d) as it stands could in some circumstances operate inequitably. There have been cases where the possession or benefit retained by the donor shortly before his death has related to only a small part of the original gift property. If, for example, there has been an earlier gift of a farming property and the deceased had been living with his son and daughter-in-law in the residence without any other benefit from the rest of the property, the total property is technically liable to duty. The provision is now amended so that where the gift was of real estate the commissioner will insist only on the residence and the immediate surrounds being included for duty purposes.

Apart from a revised section 137 to which I shall refer shortly, the remaining provisions are consequential. Section 103A is amended to allow for death duty arising from the provisions of this bill to be refunded or offset if duty is paid on the same noticnal property in another State. Provision is also made for the commissioner to be notified within three months of death of dispositions of property dutiable by virtue of the new provisions, for duty to be a charge on the New South Wales assets of a controlled company, and for duty to be a debt due to the Crown and payable in certain cases by the company associates and persons benefiting from the arrangements. Section 137 of the Act deals with actions taken with the intention of evading death duty. I understand that because of the difficulty in proving intent. in practice it has not been practicable to invoke the section. The bill contains a redrafted section designed to make it more effective. The proposed amendment would make absolutely void, for purposes of the death duty provisions of the Stamp Duties Act only, contracts and arrangements for the purpose or effect of relieving any person from liability to pay any duty or to file any statement, or of avoiding or evading any duty liability or of affecting the value of any property in the dutiable estate or of preventing the operation of the provisions of the Act. That completes my review of the bill.

There are, however, two other matters that I wish to draw to the attention of honourable members. The first relates to the revenue implications. Statistics are not available on which to frame an accurate estimate of the likely cost of the concession to spouses, but a survey of estates lodged with the commissioner indicates that it will lie within the range of $20 million to $30 million. The provisions aimed at negating the effects of the various duty avoidance schemes will offset this in part and, overall, the revenue cost on a full year basis is expected to be about $10 million. The cost is not expected to be significant this financial year because of the time normally taken to lodge estate affidavits.

The second aspect concerns the date of operation of the amending legislation which will apply to the estates of persons dying on and after the date of assent. As honourable members are aware, this is consistent with the practice adopted by successive governments in New South Wales in relation to such measures because of the difficulties that are inevitably involved in their timing. Whatever commencing date applies, there are always estates that do not qualify for new concessions. The Government undertook during its election campaign to introduce a death duty exemption for property passing to a surviving spouse and to close loopholes in the legislation. We have honoured both promises in our first budget.

There has been some comment that the provisions aimed at closing the loopholes will operate retrospectively. The Government does not accept this view and it is not a valid argument bearing in mind that liability to death duty arises only on a person's death. The measures will apply only in the case of deaths occurring

on or after the date of assent where avoidance schemes are already in operation. They will not apply to any estate where the death occurred prior to that date. It is important in this context to note the present phrasing in the Act dealing with dispositions of property. It reads, in part:

> "Disposition of property" means—
>
> (e) any transaction entered into by any person with intent thereby to diminish directly or indirectly the value of his own estate and to increase the value of the estate of any other person, . . .".

It is clear that the types of avoidance schemes now to be caught up should never have been permitted to flourish as they have. Moreover, those who seek to avoid death duty by taking advantage of loopholes in the law cannot expect to remain immune from changes in the law. It is a well known fact that advisers drawing up avoidance schemes qualify their advice to clients by emphasising that, as the law stands, certain results will or could be achieved. Books on this subject are full of warnings that the legislation is likely to be changed, with serious implications for planned estates.

Finally, I shall make one further comment on the measures contained in the bill. It is common knowledge that lawyers, accountants and tax consultants carefully seek out flaws in the language used in tax laws and then proceed to develop schemes to take advantage of any loophole they can find. We are unwilling to acrspt this situation and I want to make it abundantly clear that if new loopholes are found and new devices are developed we shall deal with them. We are resolved to ensure that the death duty laws are as equitable as possible in the interests of all taxpayers, and remain that way.

Finally, following representations by the Law Society and the Taxation Institute concerning the amendment to section 101D to provide exemption to spouses, the Government believes that an adjustment to the proposed amendment is warranted. This is necessary to ensure that gifts to a spouse within three years of the donor's death also are exempt from any duty where, at the time of the death, the donee spouse has divested himself or herself of the gift property. The amendment has been prepared by the Parliamentary Counsel, and it will give effect to the Government's intention that, when an assessment is calculated having regard to the spouse as a donee of a gift, no duty will be levied. I commend the bill to the House.

The Hon. Sir JOHN FULLER (Leader of the Opposition) [2.55]: The Opposition welcomes the provisions of the bill that provide that no death duties will be chargeable on property of a deceased person where the spouse of the deceased person is the beneficiary. The proposed amendment in this regard is similar to that promised by the former Government as the next most important advance in its on-going programme of easing the incidence of death duties, to the ultimate point of complete abolition of death duties in New South Wales. However, the Opposition is not happy with the other provisions allegedly aimed at closing loopholes in the existing legislation. Incidentally, the Minister said that this matter was included in the Premier's policy speech. I should be highly delighted if the Minister could show me where in the policy speech delivered by the Premier prior to the election of 1st May that promise is made. I certainly cannot find it.

I do not pretend to be an authority on the details of stamp duties in so far as they relate to probate. After reading the bill, I am reminded of a person who could not understand a pak-a-pu ticket, irrespective of whether he held it upside down or straight up and down. To me it is a most complex piece of legislation, and apparently one that is unlikely to be readily understood without a great deal of study, even by members of the accountancy and legal professions. One point comes out plainly.

Although I accept that there have been some methods of avoiding tax in this regard in the past, and that loopholes could probably be quite rightly closed, it appears to me that the whole intention of the bill, outside the spouse-to-spouse provisions, is to force New South Wales death duty provisions well out of line with the provisions that apply in all other States of the Commonwealth, thus further widening the gap between the States and the Commonwealth when the Commonwealth moves towards uniformity, which I believe should be the objective.

I ask the House to consider the likely consequences of this tightening of the stamp duty provisions in this State. The Queensland Government has decided that it will abolish all death duties from 1st January next year. At the same time, New South Wales is moving towards increasing death duties, which are an impost on the company structure of this State; indeed, the only effect of this will be to put New South Wales into a position of having heavier death duties than obtain in any other part of the Commonwealth of Australia. If the Hon. J. S. Thompson thinks that that would be good for industry in New South Wales, I should be very surprised. When I was in a country town during the weekend someone told me that there was a large move out already from New South Wales to Queensland because of the bait offered by Queensland to attract industry, commerce and people into that State. Retired people in New South Wales openly say, "As Queensland is abolishing all death duties from 1st January, we are going to sell our house and move to Queensland—and we will take our assets with us."

This is the worst stroke that any government could make against the possibility of providing jobs, investment, and industrial and commercial development in the State of New South Wales—a State that has the heaviest unemployment in the Commonwealth. I should be surprised if that is a responsible action.

I admitted earlier that there is some justification in trying to close some loop. holes through which people have been avoiding, in a fine fashion, their basic death duty responsibilities, but I believe that the provisions in that regard go much too far---so far, in effect, that if it were approved, there would be an outflow of capital from New South Wales to Victoria, South Australia and Western Australia, and more particularly to Queensland.

When bodies such as the Taxation Institute of Australia and the Law Society approach members of Parliament asking them to look at the things that are wrong with the legislation and saying, "For goodness sake try to do something about it", it makes me believe that the Government has been talked into this sort of action by some enthusiastic people who believe in attempting to close up every loophole irrespective of the overall consequences to industrial and commercial development and population expansion in the State of New South Wales. The Minister referred to the amendment that I understand has been inserted in another place with regard to the spouse-to-spouse provision. I had intended to refer to this as I believe it was necessary. According to some advice I have, I doubt whether the proposal inserted in another place adequately covers the situation. However, I am happy to leave that to some who I admit have greater knowledge in this field than I have. I suggest that it might well be looked at again.

That raises another point: honourable members were here last night commenting on legislation that had been introduced which we thought needed to be examined fairly closely. I am told that in another place today the third edition of legislation pegging local government rates has arrived. The first two bills were so badly drafted that they had to be withdrawn by the Government in order to correct them, so that a bill can be brought in with a chance of getting approval in another place.

The Hon. Sir John Fuller]

This bill is another example of bad drafting, in a rush, to try to fulfil an election promise with regard to spouse-to-spouse provisions. I give the Government full credit for doing that but it should not rush the other provisions, when obviously, like much of the legislation put before honourable members in the past few weeks, it is inadequately and badly drafted. I doubt whether honourable members will get the third or fourth edition of the legislation pegging local government rates before the House rises for Christmas, the way we are going. That is a good example of inefficiency of thinking, administration and drafting by the Government.

I was speaking about that part of the bill that relates to spouse-to-spouse provisions. Though I give full credit to the Government, this reflects a great change of heart on the part of the Labor Party, which has traditionally supported death duties as one of the great levellers of society. It has regarded it as one of the overall means of achieving the sort of society that is near and dear to the hearts of so many members of socialistic parties in the world, that is, the concept of equality before initiative.

The Hon. D. P. Landa: Equality under the law.

The Hon. Sir JOHN FULLER: I am glad that the Minister interjected. I have been trying to find a copy of the report by the New South Wales Labor Party committee on this mater. I understand that the committee has recommended the abolition of death duties over a long term. As I could not find it, I am speaking from hearsay. The point I am trying to make is that even the Labor Party is changing its view with regard to death duties. In taking the move it is taking in this bill it is going, not in that direction, but rather towards heavier imposition which will react against the benefits to the people of New South Wales. I have been given confirmation of the fact that it is asserted in the Australian Labor Party New South Wales platform that it is thinking about the abolition of New South Wales death duties. It is item 6 on page 4. Though the Government moves in one direction in a practical fashion with its spouse-to-spouse provisions, it proceeds to cut the throat of New South Wales economically by the rest of the measure. That is a ludicrous approach to the problem.

The Hon. D. P. Landa: Do you suggest that $10 million cuts the throat of New South Wales?

The Hon. Sir JOHN FULLER: Here they are apparently advocating the abolition of death duties——

The Hon. D. P. Landa: Between spouses.

The Hon. Sir JOHN FULLER: The Labor Party policy does not say that.

The Hon. Edna S. Roper: Yes, it does.

The Hon. Sir JOHN FULLER: Item 6 of the Australian Labor Party New South Wales State platform on law reform reads:

> The abolition of New South Wales death duties as a first step towards final abolition.

Though I get out of touch with the policy of my party and decisions of its conferences, I should have thought that the Minister, bringing major legislation to this Chamber, would have studied his own party policy in this regard.

The Hon. D. P. Landa: The Hon. Sir John Fuller will hear about it in my reply.

The Hon. Sir JOHN FULLER: I shall keep the platform close to me so that when the Minister replies at some time in the future I shall be able to compare what he says with the written policy. I hope that there is some likeness between the two versions. The policy of the Country Party in New South Wales is the abolition of death duties. The policy of the National Country Party is the abolition of death duties.

The Hon. H. J. McPherson: When?

The Hon. Sir JOHN FULLER: As soon as possible. In Queensland it will be implemented from 1st January.

The Hon. W. C. Peters: The former Government had years to do it but never did anything.

The Hon. Sir JOHN FULLER: The Hon. W. C. Peters is suggesting that we never did anything. I shall tell him what we did. Before I do that I want to refer to the Labor Party's thinking about death duty revealed in the findings of the Senate Standing Committee on Finance and Government Operations, set up by the Whitlam Government in its early days in office. I shall refer to that particularly as it relates to death duty because I would suggest that Labor thinking federally has swung a long way to recognizing that the objective of wealth redistribution is no longer a valid argument in favour of retention of death duty.

So that the Hon. W. C. Peters will not have to wait too long I shall give a somewhat less than brief summary of what the Liberal-Country party Government did in its eleven years in office in relation to death duties. I think I can summarize it by saying that when it was in Government the Opposition took a number of positive initiatives to lessen the more punishing impact of death duties and it made it clear on a number of occasions that its ultimate objective was the complete abolition of death duties in New South Wales. It was deeply conscious—just as the Queensland Government is—of the retarding effect that death duty has on development, both on the farm and in the factory, on job opportunities and continuity of businesses. It forces the tying up of substantial capital in the hands of small businesses and individuals in order to make provision for death duties when that capital could often be employed in the business. providing expansion opportunities and more job opportunities. Particularly does that apply within the rural industry.

The present Opposition, when in Government, took steps to ease the burden in the more deserving areas first. The next initiative that it forecast was the abolition of death duty on property passing from spouse to spouse, as is contained in the bill. The depressed state of the majority of our primary industries, which became evident in the early 1970's and has not in any way improved to the present time, dictated that the first priority should be the provision of some relief from the crippling impost of death duty and land tax on this section of the community. I refer to the family farmer who wished to be able to leave his property to his children on his death. We did not want the farm to be sold to pay death duty, with someone from the city buying the farm and the farmer's son having to go to Sydney to get a job. We took positive moves in that regard and we progressively abolished land tax as it applied to the great majority of primary producers and in respect of the policy of progressively increasing the allowance aimed at assisting beneficiaries in primary producer estates up to $200,000.

In the 1973 State Budget the former Government lifted the primary producer allowance from 30 per cent to 50 per cent for estates up to $150,000. Further extensions were provided in the succeeding two budgets, culminating in a maximum rebate of 100 per cent on estates up to $150,000 with further staggered concessions up to $200,000.

The Hon. D. P. Landa: Let us talk about your mates with the loopholes. Tell us what you propose to do to help them.

The Hon. Sir JOHN FULLER: I do not know that I have any mates with loopholes. When the Minister was speaking I did not suggest that he should follow a particular line but if he wants me to deal with a certain aspect, I shall give consideration to his request. In our last budget a review of concessions and exemptions was made for property passing to close dependants of a deceased person. In that budget the existing level of exemption was raised from $50,000 to $60,000 for all estates and the concessional rate range from $68,000 to $78,000.

The Hon. W. C. Peters: That only kept pace with inflation. Your Government did not give any extra, and it did not abolish the death duties.

The Hon. Sir JOHN FULLER: I should like to engage in a longer discussion with my friend on this subject, but I must proceed with the general theme of my speech. I could speak at length about the effect of inflation on death duties. This is one reason why the previous Government lifted the level of exemption, which was a step towards the abolition of death duties in New South Wales. That is not what the bill envisages.

The Hon. W. C. Peters: Your Government had eleven years in which to abolish death duties, but it did not do so.

The Hon. Sir JOHN FULLER: In our policy speech prior to the recent elections, apart from the major provision of complete exemption from death duty on property passing to a surviving spouse, we undertook to increase the present limits so that no duty would be payable in respect to rural assets passing to an eligible dependant on rural estates up to $200,000, with concessional rates applying up to $300,000. We undertook also to amend the application of concessions to apply to the net value of estates after debts as allowed under the Stamp Duties Act. This would have greatly extended the number of estates eligible for available concessions.

The Minister said there had been a considerable reduction over the past few years in the number of persons whose estates were assessable for stamp duty purposes. I believe the major reason for this was the lifting of the minimum level. Many people were excluded from having to pay stamp duty and so were given considerable relief. These undertakings were consistent with our stated policy of progressing towards ultimate elimination of all death duties, which policy still stands.

The bill, apart from the spouse-to-spouse provisions, will inflict heavier death duties in New South Wales which will result in chasing people to other States and companies being registered in other States. Companies as well as individuals will want to go away from New South Wales and set up business. This is basically wrong. Instead of worrying so much about closing loopholes, the Government should be moving towards the complete abolition of death duties. In the long run this legislation will have the effect of supplying job opportunities for accountants and legal experts—some not far from here—which will bring them a lucrative return. They will gain either directly or indirectly from the result of a complex measure of this sort.

I emphasize particularly the need for the abolition of death duties, particularly in respect of rural estates. I have read carefully case studies that were included in the submission made to the Senate standing committee by the Australian Wool-growers and Graziers Council which revealed an interesting aspect. This committee, which was headed by Senator Gietzelt, summarized the general effects of death duties on rural estates as follows: lack of liquidity as a result of death duty assessment;

uneconomic and unproductive borrowings to pay death duties; insufficient funds for normal maintenance and improvement; reduction in standards of living; loss of viability; forced sales with fragmentation of holdings; and hardship not confined to small estates.

Fundamentally a greater proportion of primary producer capital is in land and other non-liquid assets than is the case for other sectors of the community. This means that death duties are harder to pay unless assets are sold or borrowed finance is available. Borrowing or sale of stock will tend to disrupt the operation of the property, while sale of land can totally fragment it. In support of these claims I have made a random selection of brief details from the hundred or more case histories presented to the Senate standing committee by the Australian Woolgrowers and Graziers Council. One concerning a 700-acre property in the Crookwell district is as follows:

> I lost my father two and a half years ago. Our property is of 1 250 acres of which 700 acres were in my father's name, the rest belonging to me. The property is over-valued and probate on this 700 acres was almost $30,000.
>
> Insurance totalled only $6,000 and as we had a debt of $20,000 beforehand ($11,000 on my home and $9,000 on my area of land) my debt then became well over $40,000 on a small sized property.
>
> I couldn't borrow money from the bank as I couldn't make the repayments over a short term. I got a long-term loan from the A.M.P. Society and another loan from the Development Bank for extra stock, etc. I now have the property very heavily stocked in an effort to make enough money to meet commitments. The A.M.P. loan is over thirty-three years and if it takes that long to repay it my son will be coming into probate problems as I will then be over sixty.
>
> My debt now is $17,850 to Development Bank and $40,000 with A.M.P. Society, a total of $57,850.

That case illustrates the effect of this taxation. We should be moving away from any legislation that would have the effect of such an impost on a son because his father has died. A second case I want to quote involves a property in the Burren Junction district where not only was it found that it was necessary to sell portion of the holding, which gravely threatened its continued viability, but also it appeared likely that some livestock would have to be sold. The submission in respect of this case concluded with the following statement:

> It seems an absurd situation where the Government is supplying money for rural reconstruction to uneconomic units and at the same time taking it away from economic units by way of death duties.

It is certainly an extraordinary and paradoxical situation, when the imposition of death duties on rural estates contradicts Government policy in other areas in that it causes the breakdown of properties, while the rural reconstruction scheme is designed to enlarge the scale of farm operations. I do not know whether the Hon. W. C. Peters would appreciate the details of further cases but there are some very interesting extracts from the submissions to the Senate committee dealing with the effect of inflation on death duties and also the increase in the value of properties. There were more than one hundred case histories of this sort in those submissions but the random selection I have made should be sufficient to bring to the surface the very real problems posed for primary producers by death duties.

It is interesting that the majority report of the Senate standing committee—compiled by Labor members of the committee—recommended the abolition of the dual system of death duties whereby both Commonwealth and State governments levy

death duty and gift taxes. The committee further recommended that the Commonwealth Government withdraw from taxation in these fields. This would be a progressive step towards complete abolition. I should like to draw attention particularly to the minority report handed down by three coalition members of the standing committee–senator **A.** S. Lawrie, Senator R. C. Cotton and Senator Margaret Guilfoyle. It stated:

> We believe that death and like taxes in Australia have outlived the basic purpose for which they were originally intended and are now nothing more than inefficient and socially unacceptable revenue-raising devices.
>
> The Commonwealth Government for its part should vacate the field of collecting these duties because they are not productive of substantial amounts of revenue. Consequently, we make the following recommendations:
>
> The Federal Government vacate the field of death taxation including the A.C.T. and N.T., and the States should examine the possibility of gradually reducing their death taxes with the view to eventual abolition.

That minority report conforms to what the Askin-Cutler Government projected more than three years ago as its aims, and to the subsequent actions of the former Government in New South Wales moving towards abolition. Now in Opposition, the policy of the coalition parties remains unaltered. In summary, we support completely the elimination of duty on estates passing between spouses. We believe that another amendment may be necessary to achieve the intention of the Government in this regard. The Minister says it is always doubtful, but he would know that differing opinions can be held even on the law.

The Hon. D. P. Landa: I would back the Parliamentary Counsel against you.

The Hon. Sir JOHN FULLER: If the Minister wants to back the Parliamentary Counsel, he had better not back him on the local government pegging of rates legislation, unless the Parliamentary Counsel has been led astray by the Minister for Local Government or one of his colleagues. That is not a creditable performance.

The Hon. D. P. Landa: On a point of order. The Leader of the Opposition is referring to a measure that is not before this House or the other House. Even if it were before the other House, it is contrary to the standing orders to debate a bill that is in the other Chamber.

The PRESIDENT: The Leader of the Opposition will connect his remarks with the bill before the House.

The Hon. Sir JOHN FULLER: I accept your ruling, Mr President. I was saying that the Opposition approves the legislation so far as it concerns property passing between spouses. We believe that there should be another amendment to that in order to make clear the intention of the Government. We shall give any assistance we can to the Government—especially Government members who are in the Chamber today—towards the drafting of an efficient amendment.

It must be accepted that the remaining provisions of the legislation are complex and difficult to comprehend, even by people in the city of Sydney who are learned in the subject. Even they have difficulty in determining what the final result of some of these amendments will be. The amendments have a retrospective effect. To the Opposition, that is most undesirable. It is all very well for the Minister to say, "You are not caught until you are dead". That is a fact, but we believe that there are undesirable amendments relating to retrospectivity in this legislation that can give a

commissioner a right to make a determination on what duty will be paid on an estate that passed on fifteen or twenty years ago. There is no way of determining the basic likelihood of responsibility for a definite decision on that situation.

We believe the extent of the retrospectivity is too complicated and difficult to understand. Another member of the Opposition will speak in more detail on those matters. Two other members of the Opposition will have the responsibility of elaborating the Opposition's views in detail on some of the items in schedule 2 of the bill. Other members of the Opposition will refer in more general terms, as I have done, to the pros and cons of death duty generally and this legislation in particular.

The Hon. EDNA S. ROPER (Deputy Leader of the Government) [3.27]: The Minister has given a detailed outline of the bill, which I support in every respect. I was interested to hear the remarks of the Leader of the Opposition. He commented on the fact that the Opposition had been approached by the legal profession on the areas of this legislation that were causing concern. On the one hand he commented that the legal profession was concerned about certain areas, not in relation to property passing between spouses but the loophole aspects of the amendments. He mentioned that the legal profession had approached him because it was not good legislation, yet on the other hand the Deputy Leader of the Opposition in another place said that this was a legal man's dream; it was a Pandora's box for the legal profession. The Opposition cannot have it both ways. It cannot claim on the one hand that the legal profession is concerned about the amendments proposed with regard to the loophole aspects of the Act and on the other hand say that they are a Pandora's box for the legal profession—in other words, that they will wax fat on this legislation.

Again the Opposition is talking with a double tongue. It talks in terms of being concerned about property passing from spouse to spouse. It agrees with this. No honourable member could disagree with that aspect of the bill. Everyone agrees because in real terms, property passing from spouse to spouse is in the main passing from a man to his widow. Usually that represents only the family home. For the majority of the population it does not represent large investments or the covering up of the true assets of the person who has passed away, where it has been made possible to diversify assets or to take them out of the country to defeat the death duty provisions. The Opposition sees no problems in property passing between spouses. The real crunch comes for them when the Government attempts to close the loopholes which for years have made it lucrative for the people who wish to avoid death duties and for the members of the legal profession who assist them to defeat the Government in this direction.

I believe that every honourable member, irrespective of whether he protests about what I am saying, knows full well that this is in existence and operates all the time. The Government has no need to apologise for this aspect of its legislation. This is necessary legislation. Towards the end of his speech the Leader of the Opposition spoke of correspondence that he had received, describing the value of the property of a person who had passed away. The correspondence set out how much death duties would have to be paid, and so forth. I shall never forget the occasion on which the Hon. H. J. A. Sullivan made an impassioned plea in this Chamber for the abolition of death duties because of the hardship they brought to families. His party was in office at the time, and he gave an instance of a family which, during the rural recession, had difficulties when the husband died. The property had been built up by the husband and wife together. It had become quite valuable, but the Valuer-General's valuation was far beyond what could have been obtained for it during the rural recession. The widow had been billed for about $150,000 for death duties but she could have obtained

only about $50,000 for the property had she been able to sell it. I think that was the figure quoted by the honourable member, who pointed out that there was special and extreme hardship in this area.

That is what the bill is mainly about. I know there are areas of concern, but I know also that the representatives of big business and those who are caught up in companies try, wherever possible, to bring about a situation in which they do not have to pay the death duties they should pay. Let us face it. Their wealth has been built up in the State where they have carried on their business. Also, death duties legislation has been on the statute book of New South Wales for 100 years, and nothing has been done by honourable members opposite about the areas complained of. Incidentally, the Leader of the Opposition quoted Labor Party's policy on death duties and so on; he went further, and quoted the Premier's speech. However, we have the official State platform of the Liberal Party, which contains not one word or reference to the abolition of death duties.

The Opposition is indulging in double think; on the one hand it wants to appear to be doing something for families in respect of property passing from spouse to spouse. On the other hand, it says, "But please, do not interfere wth the sacred cow area of big business." When it comes to the ordinary man on the street—the little person—members of the Opposition are willing to grant the concession, but they are unwilling to close the loopholes in the law, thus denying to the State revenue it should justly receive. I hope that honourable members opposite will not attempt to emasculate this measure and do with this bill what they have done in other areas. Now that they are in Opposition, honourable members opposite hold themselves out as the great champions of the underprivileged and the underdog. They say that they want to do this and that, but they have been responsible for deferring the Children (Equality of Status) Bill and the Anti-Discrimination Bill. It is a wonder that they do not want to defer this measure, and so discriminate against widows in this State.

In another place attention was drawn to the fact that Labor has been in office for six months and has only just got around to doing something about exemption from death duties when a property passes from spouse to spouse. It should be clear to honourable members that when the Budget was brought down it specifically made it clear that as soon as possible legislation would be introduced in the death duty area. This is the first opportunity the Government has had of doing this.

Nasty comments have been made about the Parliamentary Counsel, who was formerly known as the Parliamentary Draftsman. The Parliamentary Counsel and his staff have a difficult task. Honourable members opposite used to claim this when they were in office. Indeed, no one denies the difficulty of their task, and there could be areas in which they might make a slip, but in the main they do a magnificent job when drafting legislation to present to this Parliament.

I hope that honourable members will look at the bill in terms of the greatest benefit for the majority of the people, and get away from thinking of the minority groups only. They should ensure that the majority of the benefit flows to the greatest number of people. I hope that they will think well on the legislation and give it the support it justly deserves.

The Hon. W. L. LANGE [3.37]: In the brief time the Labor Government has been in office it has brought forward some innovative legislation, but also some legislation which is not what we consider desirable for the State of New South Wales. The provisions contained in schedule 1 of this measure are obviously desirable. In so far as those provisions are concerned, this is good legislation, and we totally support it. However, the ramifications of schedule 2 are so wide as to make it unacceptable to the vast majority of people in this State.

The bill shows a real conflict in the Labor Government's attitude to death duties. On the one hand the Government has brought forward desirable provisions in schedule 1, but on the other hand, I am afraid it could not contain its prejudice against inheritance, and has cast the net so wide that it will destroy almost all commercial rural operations throughout the State if the schedule is implemented—as it could be—with absolute discretion granted to the commissioner. The provisions of the schedule are so wide and sweeping that business people will be unable to plan their affairs with any confidence at all. There is no doubt about that. The Minister seems to be amazed by what I have said, but I do not know whether he has had a close look at the potential ramifications of schedule 2. I suggest that he does so before he adopts a firm attitude on it. Schedule 2 is not good legislation, and the Government should not be proud of it.

Some reference was made to the drafting of the bill. I shall give one example of what I believe to be a most complicated provision, which will not enhance the bill in any way. In item (1) (b) of schedule 2, the wording of the definition of associated operations in subparagraph (ii) has been taken directly from the British Finance Act. It is a good example of the complexity of this legislation. In that definition, these words appear:

> . . . operations, each of which is effected with a view to enabling another of those operations to be effected or to facilitating its being effected or each of which, except one, is effected with that view, that one being an operation with a view to effecting which or to facilitating the effecting of which the other operation is or the other operations are effected . . .

If the Parliamentary Counsel cannot do better than that, I should be surprised. There must be simpler ways of dealing with the so-called Gorton schemes, the Robertson schemes, and the option schemes than by adopting that sort of definition.

The Hon. D. P. Landa: Has anyone published a way to do it?

The Hon. W. L. LANGE: If the Minister is willing to follow the debate through, I hope I may be able to offer some improvement on it. The Opposition believes that schedule 1 does not totally carry out the Government's intention of eliminating from death duties all property passing between spouses. Likewise, the amendment that the Government has circulated does not do that. In Committee I shall point out to the Minister and the House the deficiencies that the Opposition considers to exist in schedule 1 and also in the amendment. Schedule 2 is an attempt to prevent what is known as Gorton, Robertson and option schemes but it does far more than that. There is no need for the widespread provisions of that schedule to cover the Gorton scheme, the Robertson scheme and the option scheme. Criticism has been made of people who, of their own volition, take action to minimize death duties. It is a well-held principle, espoused by Chancellors of the Exchequer in Britain and many learned counsel, that it is quite proper for people to take action to minimize taxation, acting within the law. They are quite at liberty to do so.

For the Minister to say that people should not protect their assets is ridiculous. It is in the interests of every family to protect assets that have been built up over years of hard work. There is nothing wrong with people trying to minimize the incidence of death duties. Death duties come at the worst possible time in the life of a family. Usually it is on the death of the breadwinner. They come at a time when the widow does not know what is happening. The family does not know what is likely to happen. The incidence of the tax is not known, nor are the extreme complications that follow. They do not know the tremendous work that is required to obtain the grant of probate or to get a loan on property. Death duties should be removed completely.

I was pleased to hear the Deputy Leader of the Opposition in another place last night say that the Opposition, on its return to office, would abolish death duties in New South Wales. I know that everyone on this side of the House fully supports that view.

One of the worst features of probate in New South Wales is that the rates of duty have remained unchanged since 1939. The effects of inflation on those duties have been substantial. I should like to illustrate how that has happened. Since 1939 the value of the dollar has dropped from the equivalent of $1 to 16c. Taken another way, in money terms the 1939 dollar is now worth $6.35. There has been almost a sixfold depreciation in the value of money. Let me take an example of a property worth $100,000 in 1939; the death duties then payable on it would have been $15,500, that is, 15 per cent of the estate. The same estate would have increased in value since 1939 and would be worth $635,000 now. The duty payable on $635,000 is now $170,000 or, 27 per cent of the total estate. Anybody who had assets worth $100,000 and simply did nothing else with them but allow the value of the assets to accumulate would be losing, because of inflation and for no other reason, almost one-third of the total asset by way of death duties.

The real difficulty today is in finding money to service the debt on those assets. That is beyond the capacity of any business. Businesses in country towns and rural properties are flat out making a reasonable living let alone providing for probate on this sort of value. They are the people who are hardest hit by death duties and have been over the years. Some years ago a study was done in South Australia which revealed that the rural sector was the section of the community hardest hit by probate. Out of the total community in South Australia the rural community represented only 8 per cent of the total number of taxpayers but paid something like 40 per cent of the total probate duties. Anyone who says that people on the land or in business should not take action to ameliorate the incidence of death duties is not facing realities and recognizing the real problems that confront these people. All honourable members know that many families have been broken up. People have had to sell their properties and move to the cities because of the incidence of probate. Not only is an adjustment of rates of duty long overdue, but also the total abolition of death duties in New South Wales ought to follow. Though the Government has not said so, it is Government policy. I predict that before the next election the Government will be taking that action.

In speaking on the measure the Leader of the Opposition referred to the impact on New South Wales of the decision in Queensland to remove death duties from 1st January, 1977. Once that has started, inevitably loopholes will be found because one State has no death duties. There is no doubt that other States will be compelled to follow. That remark applies particularly to New South Wales which is situated right next door to Queensland. Anyone who wants to retire to the north coast of New South Wales will now go that much further and move into Queensland. Already there has been a considerable increase in the sale of home units and houses in coastal areas of Queensland. People who are retiring in southern States are moving to Queensland in anticipation of the red and worthwhile decision to remove death duties there.

As a result of that move the federal Government will collect greater federal estate duty but in future the federal Government will move out of that area as well. Federal estate duty is a small percentage of total federal revenue. There are already clear signs of capital moving from New South Wales to Queensland. It is capital that New South Wales cannot afford to lose. The State should be taking steps to prevent and correct that.

The bill seeks to establish new definitions under section **100** of the Stamp Duties Act. They are basically in relation to the concept of controlled companies. Controlled companies are defined in the bill as companies under the control of five or fewer persons. In practice that would mean that almost all private companies in New South Wales could be caught by the provisions of the bill. Something like 95 per cent of all private companies in New South Wales could be potentially affected by this provision. Though the commissioner has wide discretion not to impose duty in respect of private companies that are not controlled, the mere fact that he has that threatened discretion will disrupt the business and commercial world of the State to such an extent as to make it unrealistic to consider this to be a reasonable provision.

Most of these companies have been set up in New South Wales, not to avoid death duty but for commercial purposes. Many were set up for income tax purposes. Many companies could come into that category. The Government has really done itself an injustice in bringing such a concept to the Parliament. The concept of controlled companies brought a quick response from people associated with companies. I shall refer to one. The Taxation Institute of Australia, a most responsible body, concerning controlled companies, said:

> The single most disturbing aspect of the proposed legislation is the enormous width of the provisions dealing with controlled companies and the ramifications of the application of these provisions, many of which would not, it is felt sure, have been intended by the draftsman.

A submission from the Taxation Institute of Australia goes on to say:

> Section **100** (2) (d) requires related persons to be treated as one and the term "related persons" is given an extremely wide meaning by section 100 (3). Many (if not most) normal commercial companies established to carry on some business or enterprise will fall within the definition of "controlled company".

That is a real indictment on the sort of legislation contained in this bill.

The Hon. D. P. Landa: The discretion is there.

The Hon. W. L. LANGE: The Minister has suggested that we ought to leave it to the commissioner's discretion to determine whether or not the company ought to be assessed, or whether the directors or shareholders ought to be assessed under these provisions. I have a great respect for the ability of the Commissioner of Stamp Duties. He is a man of considerable ability. Quite frankly I should not like to leave so many private companies in the State at the mercy of the commissioner. There may be a change—there may not be in New South Wales such an admirable commissioner in the future. If the Minister is about to say that this legislation is exactly the same as the Victorian legislation, I regret to inform him that that is not so. That legislation is not nearly as widespread. Perhaps in Committee I might be able to point out the position to the Minister.

The Hon. D. P. Landa: There is exactly the same discretion as operates in the Income Tax Act, the federal law.

The Hon. W. L. LANGE: I shall come to discretion a little later. The question of control, which is basic to controlled companies means that the commissioner will be able to use his discretion related to directors or shareholders. This concept was criticized quite stringently by the Asprey Committee. That committee said that to define control is almost impossible. It requires the net to be spread so wide that it catches too many parties who ought not to be caught up in the provisions. In fact

the concept of controlled companies is not really needed to catch the Gorton schemes anyway. The provisions in the bill of disposition of property is quite adequate to cover the Gorton schemes. There is no need to go to this concept of control function to catch them. In Victoria where there is the control concept, it was not that concept which caught the Gorton scheme; it was a subsequent Act—the Gift Duty Act—which was used to stop the Gorton schemes in that State.

The Government cannot justify the use of this method for that purpose. The Government has not followed in this measure its progressive attitude in other fields in regard to death duty legislation. Apparently it is willing to legalize casinos and set aside nude beaches but in this death duty legislation it is harking back to the old days of the Labor Party. With the exception of schedule 1 it has turned back the clock on the death duty legislation almost a hundred years to when it was first introduced. It has introduced one of the harshest and most punitive provisions this State has ever known in respect of death duties.

In Western Australia in 1972 the Tonkin Labor Government introduced a concept of death duty in respect of controlled companies. However, in 1974 the Court government brought in an amending bill to delete the very provisions we are talking about. In his second-reading speech on that bill the Western Australia Premier, Sir Charles Court had this to say in respect to controlled companies:

> This paragraph, on the explanations given, was designed mainly to prevent the avoidance of duty by the use of private companies with what are known as "life governor" shares. However, in our view, the provisions are much wider than that and, more importantly, have caused a great deal of uncertainty as to their meaning and scope.
>
> We have made an exhaustive study of these new provisions and have received a great deal of advice and complaints from many quarters. As a result we are convinced that the law as now worded will present very difficult matters of legal interpretation. Our examination also revealed that it is possible to circumvent the provisions by other means.

We have a situation in which the experience of Victoria and Western Australia of the controlled companies concept has proved not to be the means of control that was expected.

Earlier we were told about the concept in the bill of absolute discretion to be given to the Commissioner of Stamp Duties. This is a new term and does not appear anywhere in the principal Act. It is an addition to the discretion already given to the commissioner in that he now will have absolute discretion in determining certain matters in relation to duties. The extension from "discretion" to "absolute discretion" is most undesirable.

There will be no board of review in New South Wales to which people may appeal if, in fact, absolute discretion is held by the commissioner. We shall have a situation in which people would be subject to the determination of the stamp commissioner—however benevolent he may be—although over the years that has not always been the case, I regret to say. People will be left to the whim of a senior although respected public servant and it is dangerous for him to have too much discretion. This provision must be considered very carefully. Court decisions in Western Australia have determined that there may be no difference between discretion and absolute discretion. This provision is unclear and if the draftsman of this measure intended that the Commissioner of Stamp Duties should be given much wider powers than mere discretion, we believe that the concept of absolute discretion is alien to the people of New South Wales and ought not be tolerated.

In this connection I refer to new section 103A (3) which seeks to give the commissioner absolute discretion to refund death duty that has already been paid in other States or countries. This is something that we believe is a bad principle—that the commissioner has absolute discretion to determine whether or not people are to pay duty once or twice. I cannot see any justification for giving that sort of discretion to the commissioner. Section 103A (1) provides that:

> . . . the Commissioner shall refund to the person who has paid the death duty under this Act on such personal property an amount equal to the said death duty so paid thereon to the state, territory or country in which it is situated or to the said duty so paid thereon under this Act, whichever amount is the lesser.

This bill seeks to give the commissioner absolute discretion to determine whether or not the payment of those duties ought to be refunded but this is in direct conflict with the principle already established in the principal Act.

Another feature about which we believe there should be some concern is the new section 120A which provides for a double amount of death duty to be levied as a fine in the event of a person who has been the recipient of a disposition of property failing to file a return in accordance with this proposed new section.

The Hon. D. P. Landa: The honourable member did not read that correctly; it reads "wilfully fails".

The Hon. W. L. LANGE: He may have wilfully failed but even so the penalty is double the debt. No credit whatever is given for that fine in respect of the duty to be levied. The maximum fine in respect of income tax is double but never treble the tax. In this case it is proposed to treble the amount of duty that would have been paid.

Proposed section 120A contains a provision that duty payable in respect of property under this bill shall constitute, as from the person's death, a floating charge in priority to all other charges on the New South Wales assets owned by that controlled company, subject only to the fact that it will not affect a bona fide purchaser for value. That means that anyone who is a secured creditor and who holds a registered first mortgage or other mortgage over the property would find that death duty would take precedence over his secured charge. The ramifications of that to the commercial community throughout New South Wales are horrendous. Not only would the mortgage take second place to the proposed duty, but also if a bank gave notice to a creditor that it was proposing to take action, the floating charge proposed by the commissioner would take priority over all other charges. That is quite alien to the concept of secured creditors and should not be tolerated.

The Hon. D. P. Landa: That is only where a disposition of property is made by a controlled company.

The Hon. W. L. LANGE: It does not matter how it is made; it is in respect of duty levied under this bill. It would take priority over mortgages.

The Hon. D. P. Landa: You do not want people to obey the law.

The Hon. W. L. LANGE: If anyone had effected a Gorton scheme and the creditor did not know about it, there would be a contingent liability which would not be brought to the notice of the secured creditor. That means that if people borrowed money from a bank or a solicitor on first mortgage, the lender would have to find out whether the company was a controlled company and whether it had effected a Gorton

scheme. If it had, the death duty could destroy entirely the security given, probably by way of first mortgage, to the creditor. It is quite foreign to the way in which commerce is conducted in this country. I cannot understand why the Government has included such a provision in the bill.

Proposed substituted section 137 has been taken almost exactly from section 260 of the Income Tax Act. It seeks to negate any scheme that has the effect of reducing death duty. The proposed new section provides:

> (1) Every contract, agreement or arrangement made or entered into orally or in writing whether on, before or after the date of assent to the Stamp Duties (Amendment) Act, 1976, so far as it has or purports to have the purpose or effect of in any way directly or indirectly—
>
> (a) relieving any person from liability to pay any death duty or file any statement;
>
> (b) defeating, evading or avoiding any death duty or liability imposed on any person by this Act;
>
> (c) affecting the value of any property which forms or is deemed to form part of the dutiable estate of any person under this Act; or
>
> (d) preventing the operation of Part IV or V in any respect,
>
> shall be absolutely void for the purposes of this Act or in regard to any proceedings under this Act but without prejudice to such validity as it may have in any other respect or for any other purpose.

I predict that that will provide the legal profession with at least five years' litigation. In fact, section 260 is so uncertain and there have been so many conflicting decisions on it that for the Government to contemplate replacing the existing provision with the new section is wrong. In any event, there is no certainty that section 260 of the Income Tax Act—which relates, of course, to income tax—can be used to replace a death duty provision. There is no certainty at all that it is automatic that what applies in the sphere of income tax would straight away apply to death duty.

The Minister made a special reference to retrospectivity. That should be considered carefully because throughout the community there have been hundreds, probably thousands, of schemes of some sort introduced to reduce the incidence of death duty. People have sought advice and taken the quite responsible step of minimizing the effect of death duty. The application of retrospectivity would destroy entirely the arrangements that these people have made. Not only would the schemes be destroyed, but under new section 137 these people may well be prevented from taking further action to prevent their being locked into their situation. Under new section 137 any contract, agreement or arrangement made or entered into orally or in writing on, before or after the date of this bill, would be entirely negatived in respect of death duty. Thousands of families in this State who have taken some responsible step to reduce the incidence of probate would be prevented from taking any further steps to get themselves out of the situation that they are in. The Government ought to consider seriously the desirability of that sort of legislation.

I should like to refer to what the Government claims is its mandate in respect of this bill. The Premier in his policy speech made little reference to this bill. At page 17 he said:

> As I proposed in January we will abolish death duties on estates for the surviving spouse.

That was the limit of the reference made to this bill by the former Leader of the Opposition. In schedule 1 the Premier proposes to honour that promise, and we applaud

him for it. But the implementation of schedule 2 was the subject of no announcement whatsoever prior to the elections. In fact, the Premier said in his speech at page 49:

> We shall come into Government without any hidden commitments, without secret undertakings or obligations.

Schedule 2 is a negation of what the Premier said. The only press statement that I can find regarding the matter was in the ***Sydney Morning Herald*** of 20th April when he said that the burden of death duties should be shared equally and that devices used to avoid duty should be stopped by amendments to the law. He did not say that, on coming to government, his party would introduce such widespread legislation as this, not only to stop the loopholes but also to interfere with the commercial life of this State.

This bill is regressive, oppressive and punitive. With the exception of schedule 1, the Government cannot be proud of it. It turns back the clock on death duty at least 100 years. It does nothing for the welfare or development of the State. The Government ought to take it away and redraft it.

The Hon. M. F. **WILLIS** [4.9]: The House is indebted to the Hon. W. L. Lange for his incisive exposure of the ramifications of this bill. In my view it is an absolute abomination. It is one of the worst and potentially most oppressive pieces of legislation that has come into this Chamber since I became a member. It is an abomination as a tax law, in its social consequences and in its economic effect on the State of New South Wales.

I applaud the Government for introducing legislation in accordance with its mandate to eliminate death duty on property passing between spouses, in accordance with schedule 1. However, it has no mandate for what it proposes to do by schedule 2. I refer to the comfortable words of the present Premier in his policy speech of 12th April last when he said, "We will abolish death duties on estates for the surviving spouse." The Liberal-Country parties announced the same proposal approximately a month before, but I think we said that we would introduce it in the first budget. Mr Wran had no alternative if he was trying to win the election. However, I shall give him the benefit of acknowledging that he was genuine on the matter. As I said, we applaud and support completely the introduction of schedule 1, which provides for the abolition of death duty on estates passing between spouses.

In his policy speech Mr Wran said also, "No individual or group in the community shall be discriminated against." He did not say in his policy speech that he would bring into this Parliament a measure containing the provisions that are included in schedule 2 of this bill, which discriminate retrospectively and viciously, in an economic and social manner, against the group of people in the community who, by establishing schemes, quite within the law, to avoid death duties, sought to achieve the very thing that the Government is now purporting to do by schedule 1, for which it has a mandate.

Not only do the provisions of the bill seek to penalize the prudent people who have done those things, but it says in effect: "Because you have been so presumptuous as to plan your estate and affairs to avoid death duty within the limits of the law as you knew it, you will not now be allowed to undo those schemes without incurring penalty. You will not thereby be able to have the benefits of schedule 1. You must suffer for your presumption." To my mind, that is the most discriminatory piece of legislation that has ever come into this Parliament.

The House could be forgiven if it gained the impression that the task of drafting this bill was handed to a very competent and bureaucratic zealot, who believes passionately in the socialist version of St Paul's declaration to the Corinthians, that

man comes into the world with nothing and, by hook or by crook, the Commissioner of Stamp Duties will ensure that he goes out of it with nothing, no matter what he does to thwart the commissioner.

The Hon. D. P. Landa: We do not mind if he takes it with him, so long as it is equal.

The Hon. M. F. WILLIS: The commissioner will not even let him put it in the coffin with him. The powers and discretions vested by this bill in the cominissioner are the most sweeping we have seen in this House. In effect, they are an irresponsible abdication by the Government, in favour of a bureaucratic taxgatherer, of the parliamentary sovereignty that rightly vests in this Parliament.

I shall comment on some of the obnoxious features of the legislation. Its many obnoxious features, which appear in schedule 2, are certainly not in the interests of the community, and must not be allowed to pass on to the statute book. I shall comment first on defects of schedule 1. The Minister has made some comments on this, and I hope that he will accept our amendments, which will ensure absolutely and without doubt that notional estate also is included in the total exemption that is to be given to surviving spouses.

The most obnoxious part of the bill is the retrospective operation against schemes that have been legally set up in the past. I abhor the Government's attempt in this regard. Over the years people have sought, quite within the limits of the law, to mitigate the amount of death duty that would be payable on their estates when they die. The bill places no limit on how far back such a scheme is to be rendered void and of no effect. Surely every citizen in a democratic society is entitled, within the limits of the existing law, so to order his affairs that he may thereby legally avoid such death duty or taxes as he can. If he cannot do that, why are there any laws at all? If he cannot do that, the laws would be meaningless. This means that, at the whim of the Legislature at any time, the laws by which people operate might vanish. That is what would happen as a result of schedule 2 of the bill.

If that is to be the intention of the legislation, citizens will be left absolutely to the discretion of the taxgatherer in regard to how much of their estates will be taxed for death duty. There is no purpose in a law if it has no certainty, because a law that is uncertain is a bad law.

Proposed new section 137 is probably the best example in a long time of a bad law. If there is any certainty whatsoever in the revenue laws, a citizen must always have a right, with the law as he sees it when he does it, to mitigate the incidence of taxes and duties on his assets at death. But the bill goes further, for proposed new section 137 says that, if a person has a scheme, which has been set up no matter how long ago in accordance with the law, and if after the bill goes through he attempts to undo it for the purpose of lessening his estate duties, his attempts to undo that scheme are utterly void. In other words, a person becomes locked in and, no matter what he does, he will have to pay dearly for the actions he previously took in accordance with the law. The Government says, "You will be penalized." Much as I dislike it, I have no objection at all to the Government's legislating to provide that schemes such as Gorton's and Robertson's, established from this day onwards, will have no effect. But I take the most strenuous exception to the Government's seeking to provide that anything that has been set up hitherto also is to be void and of no effect, as if the law as it was then never existed.

The Hon. D. P. Landa: The law constantly changes and affects people.

The Hon. M. F. WILLIS: If the Hon. D. P. Landa bears with me he will see how the law will affect people. I have referred to the absolute discretion of the commissioner. The Minister commented that the purpose of the absolute discretion was to ensure that by the grace and good discretion of the commissioner the provisions of the legislation would not be implemented harshly.

The Hon. D. P. Landa: The Hon. M. F. Willis should speak properly of the commissioner.

The Hon. M. F. WILLIS: I do not speak improperly of him. I have the greatest respect for the Commissioner for Stamp Duties, who is one of the most efficient tax-gathering public servants in our community. That is his job and he does it most efficiently. The commissioner does it strictly according to the letter of his legislation. He never varies. I am not criticizing him for doing his job properly. I am not being personal or adversely critical of the commissioner or his staff. I have no doubt in my mind that the commissioner, vested with these absolute discretions, will always exercise them to the benefit of the Treasury.

The Hon. D. P. Landa: That h a shameful allegation.

The Hon. M. F. WILLIS: It is not a shameful allegation.

The Hon. D. P. Landa: I shall show the Hon. M. F. Willis in a moment how shameful it is.

The Hon. M. F. WILLIS: I do not say that the commissioner is wrong in doing that. He is a taxgatherer. That is his job. If the Legislature and the community want to invest the commissioner with that kind of power, they must expect that he will use that power in favour of the Treasury. If the commissioner is given the power, I shall be the last one to blame him for using it. What I am saying is that it is the responsibility of the Parliament, as representatives of the people in the community, to ensure that this kind of power is not vested in a government official but is specifically spelt out by the Legislature which makes the law.

Any member of the legal profession who has practised in this field will have heard of requisitions. Let me give an example of how diligently the commissioner does his work within the ambit of the law as it stands and how honourable members must expect him to do it within the ambit of this law, if it is passed. I am quoting from an actual file relating to an estate where the total value is below the current exemption limit on the estate passing to a widow. It is below $60,000. The widow's husband was killed when he took a holiday to see his family in Lebanon. Regrettably the car he was driving was ambushed by terrorists and he and his car were incinerated. The wife was back here in Australia with two small children. The total value of the estate was under $60,000. The commissioner--quite properly—has to assure himself that the value of the estate is less than $60,000 and that the widow is not keeping back something that might put the estate over $60,000 and thereby require payment of duty. I remind honourable members that it is not a big estate these days that tots up to $60,000. This is the kind of inquiry that the commissioner makes:

> How and when was the joint tenancy of the property referred to in schedule 1 created?

That was the matrimonial home.

> If by purchase, state purchase price. How was it financed? What were the respective amounts contributed by the deceased and the other party? If the widow and two other people, namely the brother and sister-in-law, claim to have contributed, what was the source of that contribution?

It goes on:

> Was the deceased self-employed? If so, what were the details of the business he conducted. Explain the non-disclosure of assets appropriate to such a business and his interest therein. Explain the absence of household furniture, personal effects or a bank account. Did he have any income tax credits?

Many of these questions are quite easy to answer but I invite honourable members to listen to them as I go along.

The Hon. D. P. Landa: Which ones is the honourable member objeoting to?

The Hon. M. F. WILLIS: I am not objecting to any of them. The questions continue:

> Were any moneys due to him by his employer for wages, value of holiday or long service leave? Was he a member of a superannuation fund? Produce the rules. In relation to the money received from a certain property valued at $29,000, when were the proceeds received? Produce any agreement disposing of that asset. Was it for full consideration?

Then, relating to the stock of the business:

> When were the proceeds received? What was the date of sale of the asset? Give details of the sale price. How was the sale price determined? What was the nature of the business? Produce the contract under which it was sold. How did the deceased use such sums?

I do not know how we would find that out. Were they reflected in his detailed estate? It goes on to ask whether his widow received $34,000 net from the sale of assets or interests related to the business over a period of three years prior to the date of death and asks for a declaration of the full assets of the deceased and how he used this money in respect of living expenses. Then we come to the daddy of them all: "Give full details of exactly how the deceased expended the amount. Give details of any large expenditures. Advise the methods by which he disposed of this money."

The Hon. D. P. Landa: What is wrong with that?

The Hon. M. F. WILLIS: How could that be found out?

The Hon. D. P. Landa: Have you never heard of cheque books?

The Hon. M. F. WILLIS: He did not have a cheque book. The next question is: Whether he had any cash in hand when he died—and it goes on in this fashion. I have quoted this in relation to a small estate with a value of less than $60,000, not because I criticize the commissioner for asking the questions but to demonstrate to the House how zealous—and I do not criticize him for being zealous—the commissioner and his officers are in pursuing, under the statute, what they believe to be the just revenue entitlements of the State.

Does this House have any reason whatever for believing that the same *modus operandi* would not be used by the commissioner and his department under the absolute discretion proposed to be conferred by this bill? If the House believes that, then with all respect to all honourable members I say that we are having ourselves on.

The Hon. Lloyd Lange mentioned the absolute floating charge on company assets. That is the most incredible implication of this measure. Every small businessman who operates his business through a family company of some sort or other, whenever he goes to the bank to get a loan and produces the deeds of his company property from

which re runs his business, will be required by the bank to show what are the contingent liabilities for his death duties. Surely it is one of the privileges of a client of a bank not to tell the manager everything but under this provision he will have to tell the bank everything otherwise he will not get a loan. Probably he will have to provide a statutory declaration containing that information.

The Hon. Sir John Fuller adverted to the economic consequences that will follow if this measure passes into law. He referred to a border town from which something like 200 local companies would do a flit across the border. I should think that something like 100,000 would flit from all parts of the State.

Already in my relatively small practice I have had clients who have retired, with assets in the vicinity of $150,000 to $200,000, who wish to spend a couple of months during winter on the Gold Coast because their bones are a little creaky in the winter climate of Sydney. They go up there and play bowls. Their assets are all invested in New South Wales and yield them a reasonably comfortable income in their retirement but they have consulted me about selling up everything they have here, transferring to Queensland, buying themselves a house on the Gold Coast and buying only a one-bedroom unit in Sydney so that they may come back here during the summer months—but not for too long, in case their domicile is challenged when they die—and visit their family. I have had half a dozen cases like that in my small practice and there are thousands of solicitors being asked the same question by dozens of people in the same category. Thousands of these people have their assets tied up in family companies—described by the bill as controlled companies. They will realize on those assets, move them to Queensland and set up in the sun of the Gold Coast. If this is looking to the economic welfare of New South Wales, then heaven help us in the next couple of years that we have to endure the present Government regime.

The Hon. D. P. Landa: They can take only their liquid assets up there.

The Hon. M. F. WILLIS: The Government which the Minister represents is doing everything it can to encourage people to liquidate all their assets and take them away from New South Wales.

The Hon. D. P. Landa: That does not destroy their assets. Someone else buys them.

The Hon. M. F. WILLIS: It does not destroy their assets but it deprives this State of the value of the operation of those assets. Most of these persons live on income derived from those assets which are invested here by way of mortgages, or loans in the water board, and things such as that.

The Government said that schedule 2 is designed to lop the tall poppies who have been indulging in dreadful schemes to deprive this State of its lawful revenue when they die. I suggest to the Government that although it may seek to lop the tall poppies. they have the wealth and, since time immemorial, they have had the best advice and will do everything possible to get themselves out of their obligations somehow. I have no doubt whatever that the ingenuity of the profession to which both the Minister and I belong, in tandem with the profession represented by the Hon. Lloyd Lange, will find this measure a bonanza equivalent to what Medibank has been to the doctors.

The Hon. H. J. A. Sullivan: The honourable member would not want that, of course?

The Hon. M. F. WILLIS: No. Actually I am crazy to be standing up here opposing the bill. There is no doubt in my mind that the Government will have no hope in the world of extracting large amounts of revenue from the so-called tall poppies.

All it will do is inconvenience, penalize, victimize and discriminate against the small, modestly successful man who has an estate of something between $150,000 and $200,000.

The Hon. D. P. Landa: And does not want to pay duty on it.

The Hon. M. F. WILLIS: He does not want to pay duty on it. If that person had not put his money into a family company—which, under this bill will be termed a controlled company—but left it all to his widow, no duty would be payable. Let us say that he was a prudent man who, ten years ago, went to his solicitor or accountant and said: "My business is successful; it is building up nicely; I have a wife and two children, one aged 10 and the other 12, but I am a little worried about death duties, what are my rights?" When he saw the rates of death duty doubtless he asked, "What can I do?" He was properly advised in accordance with the law. Now he is stuck with what he has done and cannot undo it.

The Hon. D. P. Landa: The honourable member is on uncertain ground.

The Hon. M. F. WILLIS: I am not on uncertain ground; I have never been on more certain ground.

The Hon. D. P. Landa: Why not compare like with like? Why not take the case of an estate worth $150,000 where he does not try to avoid death duties and another of $150,000 where he does?

The Hon. M. F. WILLIS: As part of the scheme he did not leave it all to his widow in a company structure but hived some of it off to his children. He organized it in accordance with the law and he is now stuck with it. Under this legislation he cannot get out of it. He cannot even dismantle the scheme and then give it all to his wife.

The Hon. D. P. Landa: Nonsense!

The Hon. M. F. WILLIS: It is not nonsense and I ask the Minister to read section 137 carefully. If the Minister's technical advisers do not believe it means that then they are at odds with some of the most eminent legal brains in Sydney. I know to which opinion I should give the greatest credence. In respect of the relatively small man, $200,000 is not a big estate these days.

The Hon. D. P. Landa: It puts him in the top 5 per cent in the country.

The Hon. M. F. WILLIS: Let us say a man came back from the war and bought a house at Maroubra or Cronulla. It does not have to be a palatial home these days to be worth $70,000. Then let us say he is a small businessman—there are thousands of them throughout the suburbs of Sydney—and in building up his business he bought his own little shop, as his business premises. That today even if it has a 20-foot frontage in a suburb like Caringbah, Carlingford or Blacktown, would be worth $70,000 to $80,000. We are now up to $140,000 or $150,000.

The Hon. T. S. McKay: What about the contents of his house?

The Hon. M. F. WILLIS: That is peanuts, compared to his home and business. Then let us say he is a prudent man and has some kind of life insurance. These days an insurance policy worth $30,000 or $40,000 is not considered to be a large one. Now we are getting up to $180,000 or $190,000. This does not include his car and his furniture. He probably also has about $10,000 worth of shares.

The Hon. D. P. Landa: This is the average bloke, is it?

The Hon. M. F. WILLIS: There are thousands of them in this State, and they are the salt of the earth—men upon whom the business community depends. There are some on the benches behind the Minister. They have been hard-working, prudent businessmen.

The Hon. D. P. Landa: That is getting into personalities.

The Hon. M. F. WILLIS: I am not getting into personalities. I believe that the Government of which the Minister is a member is the better for having some of them. Now our imaginary hypothetical man, because he was prudent, is to be denied the benefit of the action he took--completely within the law. If the Government wants to say: "There will be no more schemes from now on; they will all become void," that is all right by me, but I take the most vigorous objection to putting all these people at a tremendous disadvantage. Let us suppose that the man's son has taken over the small business; the man has probably reached the stage where, when he dies, his widow will not receive any assets at all. Possibly he has an arrangement through the company whereby she has a comfortable income during her widowhood. Under this legislation it will be presumed that that scheme never existed. The man's estate will be taxed as if he were leaving an estate of $200,000 to his children, the lineal issue.

Under the present death duty legislation—and bear in mind that his widow is dependent on this estate for her income—that family will have to find nearly $84,000 in death duty. If that does not cause hardship to thousands of prudent, hardworking families in this State, I do not know what does. To pay that $84,000 his wife will either have to sell the house that she has lived in with her husband, or the son will have to sell the business, the freehold, and possibly they will have to use a large slab of the insurance policy and the shares, the interest on which was to form part of her income during her widowhood. If that is not discriminating against a specific class in our society, I do not know what is. That class happens to be the backbone of commercial enterprise of this State. It is a most shameful thing for this Government to introduce on the one hand the bounty of schedule 1 and on the other to set out purposely to discriminate and put at a social disadvantage and great economic hardship a section of the community which in my estimate would number thousands.

In conclusion, I repeat my opening remarks. Schedule 2, which forms the bulk of the bill is an absolute social, economic and tax-gathering abomination.

The Hon. ANNE PRESS [4.44]: As I happen to belong to the category of persons who will be most affected by this bill I should like to tell the House why I object to it. I am a farmer's wife. When my children were young I worked extremely hard to build up an estate of which my son could have the advantage. Working hard in the country means a great deal. I can tell the House of hundreds of farmers in my area who will be adversely affected by this legislation.

As a farmer's wife my day started at 5 o'clock in the morning and finished at 10 o'clock at night. On many occasions we depended upon income from the turkeys I reared, the pigs I bred and other work I did on the farm, which included sewing bags. The seasons were so poor that we could not afford to hire labour and I wheeled my baby up the paddock and put him in the shade of a tree while I sewed bags after my husband had finished stripping the grain. I have gone out at 4 a.m. and stooked wheat with my husband so that we might get ahead.

Eventually we managed to buy a farm. My husband and my son bought a farm. The hard work continued year in and year out until it became a viable proposition. Today I am in the position where I suppose I can look forward to another twenty-two or twenty-three years of happy life, if I live as long as my mother did.

My son, who is a shareholder in the property, has three sons who are entitled to benefit from my hard work. Now, suppose my husband leaves his share of the property to me. Where will it go from me? It must go to one of my grandchildren and the estate will be taxed. If my husband decides to sell out his share of the property to my son or to one of his grandchildren, under the provisions of this bill they would be taxed. To my way of thinking this bill is a bonanza for the taxgatherer, and I do not care who he is. It is built around him; it will ensure that the State destroys the majority of farmers in this State.

Mr President, you know as well as I do that it takes years and years to build up a family farm. Indeed, the Hon. Amelia Rygate is in exactly the same position, for her family farm will be taxed out of existence when the time comes for her estate to be allotted. For that reason I believe that we could not possibly tolerate this bill. I understand that today this House was threatened if we decided to amend the bill. If it were the last thing this House did, it would be to its everlasting credit if it denied the Government the opportunity to carry out what is meant by this measure. I speak to the House as a working farmer's wife, and as a woman who has worked from the day she was married until today. I still work; indeed, at half past nine the other night I was ferrying dieseline around the countryside. My son was working on the property and wanted a tank load of dieseline taken to where he was working. My husband was not available, so I went out and did it for him. I have always worked. We all work on that family farm to make it successful. However, because of this bill all that work is going to be denied to my family.

I have gone through the measure carefully, and I have noted that schedule 2 deprives the widow of everything she gets in schedule 1. It is so unclear that it is impossible to understand it. It brings in so many elements that it is like a fishing net. One honourable member described it as a sprat to catch a mackerel. That is precisely what it is. At the beginning of schedule 2 the bill cuts out everything and everybody. There is no way that a person can avoid the State destroying his assets for which he and all his family have worked. As a farmer's wife, I believe that I must say something on behalf of all the women who have worked hard, side by side with me, taking their eggs to town, selling their turkeys, and doing all the things a farmer's wife has to do. Of course, they loved doing it, and they gained the love and respect of their husbands and families because they did it. But now they are going to be deprived of what they have helped to build. I believe that is wicked and cruel.

Apart from schedule 1, the bill should be thrown under the table. We were better off as we were. According to their policy speech, the Liberal-Country parties were going to exempt the family farm. That was something we needed more than anything else. People think that all farmers live in big houses, drive round in Mercedes Benz cars, live in the lap of luxury, and are always coming down to Sydney for the show and the races. If some people do that, they are in the minority, but they have worked very hard for that privilege.

I have marked the bill here and there at the points upon which I should like to comment. However, these points have been dealt with well indeed by other honourable members. The point is that we cannot tolerate the provisions that are included in schedule 2 and, unless the bill is amended so that we can get some comfort from it, it will put many of us in our graves.

The Hon. P. S. M. PHILIPS [4.55]: The Government is to be applauded for amending the Stamp Duties Act by adding new subsection (6) to section 101D, to provide that no death duty shall be chargeable when property passes on intestacy or by will to the widower or widow of the deceased. The amendment will undoubtedly tend to reduce the avoidance of New South Wales stamp duty by movement to other

States. This is clearly a most important objective. This was the general thrust of the first part of the speech delivered today by the Hon. Sir John Fuller, and it will be the general theme of part of my remarks.

However, I suggest that the exemption to which I have referred does not quite go far enough, and that the general objective should be further extended, by the second schedule being amended to exempt from duty transfers from nominees — trustees — to beneficial owners. This is the position in Victoria by virtue of the third schedule of the Victorian Act, section IV, under the heading of exemptions; and in the Australian Capital Territory by virtue of the Stamp Act, No. 48 of 1969, second schedule. items 24 to 30 inclusive. Similarly, transfers to beneficiaries under a will are subject to stamp duty in New South Wales but are specifically exempted in Victoria and the Australian Capital Territory. Although the stamp duty involved in the abovementioned matters is nominal, the duty has the effect of driving business out of New South Wales into Victoria, because the duty ***per se*** makes it prohibitive to use computer systems for processing transactions in New South Wales.

By contrast, in Victoria for some years a system has been in existence whereby a nominee — the trustee — company can process transfers without incurring Victorian stamp duty. It is likely that this system will extend considerably in Victoria, thereby making it more attractive for investors to direct their investments to that State. Because of the nominee — trustee — service now existing in Victoria, it will become more attractive for companies to establish their central share registries in that State. They will have fewer documents to process and fewer share certificates to issue, thereby reducing the costs of running registries.

Surely there is no justification for levying a stamp duty, however nominal, on an instrument of transfer where there is no change of beneficial owner, particularly when the net result of doing so is to lose to the State a proportion of over $2 million in transaction duty collected by agents on behalf of the public.

I urge the Minister to have this matter examined. As things stand there is clearly a communications gap between the Government and the interests involved — this is evidenced by the Minister's remarks at page 3011 of ***Hansard*** of 17th November, 1976, which is likely to cost the Government a significant sum in lost revenue. In response to what the Minister is now asking me, it goes without saying that I should be only too pleased to close this communication gap at any time if requested by the Minister to do so. I now turn from that observation to the iniquitous proposed new section 137. Section 137 of the principal Act reads:

> (1) Where a deceased person makes a disposition of property (whether before or after the passing of this Act) with intent to evade the payment of duty under this Act or any Act hereby repealed, such property shall be deemed to form part of his dutiable estate.
>
> (2) Any disposition of property which is made to take effect upon the death of the deceased shall be deemed to have been made with such intent as aforesaid.

An adequate body of case law has built up on the old section 137. I shall read from D. ***G.*** Hill's ***Stamp, Death, Estate and Gift Duties*** under the heading "Intent to evade the payment of duty".

> In order that a disposition be held to be made "with intent to evade the payment of duty" within this section it is necessary that evidence of some device or contrivance for that purpose be given. See ***Simms*** v. ***Registrar of Probates,*** [1900] ***A.C.*** 323. The section extends to and strikes at colourable transactions only.

The Hon. P. S. M. Philips]

That, I suggest, is where it should be aimed. The authority continues:

> See Payne v. *The* King, [1902] A.C. 552. It would seem that it is the duty of the Commissioner to establish mala fides or evasion (see Watson v. Commissioner for Stamps (1908), 8 S.R. (N.S.W.) 398) and that the question whether the disposition is made "with intent to evade payment of duty" is a "pure question of fact" for the Court to determine (Watson's case, supra).

Then there is a reference to section 124 which throws the burden of proof on to the taxpayer:

> In Watson's case, supra, Darley C.J. said at 403: ". . . where there is an absolute disposition, whether voluntary or otherwise, of property, a complete parting with the whole jus disponendi, then unless it can be shown that there is some agreement, written or verbal, or some secret trust or arrangement capable of being enforced in a Court of law or equity, the disposition cannot be said to be made mala fide or with intent to evade the duty."

The general thrust of the current section 137 is equitable and fair and deals with the problem to which the Government has been directing its attention. The proposed new, iniquitous section 137 goes much too far. On the question of definition of where intent to evade duty is inferred, there is a reference to in re *Coburn*. It was held in that case that there was intent to evade duty when an old and invalid father, shortly before his death, transferred property worth £540 to his daughter with whom he had lived gratuitously for four years. In broad terms I suggest the Government is using a sledge-hammer approach. The remedy proposed is out of all proportion to the ill that the Government is seeking to cure.

The proposed amendment to section 100, to change the definition of "Disposition of property", reads as follows:

> (a) a conveyance, transfer, assignment, mortgage, delivery, payment or other alienation of property whether at law or in equity;
>
> (b) the creation of any trust;
>
> (c) the release, discharge, surrender, forfeiture or abandonment at law or in equity of any debt, contract or chose in action, or of any right, power, estate or interest in or over any property;
>
> (d) the exercise of a general power of appointment in favour of any person other than the donee of the power;
>
> (e) an agreement, obligation, engagement, arrangement, contract or transaction entered into by a person, an act done or effected or omitted to be done or effected by a person, or a forbearance by a person to exercise a right or power, as a result of which—
>
> (i) the value of the total property of that person is, whether during his lifetime or upon or in consequence of his death, directly or indirectly diminished; and
>
> (ii) the value of the total property of some other person is directly or indirectly increased,
>
> whether or not at the request or subject to the acquiescence or on behalf of a person;
>
> (f) the distribution by a controlled company of a dividend upon shares held in that company or the payment of interest on money advanced to that company, whether or not the dividend or interest is paid to the shareholder or creditor entitled thereto, accumulated or invested

on his behalf, credited in his name to a loan account or fund however designated or otherwise held or dealt with on his behalf or as he may permit or direct; or

(g) the allotment or issue of shares in or debentures of a controlled company, the grant of rights to a person in or in relation to a controlled company or the grant of an option to take up unissued shares in a controlled company or to acquire rights in or in relation to a controlled company,

whether or not effected by an instrument in writing, by a person alone or by two or more persons or by associated operations and whether effected on, before or after the date of assent to the Stamp Duties (Amendment) Act, 1976.

In the principal legislation there was a somewhat shorter definition. There is case law on it which I suggest satisfied the requirement of the State's taxgatherer. I remind honourable members that the present definition of disposition of property is:

(a) any conveyance, transfer, assignment, mortgage, delivery, payment, or other alienation of property whether at law or in equity;

Honourable members will agree that that is quite clear. It continues:

(b) the creation of any trust;

(c) the release, discharge, surrender, forfeiture, or abandonment at law or in equity of any debt, contract, or chose in action, or of any right, power, estate, or interest in or over any property;

(d) the exercise of a general power of appointment in favour of any person other than the donee of the power;

(e) any transaction entered into by any person with intent thereby to diminish directly or indirectly the value of his own estate and to increase the value of the estate of any other person,

whether in any of the cases referred to in the foregoing paragraphs the disposition is effected with or without an instrument in writing.

My point in relation to the proposed amendment to that part of section 100 is that the former definition was clear. The case law, happily—because the definition was clear—is extremely limited. One of my colleagues on this side of the House pointed out that once section 100 is amended in the way proposed—but much more the iniquitous clause 137—we shall be involved in litigation for many years to come.

The Hon. L. A. SOLOMONS [5.11]: The bill seeks to amend the Stamp Duties Act in several ways which have been adverted to by previous speakers. I propose to limit my contribution to the debate to problems that so far have not been discussed. It is clear that the purpose of schedule 1 is to have what one might call the humane basis for avoiding the necessity of paying death duty on estates passing between husband and wife. Although members on the Government side have expressed a great deal of self-congratulation, I wonder whether they realize how small and insignificant the proposed concession is. In the long run, rather than the short term, the concession will result in the collection of more duty than was collected prior to the granting of the so-called concession. I am not against the concession but I suggest that if the House looks closely at it and appreciates its effect, it will understand that, as the Hon. Anne Press said, it is little more than a sprat to catch a mackerel.

The so-called concessions in many cases will lead to an increase in duty. To illustrate this I shall state a theoretical case. If a husband and wife each have assets worth $100,000 and they leave those assets directly to their children, whether they are

infants or not, the death duty payable in respect of each estate would be approximately $15,500. The duty payable on the death of both husband and wife would (therefore be $31,000. If, however, taking advantage of this concession the husband leaves his estate to his wife and pre-deceases her, and she dies, the husband's estate would not be dutiable but the amount payable on the wife's estate of $200,000 would be $53,600. That is a significant increase in the total amount of duty payable.

It has always been a trite statement that the commissioner can afford to wait. One must see even this concession in its correct form. There can be no doubt that the effect of the so-called concession is only to delay the collection of greater amounts of duty by aggregating the joint property of husband and wife in due course, when the latter of them dies.

As the Hon. W. L. Lange pointed out, the operation of a sliding scale will take care that the State receives its benefit in due course. Other speakers, as well as the Minister in his second-reading speech, referred to the fact that even in so simple a matter as this the intention of the Government was not made clear in the original measure which was introduced in another place. Even with a concept so simple as this it will be necessary for an amendment by either the Government or the Opposition to make certain that the intention of the Government in regard to the so-called concession is effected.

I trust that in due course honourable members will consider an amendment, from either the Government or the Opposition, to widen the exemption to take in all forms of so-called notional property. Honourable members who are not expert in this field may wonder what notional property is. It consists of property that is deemed to be property by the operation of law. For example, if a person gives a gift of anything within three years of the date of his death, within that period of three years that property, although given, still forms part of the estate of the person who gave it. This has been extended in several ways by provisions in the Stamp Duties Act. Previous speakers have referred to this and I will not weary the House with a further discussion on it.

The real problem in this legislation is schedule 2. At this juncture I throw out a general challenge to honourable members on the Government side, by asking them whether they have read the bill word for word and, if so, whether they understand it. I should be glad if some of them said they had done so, because I do not believe that all the members on the Government side can seriously say they have read this bill and understand it. It is a measure of unparalleled complexity and great difficulty. Lawyers---even the most distinguished of them—have had the greatest difficulty in understanding or interpreting the principal Act.

Perhaps the reason for this complexity is best demonstrated by the fact that, following the Minister's second-reading speech, only one speech on the bill has been made on the Government side. That was by the Deputy Leader of the Government, who did not speak on the technical matters in the bill. So difficult is this legislation that perhaps it is worth while at this juncture to say something about its history. I refer basically not to those parts of the legislation for which the Government may have some form of mandate. I have no objection if the Government wishes to cut away the Gorton scheme—it bears the responsibility for that. Some words have been said by some government leaders which indicated that this was the Government's intention. I have no objection to the cutting away of the so-called McPherson-Robertson scheme, if the Government is willing to take responsibility for that. I have no basic concern with the disposal of the options, extension of the Bray scheme, if this is the Government's intention.

The Government is entitled to govern and to do these things if it sees fit, within the mandate which it says it has. But what concerns me is the breadth of the mechanism to do these things which the Government has introduced into this bill in association with existing legislation. Basically the real concern is with the concept of controlled companies and what flows from that. The controlled company concept was invented by the British, like much of the financial legislation which has been adopted by the treasuries in Australia, albeit often many years later. It has taken us something like thirty-six years to find this controlled companies legislation and to introduce it.

This legislation was introduced in Great Britain by the Finance Act of 1940, at a time when the British nation was in severe peril. At that time the British Treasury was seeking a method to squeeze every possible penny out of the tax possibilities for the country's very survival. It is interesting that this legislation, which was the subject of many judicial decisions, was described by no less a person than Lord Simon, Lord Chancellor of England, the senior law officer of the entire British legal system, as being of unrivalled complexity and difficulty. If it was of unrivalled complexity and difficulty to the Lord Chancellor of England, what chance have we to give serious and proper consideration to this bill, which is being bulldozed through this House? Having been guillotined after an hour and a half's debate in another place, it has come into this House with an aura of the sword of Damocles hanging over our heads.

I do not pretend to be an expert on the full ramifications of this proposed legislation. I would have liked much longer time to consider it. I have lived with it for the past approximately sixty hours and I have given a great deal of consideration to propositions for amendments. Also, I have considered what I believe to be an analysis of the effect of the bill. But, like Lord Simon, I found it of unrivalled complexity and difficulty. I propose to try to outline to the House some of these complexities and difficulties and some of the matters which flow from the bill, as I read it. However, I regret that it can be only my opinion. I have no doubt that other lawyers on both sides of the House will have different views. Also, I have no doubt that in due course the courts will be called upon on many occasions to determine the meaning of the bill.

Before I start to analyse the problems concerned in the question of controlled companies and their likely effect, I shall deal with what was said both in interplay and in the debate about alterations to the law as it affects the exercise of the discretion of the Commissioner for Stamp Duties. One can only wonder why the discretion of the commissioner has been widened to the extent that it prevents an appeal or a review: that is, in effect, precisely what the wording of the bill does wherever that discretion has been widened.

The discretion of the Commissioner for Stamp Duties was considered by the High Court in Pearce's case. In that case it was made perfectly clear that the courts of the land could consider the commissioner's exercise of his discretion. It was held that if, in the view of a court, he had wrongly exercised that discretion, the court could grant relief to those persons who were so affected. Why should that be changed? Why should it be changed so that the commissioner's discretion is not subject to a proper review by the courts? I have no part of any criticism of the commissioner. I do not want to join in any of the interplay that passed between the Minister and some honourable members in this regard. Like some other honourable members, I believe that the commissioner has a task to perform, and that he has performed that task with integrity, honesty and sincerity. Perhaps from time to time I have felt that he has exercised his discretion wrongly, but that has probably concerned a matter in which I had a personal interest. On many occasions I have seen the commissioner exercise his discretion humanely and for the benefit of the taxpayer. However, there can be no doubt that on occasions that discretion must be reviewed—and the courts have from time to time reviewed that discretion.

The Hon. L. A. Solomons]

I should like the Minister, in reply, to tell the House why he would seek to take away—by giving an absolute power of discretion to the commissioner—a right of appeal which a citizen should properly have. So wide is the power given to the commissioner that he must become exceedingly powerful in this State. For example, he would have power to determine whether shares are generally available for purchase by the public, and therefore, whether a corporation is to be deemed to be one in which the public are substantially interested. He would have power to determine whether property of which there is a deemed disposal is situated inside or outside New South Wales. The commissioner would have power to determine whether there has been a full consideration in respect of a disposition of property; whether payment of interest was made in the ordinary course of a commercial transaction, and whether it would be just and reasonable that the appropriate subsection should apply thereto. In all these matters his word would be final. If he had made a mistake for any reason, there is no way in which a court could adjudicate and alter the effect of his decision. The commissioner would have the power to determine in what proportion the deemed disposition of the net value of the assets of a company by a controller is made to associated persons other than himself—and so on. I do not propose to weary the House with a full account of these discretions. I ask the Minister to explain in reply why the Government has felt it necessary to go outside the practice which has existed in this country for years. That practice has enabled the commissioner to exercise his discretion—and in the execution of his difficult duties the commissioner should have a proper discretion. Moreover, that discretion from time to time should be subject to the appropriate judicial review.

I now turn to what to me is the most disturbing aspect of the proposed legislation. I refer to the enormous width of the provisions dealing with controlled companies and the ramifications of the application of these provisions. I feel that these ramifications are so widespread that they were not intended by the draftsman of the legislation. The question I should like to ask the Minister is, what is a controlled company under the terms of this measure? Broadly speaking, it is defined in section **100** as being a company which is under the control of not more than five persons, is not a listed corporation—that is, not a corporation listed on the stock exchange—and not a corporation in which the public is substantially interested.

Whether a company is a company in which the public is substantially interested is a matter that is left to the commissioner's absolute discretion. Proposed new subsection **100** (2) (c) sets out the circumstances in which a corporation shall be deemed to be under the control of not more than five persons. Summarized generally, these circumstances are, first, that if five or fewer persons together possess the majority of the voting power in relation to any matter at a general meeting of the corporation, it is so deemed. Further, if five or fewer persons together exercise direct or indirect control of any of the affairs of the corporation and cannot be deprived of that control by the exercise of the voting power of any other person or persons at the general meeting of the corporation, it is to be so deemed.

If five or fewer persons together possess shares in the corporation the paid up amount of which is more than one half of the paid up share capital of the corporation, it is to be so deemed. Even if five or fewer persons together possess a right which would, if the whole of the income of the corporation were in fact distributed to the members, entitle them to receive more than one half of the amount so distributed, it is so deemed. **If** five or fewer persons would, if the corporation were wound up, be entitled to receive more than one half of the net assets of the corporation available for distribution, it is so deemed. Section **102** (d) requires related persons to be treated as one, and the term "related persons" is given an extremely wide meaning in section **103.**

Many, if not most, of the normal commercial companies established to carry on some business or enterprise will fall within the definition of controlled company. If Mr and Mrs X, Mr and Mrs Y and Mr and Mrs Z, who are not related in any way or connected otherwise than through their own business interests, decide to form a company to carry on the business of manufacturing, butchering, plumbing, carpentry or whatever it may be, the company will be a controlled company. It is not clear whether the references in the definition of member, or possession of shares, is to the persons on the register or the beneficial owner of the shares, or both. Again, are the persons referred to in paragraph (iv) or (v) of proposed section 100 (2) (c) the persons on the register or the ultimate beneficial owners of the shares? These are matters on which the bill is silent.

The widest meaning is given to the definition of associate in a controlled company. Under section 100 an associate is defined to include any director or member of a controlled company, a person who has voting rights in relation to any meeting of a controlled company, and, more significantly, a person who by the constitution of the company possesses either alone or together with any other person or persons either a right to appoint or remove any director of that company, or a right to veto or vary a decision of any meeting of that company. This term is expanded further by including an associate of another controlled company, which in turn is one of five or fewer persons controlling the first controlled company, or is related to the first controlling company. It is obvious that the range of persons falling within the definition is far-reaching indeed.

May I give the House another example that will demonstrate what I am saying? Suppose a company called XYZ Holdings Pty Limited is parent company of three operating companies—XYZ Manufacturing Pty Limited, XYZ Sales Pty Limited and XYZ Leasing Pty Limited. XYZ Holdings is owned by five families but nevertheless falls within the definition of controlled company. It is company policy to appoint outside directors to the boards of operating subsidiaries. Each director of each subsidiary will be an associate in relation to every company in the group. The shareholders in XYZ Holdings Pty Limited will be associates not only in relation to their own company but also in relation to each operating company, and any minority shareholder in one of the operating companies would be an associate not only in relation to that company but also in relation to every single company in the group.

In my view this is so wide as to be probably an accidental inclusion by the draftsman into the net interest in the matter. By section 100 (16) the payment of interest by a controlled company is a disposition of property deemed to have been made by the associates of that company, and by section 100 (17) it is deemed to be disposition of property made without consideration except to the extent that the commissioner is satisfied that payment of the interest was made in the course of a normal commercial transaction and that it would not be just and reasonable that section 100 (16) applied. This exception would not seem to assist the outside director of a controlled company when the company made interest payments admittedly not in the course of a normal commercial transaction—and possibly against the wishes of the outside director—but no benefit of any kind accrued by reason of such payment to the outside director or any person related to him.

Again, I suggest that such width, put in for greater caution by the draftsman, has caught persons other than those that were intended to be affected. This means that every director and every member of a controlled company that pays interest or of any controlled company that controls or is related to the controlled company paying interest is deemed to have made a disposition of property without consideration—and thus a gift—unless the commissioner determines to the contrary. Outside directors must therefore rely on an exercise by the commissioner of limited discretion—which may not be

available in that circumstance in any event—to have interest payments made by a controlled company of which he is a director or by any related controlled company, not included, at least as to part, in his dutiable estate under section 102 (2) (d), if at any time within the three years before his death he was an associate of the company.

I could go on and deal at some length with further problems that arise out of the payment of interest. I could deal further with problems arising out of the payment of dividends or allotment of shares of controlled companies. I could deal with problems associated with the definition of a controlled company and the associated problems of the exercise of the discretion. I could point to numerous examples in this legislation which I am certain the draftsman has simply taken from the precedent of the English bill and transposed, irrespective of their effectiveness, into the present legislation. The result in my submission will be in due course nothing short of financial chaos. Perhaps I should finish lest this House be wearied of trying to understand a measure of excessive technical difficulty. I return to what I said concerning the words of Lord Simon—"of unrivalled complexity and difficulty"—by giving some further examples of how this legislation will operate, in my view. In so doing I hope I shall point out to honourable members some of the difficulties and dangers that I see inherent in schedule 2.

Suppose there are a large number of relatives who are shareholders in a private company. That frequently happens, when father starts a proprietary company and for tax reasons brings in his sons and in due course they and their children are involved in the disposition of the estate. How often we find that the single operating family company business finds itself with a large number of relatives who become shareholders upon the death of the original shareholders.

The Hon. D. P. Landa: Are not these arguments against death duty and not against the exclusion of avoidance schemes?

The Hon. L. A. SOLOMONS: I do not agree with the Minister. He should ask me about Gorton, or Bray. As a result of Neische's case, on which the Minister has not touched, there will be a great transfer interstate of industries. If the Minister does not think it can be done with property remaining in New South Wales, he should go to Neische's case again and see how it happened in Queensland. This is a different matter. The Government is attacking the commercial fabric upon which the business of New South Wales is organized.

The Hon. D. P. Landa: Tax avoidance.

The Hon. L. A. SOLOMONS: No, the operation of businesses and proprietary companies.

The Hon. D. P. Landa: That is rubbish.

The Hon. L. A. SOLOMONS: If the Minister thinks that is rubbish he should listen to an example that I shall give. If he considers that I am wrong or that the example I shall give is wrong he will have an opportunity in reply to say so. I instance the case of a large number of relatives who are shareholders of a private company that is taken over by a public company, which greatly expands the activities of the private company and increases the value of its net assets. If ten members of the family die within three years after the disposition of the shares, unless the commissioner exercises his discretion in favour of the estate of the deceased persons, the net value of the assets of the company will be included in the estate of each of the ten persons. The administrators of the estates of the deceased persons will be unable to recover the duty from the company or from anybody else. Was that the intention of the draftsmen of the bill?

This is a second example: X is a director and/or shareholder of a company that is owned and controlled by non-residents. It is not a listed company. Upon the death of X, although he has no beneficial interest outside his own individual shareholding, the net assets of the company will be included in his dutiable estate—unless the commissioner otherwise determines. Can it be said that that was intended by the draftsmen of the bill? If I am wrong then honourable members on the Government side of the House can inform me in what way I am wrong. The third example is of a controlled company that has made payments of interest to persons who are members of the company, for example, and who have deposited moneys with it. The payments could have been made also to a related company. The commissioner may not be satisfied that the payment of interest was made in the ordinary course of a normal commercial transaction and that it would not be just and reasonable in the circumstances that subsection **(16)** should apply. The company is taken over by a public company within three years of the payment of the interest. One or more of the shareholders of the company dies either before or after the acquisition of the shares by the public company. The amount of the interest is included in the dutiable estate of each of the shareholders and it is also a charge on the assets of the company, and can be recovered by the commissioner in an action against the company.

In an inter-family transaction, if one follows what the High Court said in McGain's case which enabled the commissioner quite properly to exercise his discretion against the shareholder, all he would have to do would be to pay that interest at **1** per cent less than the ruling rate of interest at the date the payment was made. I could give many other examples, but I do not propose to weary the House with them. I have demonstrated the enormous ramifications of schedule 2 to the ordinary private business fabric in New South Wales. In the little time available to me yesterday I tried to obtain some idea of the number of proprietary companies that might fall within the ambit of controlled companies. I understand it would be some hundreds of thousands of companies. If the Government considers that these are all wealthy people or bloated capitalists, how wrong it is. They are small people who for their own purposes feel that they must incorporate. They include plumbers, bakers, carpenters and builders.

The Hon. Kathleen Anderson: There are not too many doctors.

The Hon. L. A. SOLOMONS: If the honourable member would care to look around she would find that there would be members on the Government side of the House who are directors of companies. I beg of the Government to look at this matter. It does not need the controlled company provisions of the legislation to achieve its object. Within the fabric of the bill there is a way to dispose of the Gorton trick, the McPherson–Robertson trick, the Bray options trick and others without using a sledgehammer to crack open the proprietary company structure of business of New South Wales. I warn the Government that if it is able to achieve its aim it will drive such a large part of the capital and business initiative of New South Wales to other States that it will make its actions so counterproductive as to represent in due course a heavy and severe penalty.

A further comment I wish to make is about the width of the application of new section **137** which, as another honourable member has said, is taken roughly from the provisions of section 260 of the Income Tax Act. I am concerned about a practical problem. I have read the new section **137** carefully and tried to look at it in a way that I think a court would look at it. If we assume that the bill is passed, that the schemes that I have mentioned, particularly the Gorton scheme, are found to be illegal, and that the Government succeeds in defeating any retrospectivity amendments that may be proposed in the House or that such amendments are not passed, it is as clear as crystal to me that persons who, having ordered their affairs with complete legality

following decisions of New South Wales courts and of the High Court, seek to unscramble those situations, will then find themselves by the mere act of unscrambling caught within the effect of new section 137. Why is the net cast? What they will then be doing is seeking to avoid the effect of schedule 2, and in seeking to avoid that schedule the documents entered into will fall within the ambit of new section 137. Again, I do not believe that is what the draftsmen intended.

If I were to give a word of advice to the Government—and I doubt whether it would listen—I should suggest that that particular objection could be overcome if it were made perfectly clear that the application of proposed section 137 would not apply to schemes entered into before a particular date or before the commencement of the bill in the form in which it is finally passed. I can only reflect what one honourable member said previously: no one wishes to prevent the Government, if it sees fit, from making the spouse-to-spouse concession, subject to my warning people, as I did earlier, that it is only an illusory concession in any case.

The Hon. D. P. Landa: Not to the spouse.

The Hon. L. A. SOLOMONS: Of course it is. In the long run it means that the State will get more duty by the aggregation of estates. Make no mistake: it has always been said that the commissioner can wait, and he always does.

The Hon. D. P. Landa: It will affect the children, but it certainly benefits the spouse.

The Hon. L. A. SOLOMONS: It benefits only the first spouse. I have already made my submission to the House on that concession. I intimate further to the Minister that if he were serious in saying that this was not a sprat to catch a mackerel he would accept the fact that there is no mandate at present in the Government to do this controlled company bit. This has never been suggested by the Minister or by anybody on the Government side of the House before the bill was introduced. I advise the Minister to look at the Western Australian experience where, perhaps through being a little closer to England, the Government adopted it a little earlier and found it had such a devastating effect on Western Australian commerce that it had to be disposed of. Western Australia was glad to see it go.

Finally, I say to the Minister that, if he is sincere in wishing to have the effect of schedule 1, he will no doubt agree to the amendments that will be proposed in due course from this side of the House—amendments which will allow him to close up the schemes that concern him in schedule 2, but will not allow him and his Government, perhaps operating with the socialistic mindedness they have often expressed, particularly when in Opposition, to crush small business in New South Wales and deal it a blow from which it will probably never recover.

The Hon. W. G. KEIGHLEY [5.51]: Coming as I do and living as I do among a considerable farming community, the bulk of whom I suppose would be closely concerned with the type of scheme and company with which this Act deals, I feel it would be highly remiss of me if I did not add my views, even though some of them will duplicate what has been said by some of my colleagues. The aspect of the bill which most farming communities would find most objectionable is its retrospectivity. In this regard I refer to the comments of Lord Diplock in *IRC* v. Joiner, which was reported in 1975 1 W.L.R., page 1701, at pages 1714 and 1715. His Lordship said:

> My Lords, the very nature and purpose of enacted law give rise to an inference or presumption that unless the language of a statute clearly indicates the contrary any changes that it makes in the law as it existed previously were not intended to have retrospective effect upon transactions that were carried

> out before the new law came into effect. The growing practice of back-dating the effect of statutes to the date of the first minatory announcement by the executive government of its intention to promote legislation to change the law does not weaken the presumption against retroactivity where there is no express provision in a statute to that effect. Rather it serves to confirm that the reason for the presumption is that in a civilized society which acknowledges the rule of law individual members of that society are entitled to know when they embark upon a course of conduct what the legal consequences of their doing so will be, so that they may regulate their conduct accordingly.

I should like the Government after this debate to take particular note of that section of the extract from the report. His Lordship went on to say:

> But where the language of a statute that is already in force is ambiguous (in the sense explained above) as to whether or not the contemplated conduct falls within its terms, it fails to provide the means of knowing what the legal consequences of the conduct will be. All that it does provide is material for guessing which way the ambiguity will be resolved at some future date by a court of justice—ultimately by your Lordship's House.

Of course, the last remark might not apply here, but I feel sure that my legal colleagues on this side of the House will state that, if these provisions come to be the law in New South Wales, on many occasions the ambiguities will be argued in the courts of justice.

The origins of the bill—which two of my colleagues have already mentioned, and there are circumstances that tend to confirm it—seem to be that it arose as the brainchild of a particular bureaucrat who moved from one department to another. It seems that because of the bill's complexity the Treasurer was unable in another place to deal with it. As a result, the bill was handled by the Attorney-General, who in the debate I witnessed did not appear to know too much about it. Despite that, the time since the introduction of the bill to the public gaze must be scarcely a week. In those circumstances, how on earth can a parliament determine what in that bill will be valid?

As my colleagues have already said, the lawyers and accountants of Sydney consider that nothing will really be known about the effects of the bill until the expiration of possibly the next five years. Despite this, the Cabinet has apparently abrogated the total responsibility for this change of law to a bureaucrat who is not subject to parliamentary scrutiny. What is the public service attitude towards the drafting of legislation of this kind? How can such drafting be done by a public servant who has no contact with Parliament and the things that go on in life? I refer to the person who leads an ivory-tower existence, whose income comes in annually at increasing rates, and whose retirement benefits are provided and increase with inflation. How can a person with that sort of mind possibly come to terms with the hard, cold, commercial world that the people in business in Sydney, and the farmers in the country have to contend with? How can such a person take into account the international trends of markets, let alone the seasons? How can that man be expected to deal with a law that will closely affect the people who have to put up with all the vagaries of seasons, trade and commerce that I have mentioned?

What is this money for? It has been suggested that the money to be raised under schedule 2 is to compensate for the loss of tax that would have been raised had the provisions of schedule 1 not applied. For some time I have adverted to the cost of Government and this subject appears to be relevant to the circumstances I am discussing. About eighteen months ago there were about 65 000 public servants in this State

employed under the Public Service Act, compared with 29 000 similar people in Victoria. I do not know the present Victorian number, but I was advised today that there are now 73 000 public servants in New South Wales.

The Hon. D. P. Landa: Most of them were taken on when the coalition Government was in office.

The Hon. W. G. KEIGHLEY: I have previously adverted to the number of public servants, irrespective of what government was in office. I ask whether it is not time to consider whether the departments that employ the 73 000 public servants——

The Hon. D. P. Landa: On a point of order. I submit that the honourable member is not addressing himself to the bill. The question of whether there should be fewer public servants in New South Wales is not a matter properly to be debated within the ambit of a bill that deals with death duties.

The Hon. T. S. McKay: On the point of order. In my opinion the net result of the passage of the bill——

The Hon. D. P. Landa: On a point of order, Mr President. The Hon. T. S. McKay surely must address himself to whether the Hon. W. G. Keighley is speaking inside or outside the standing orders, and not to whether the bill will affect the number of public servants in this State.

The PRESIDENT: I have not heard enough from the Hon. T. S. McKay to know whether he is addressing himself to the point of order.

The Hon. T. S. McKay: Mr President, the point I make is that in so many revenue bills the net result is that the tax is often absorbed by the administrative cost of collecting the tax. This is brought about by the number of public servants who are involved in its collection. Therefore, I submit that the Hon. W. G. Keighley is perfectly in order when he deals with this aspect of the matter.

The Hon. W. G. KEIGHLEY: It seems to me that in a tax-raising measure the tax is raised for the administration of government, which is a matter affecting the number of public servants in its employ. For instance, if the strength of the public service is reduced, the need for the raising of a tax is also reduced.

The PRESIDENT: As I understand it, the honourable member is purporting to give a reason why this measure—at least schedule 2 of it—has been inoluded to raise extra revenue to pay for extra public servants.

The Hon. W. G. Keighley: That is so.

The PRESIDENT: The honourable member should limit his discussion on that point, otherwise he may tend to get away from discussing the bill.

The Hon. W. G. KEIGHLEY: I understand that the object of schedule 2 is to compensate for the loss of revenue under schedule 1. That being so, I am showing that there are areas in which the Government, without the necessity for schedule 2, could reduce its costs of operation, and therefore schedule 2 is quite unnecessary.

The Hon. D. P. Landa: That is not the object of schedule 2.

The Hon. W. G. KEIGHLEY: If that is not the object of schedule 2, perhaps the Minister ought to say what the object is. I challenge the Government. I can show it how to raise the funds. It can do so by eliminating inefficiency in all Government departments. I say in conclusion that this measure is totally out of touch with reality at a time when a rising State—I refer to Queensland—is, through legislation,

making itself attractive to Australians generally, not merely to New South Welshmen. It is entirely out of touch with reality to introduce this monstrosity of a bill, as it has been properly described, which can only have the effect of exacerbating the problem—and it is a problem that death duties are causing to many business people, small and not so small, and many farmers. It seems to be a total abrogation by Cabinet of its duty to the people of this State.

The Hoa. Sir ASHER JOEL [6.1]: I move:

That this debate be now adjourned until next sitting day.

I move this motion not without a little hesitation because of the implications of moving such a motion on a subject of such grave consequence to the State of New South Wales. It is because it is of great consequence to the State of New South Wales, as has been so clearly revealed by my colleagues, that I have moved this motion. Members who have grave doubts about the effectiveness of this legislation and its draftsmanship, have been compelled to move for more than three and a half hours through a labryrinthrine maze of legal terminology. It is necessary for members, particularly laymen like myself and others who propose to speak on the measure, if we may, at a later date, to get further legal advice in order to understand and also analyse some of the interjections pertinent to the debate which were additional to the contribution made by the Minister in his second-reading speech.

The Hon. D. P. Landa: Do you want time to do that?

The Hon. Sir ASHER JOEL: I have prepared a speech of some length. Had it not been for interjections and further observations made by the honourable member, the somewhat emotive address of the Hon. Edna S. Roper, and the interjections of some of my colleagues opposite, I should have been willing to go on. I believe, in the light of further reasoning and cold analysis, that we should have the opportunity in the next few days to study these additional matters and resume this debate on the next sitting day so that we may well understand the real implications of a measure that has been in our hands for less than a week.

The Hon. D. P. Landa: Are you speaking for yourself or for the Opposition?

The Hon. Sir ASHER JOEL: I am moving the adjournment of the debate under Standing Order 58, which gives the right to any member of the House to take this action if he deems it necessary. I am using the word deem in the sense in which I shall be using it when the debate is resumed, as I hope it will be, next sitting day.

The Hon D. P. LANDA (Vice-President of the Executive Council and Minister for Planning and Environment) [6.6]: The Hon. Sir Asher Joel says that as a result of interjections, the emotive speech by the Deputy Leader of the Government——

The Hon Sir Asher Joel: I did not say that. I said emotional.

The Hon D. P. LANDA: You said the somewhat emotive speech of the Deputy Leader of the Government in this House. The Hon. Sir Asher Joel said that for those reasons he wanted this debate to be adjourned. I requested by way of interjection whether he was making a personal request or speaking on behalf of the Opposition, but he chose not to answer that question. I ask the Leader of the Opposition in this Chamber, through you, Mr President, whether the Hon. Sir Asher Joel is making this request on behalf of the Opposition in this Chamber. Let the ***Hansard*** record show that following my request, after a period in which he would have been able to reply to it, the Hon. Sir John Fuller is not willing to intimate to the Government whether the Hon. Sir Asher Joel speaks for and on behalf of the Opposition in this Chamber.

The Hon. Sir John Fuller: I will be speaking on this motion in a moment.

The Hon. D. P. LANDA: I ask the Hon. Sir John Fuller again, so that I shall have an opportunity to speak on this motion—this tactic—whether the Hon. Sir Asher Joel speaks on behalf of the Opposition in this Chamber. Let the record show again that the Hon. Sir John Fuller was not willing to advise the Government so that the Government leader in this House could speak to the motion.

The Hon. Sir John Fuller: On a point of order. The standing orders stipulate that no member should interject while another is speaking. Mr President, over a long period you have been trying to stop interjections. With your permission, I intend to speak later on the motion moved by the Hon. Sir Asher Joel. With your permission, I do not intend in any way to interrupt the Leader of the Government. During my speech I will answer the question he addressed to me.

The Hon. D. P. Landa: On the point of order. The Hon. Sir John Fuller has not raised any point of order. What is his point of order?

The PRESIDENT: Really there is no point of order. The Minister asked him to answer a question, to speak while he was sitting down. The honourable member is quite justified in refusing to answer the question, especially as he says that he intends to speak to the motion when the Minister has finished.

The Hon. D. P. LANDA: I take it that the Hon. Sir John Fuller does not wish to intimate by way of a simple yes or no, at a stage when the Leader of the Government can deal with the matter, whether the Hon. Sir Asher Joel speaks for and on behalf of the Opposition in this Chamber. As it is clear the Leader of the Opposition does not wish to resolve any doubt that may exist in this Chamber about the reason why the Hon. Sir Asher Joel has moved this motion, I shall take two courses. The first is related to the fact that the Hon. Sir Asher Joel is in some trouble personally in his capacity to debate this bill as he has some personal problem in preparing and delivering his remarks on it. I shall put this aside because the Hon. Sir Asher Joel ——

The Hon. L. A. Solomons: On a point of order. The Leader of the Government is not speaking to the motion. He is seeking to canvass some totally unrelated situation with reference to the Hon. Sir Asher Joel. His remarks have no relevance whatever to the matter before the House.

The PRESIDENT: Order! Any honourable member is entitled to move a motion that a debate be adjourned at any time. There is no reason why the Minister should question the motives of an honourable member who moves such a motion. The fact is that the Hon. Sir Asher Joel has moved the motion.

The Hon. D. P. LANDA: Mr President, I respect your ruling, as I respect the traditions of the House and the traditions of the Parliament. I have no doubt that this is nothing short of a shabby manoeuvre. It is one of the most shabby manoeuvres——

The Hon. Sir Asher Joel: On a point of order. The Minister is imputing motives to me and using such words as shabby in relation to my action in moving a motion for the debate to be adjourned. I take personal objection to it.

The PRESIDENT: The Minister is out of order in using such expressions.

The Hon. D. P. LANDA: If the Hon. Sir Asher Joel takes personal exception, I withdraw any personal reflection upon him. I had wished to speak on the point of order before you ruled on it, Mr President. I do not resile one inch from describing this motion—if it is moved on behalf of the Opposition, and if it is to be supported,

as I know it will be, by the Hon. Sir John Fuller—as a shabby tactic by the Opposition. When the Hon. Sir Asher Joel made his way to the table to move the motion, the Hon. W. J. Holt, the Deputy Leader of the Opposition in this Chamber, was sitting on the front of the Opposition benches. Is he party to this tactic?

The Hon. L. A. Solomons: On a point of order. It is the same point of order I took earlier and upon which you ruled, Mr President. The Leader of the Government is seeking to canvass the right of a member to move the adjournment of the debate. With respect, that is contrary to your ruling.

The Hon. D. P. Landa: On the point of order. The Hon. L. A. Solomons has raised no question on the standing orders whatsoever. I have not canvassed the right of any member to move this motion. I have not disputed the right of any member to move the motion at all. It was quite erroneous and wrongful of the honourable member, and he knows it to be so, to suggest that I have in any way reflected upon the right of any member to move the motion. I ask him to withdraw the submission that I reflected on a member's right to do so.

The PRESIDENT: Order! The Minister is entitled to oppose a motion for the adjournment of the debate. For that matter, he is entitled to oppose any motion. At the same time there is a limit beyond which he should not go in questioning the motives of the mover of the motion. The Minister should limit himself to simply opposing the motion.

The Hon. D. P. LANDA: To put the matter at rest, I shall make my position perfectly clear: I do not reflect upon the Hon. Sir Asher Joel or upon the Hon. L. A. Solomons; I do not reflect upon the Hon. W. G. Keighley, the Hon. P. S. M. Philips, the Hon. W. L. Lange or the Hon. Sir John Fuller, as individuals. I reflect—and I do not apologize for doing so—on the Opposition parties for moving this motion, as is my right, and I stand by that right. Let me talk about the motion. To say that the Government of the day has brought forward this bill for passage through the Chamber in the democratic way——

The Hon. Sir John Fuller: How much time was allowed for debate on the bill in another place?

The Hon. D. P. LANDA: The Hon. Sir John Fuller has found his voice to interject. He could not find it before, when I issued an invitation to him to do so. When asked to give a simple yes or no reply to my query the Leader of the Opposition was struck dumb but when it comes to a snide, smart little aside his known eloquence in the Chamber is not at all lacking. The Government has a duty to bring legislation before the Parliament and to have it passed through in the proper way. In opposing the motion I say at the outset that the Hon. Sir John Fuller, who says that he will speak on the motion, sat in this Chamber earlier today—let the record show it—behind myself as Leader of the Government. When he asked how long the bill would take he was told that the Government would allow everyone an opportunity to speak and the matter could be dealt with in this Chamber for as long as it took to get it through and that every member would have an opportunity to speak on it.

I assume that the Hon. Sir John Fuller was speaking on behalf of the Opposition when he said that he was willing for the House to sit until midnight. It is now shortly after 6 p.m. and the Legislative Council of New South Wales has sat for the exhaustive period of three and a half hours. The Leader of the Opposition spoke on the measure and did not raise any question about adjourning the debate. The Hon. W. L. Lange spoke on it and did not raise any question of an adjournment of the debate. Similarly the Hon. P. S. M. Philips, the Hon. L. A. Solomons, and the Hon. W. G. Keighley

spoke on the bill and did not raise any question of adjournment. However, the Hon. Sir Asher Joel is doing what I am sure will soon be confirmed by the Hon. Sir John Fuller—attempting to truncate the normal passage of what is a money bill through this Chamber. He wants to delay it, to interfere with the legislative function of the Government and to take the most serious step the Opposition has taken during the short period this Labor Government has been in office in New South Wales. He seeks to take out of the hands of the Government the right to have the carriage of its business through the House determined by the Government. As far as I can ascertain, a motion like the one that the Hon. Sir Asher Joel has moved and is about to be supported, I have no doubt, by the Opposition—despite the silence of the Leader of the Opposition—has been moved on only one former occasion, again by a Liberal-Country party dominated Legislative Council in defiance of a Labor government. Only once before has such disgraceful action been perpetrated in this Parliament. On that occasion, 27th February, 1963, Colonel the Hon. H. J. R. Clayton voiced the sentiments of the Liberal-Country party Opposition. The relevant motion had been moved during a debate on the Co-operation (Amendment) Bill. The honourable member said:

> I am very embarrased by the motion for the adjournment of the debate, because I consider that it is not proper, when the Government has decided on the order of business, for us to dictate to the Government and that we should be forced to vote on the motion.

Let us be clear about one thing. Such a motion as has been moved by the Hon. Sir Asher Joel has been thought by a previous leader of the Liberal-Country party not to be proper. This improper action by the Opposition will be demonstrated to the public to be so the moment we leave this Chamber, if not before.

I accepted in good faith what the Leader of the Opposition told me, namely that the bill would be debated till midnight this evening. Though I acceded to his request by saying that the Government would be willing to sit till midnight, the Opposition in this Chamber has now moved for the adjournment of the debate. The integrity of the Leader of the Opposition is in doubt. The Hon. Anne Press shakes her head, but I assure her that shortly before 3 p.m., after the tabling of papers, the Leader of the Opposition spoke to me as Leader of the Government in this House, as is done to ensure civilized proceedings. He said that the Opposition would sit till midnight to dispose of the bill. Those were his words—sit till midnight.

Now, after not one whisper of any need for an adjournment from the three main Opposition speakers, including the Leader of the Opposition, after not one request by any honourable member from the Opposition benches, after the Government had agreed to allow members of the Opposition an untrammelled right to debate, not impeded by Government contributions, with speaker after speaker putting his views, the Opposition has changed its mind. I assure the Hon. Sir John Fuller, Leader of the Opposition parties in this House, that I extend to him and his supporters the right to speak on the measure untrammelled until midnight, so that they may put their views to the Parliament of New South Wales and to move their amendments.

I should like the House to be clear about what it is doing. If there is a division on the motion and it is carried, honourable members should understand the position. In three days the government of the day will have been thrice defeated by the Opposition's superiority of numbers. The ultimate consequence of that threefold defeat will be for Opposition members to take charge of the House, to take charge of the business of the government of the day, to remove an age-old convention in this Chamber, and, in today's proceedings, to gag debate on this bill. Let it be clear what the House and its individual members are doing. Let us not hide under any

doctrines of party loyalty or party solidarity. Let the matter be decided on the basis of individual responsibility and a consideration of what we as individual legislators are doing, what each and every one of us will be doing to the institution of government in New South Wales by taking from the government of the day control of the business of the House. The Government is making available to members of the Opposition the fullest possible opportunity of putting their viewpoint. The opportunity is unfettered. The ultimate irony is that Opposition speakers are starting to be repetitious, to dwell on the same clauses, and to raise no new matter, despite the objections that may or may not exist to the measure in the community at large.

The Hon. Sir Asher Joel has not said that he is competent to speak on behalf of any organization that says it has not had time to consider the bill. He does not come forward and say that in the view of the Taxpayers' Association the Government should be truncated in its ability to carry the legislation through the House. He comes here with no mandate except, I assume, that of the Leader of the Opposition, the Hon. Sir John Fuller, to move a motion in order to defeat the Government in this House this evening. This is a most serious and wilful step, a step that I can only assume by its tardiness and lateness in the debate is a rash and reckless tactic. If the point involved were substantial, surely it would have been raised by the Hon. Sir John Fuller. If it were substantial, surely the Hon. Sir John Fuller in the normal display of courtesies between party leaders in this Chamber would have contacted me earlier and told me about it. But no, he came to me steeled with resolve, sat on a chair next to me, and said that he would sit till midnight.

The Hon. D. D. Freeman groans. I can only assume that the groan is in anticipation of the slow, dutiful march in obedience to his party Whip across the Chamber to support a disgraceful motion that strikes at the heart of democratic government in this State. Let me make it crystal clear. This is no idle motion. The Government sees this tactic, and will convey its view to the people of New South Wales, as a usurpation by the Opposition parties in this Chamber of the right and duty of the Government to take and keep control of the business before the Parliament and to have the passage of its legislation through this House. When we came back after the May elections and had our first debate the Hon. Sir John Fuller, the Hon. W. J. Holt, and many other Opposition speakers, including the Hon. L. A. Solomons on behalf of the Country Party, for which he has been a spokesman on many occasions, contributed to the sanctimonious mouthings in which it was said that the members of the Opposition would not be obstructive, would not take control of this Chamber, and would remain adherents to the democratic process.

I am offering this challenge to the Opposition. What they do is done, if it be done, in defiance of the Government. There can be no deal, no compromise, no meeting half way. The Government is willing to sit on this evening and debate the bill for as long as the Opposition wishes, as I said when acceding to the request made earlier in the night by the Hon. Sir John Fuller. The Government opposes the motion and will divide the House on it if necessary. If the Government is defeated on the motion, the responsibility will be with the Opposition, which will be shown to the people of New South Wales to be really what it is.

The Hon. Sir JOHN FULLER (Leader of the Opposition) [6.31]: The Leader of the Government has made great play on the discussions that I had with him earlier. I believe that in the workings of this Chamber over the months that the House has been sitting we, as respective leaders, have worked together well. When we had our first discussion today it was my understanding that the Minister would not press for a decision on this bill this afternoon. That was my first understanding from the discussion we had. Later the Minister informed me that he wished to have a decision

on this matter tonight. That was the way I understood the discussions we had. I repeated each of those discussions to the Hon. W. J. Holt and to the Opposition Whip.

Later some members of the Opposition expressed real concern at the need to secure more expert legal advice on the implications of this legislation and possibly more legal advice on the drafting of certain amendments that the Opposition believes should be moved for the sake of New South Wales to safeguard the people of this State and more so the State itself from the economic and business point of view. One of the honourable members concerned was the Hon. Sir Asher Joel, who was scheduled to speak at great length cn the measure. He approached me and expressed the view that he would like an opportunity to consult further with accountants and legal experts on the implications of what he was to say. He expressed concern over what difficulties might be encountered in the Committee stage. Other honourable members expressed a similar view.

The Hon. Sir Asher Joel approached the Leader of the Government on behalf of the Opposition to see whether the Hon. D. P. Landa was willing to adjourn the debate at something like the normal sitting time, or perhaps two hours later, in general terms so that we might continue the discussion next sitting day after members of the Opposition had had a reasonable opportunity to seek further advice in this regard. I ask honourable members to bear in mind that adequate opportunity for debate on this bill was not permitted in another place. Despite that, this evening we have heard the Minister talk about democracy. I am sorry if there was a misunderstanding in the personal discussions that we had. I am sincerely certain in my mind that we came to the understanding I have outlined.

The Hon. D. P. Landa: What?

The Hon Sir JOHN FULLER: First of all you said you were not seeking to have a determination of the matter this evening and secondly, some time later, you informed me that you wished to complete it. At that stage I said: "All right. We are willing to sit on."

The Hon. D. P. Landa: Yes, until midnight.

The Won Sir JOHN FULLER: Yes, until midnight if necessary. However, after that members of the Opposition expressed their concern to me. If the measure were dealt with now honourable members who might wish to speak to this measure will not get an opportunity to obtain the legal and accountancy advice that they believe is necessary for a proper determination of a matter of this sort. With regard to the sitting hours of this House, it is normal for the Government on Thursday afternoon when the House meets at 4.30 p.m. to move the adjournment at 6.30 p.m. The accepted sitting hours of this Chamber on Thursday, when the 2.30 p.m. start was adopted, were from something like 2.30 p.m. to some time between 4.30 p.m. and 5.30 p.m. That has been normal procedure. I wonder why the Government wishes to get away from normal procedure on this occasion? Is it because the Government does not want the Opposition to obtain additional information?

I remind honourable members that even if the House did put this bill through tonight, the message back to another place could not be delivered until Tuesday of next week. The Opposition is quite willing to go ahead with the debate and complete it on Tuesday. My colleagues and I are not seeking in any way to reduce the sitting hours of the House. We are willing to sit and deal with any other Government business necessary tonight and we will sit to any time the Minister may wish in order to complete it. There is no thought in our minds that we should not sit on to complete

Government business. But there is in our minds the thought that in order to get its own way the Government is trying to bulldoze this legislation through the Parliament under the threat of abolition or reform of the upper House.

This adjournment is sought to give members of the Opposition adequate time to consider properly a bill that arrived in this Chamber at only 2.30 p.m. today. In that short time members were asked to digest the bill and contribute almost immediately to a debate on a measure that has critical economic implications affecting every individual in this State and every business undertaking in New South Wales.

The Hon. D. P. Landa: You did not say that in your second-reading speech. What is this, a brainwave you have got in the past half hour?

The Hon. Sir JOHN FULLER: I am sincerely sorry that the Leader of the Government is starting to show signs of making unfortunate implications and suggestions.

The Hon. D. P. Landa: Come on.

The Hon. Sir JOHN FULLER: He is making nasty interjections. I am pleased that honourable members on this side of the House do not refer to others in nasty terms and do not make comments of that type. If the Minister wants to be nasty, he might be taking the cue from his leader, the Premier, who today in another place referred to the geriatrics up here. I shall not refer further to those sort of comments. The Opposition supports the motion for an adjournment of this debate only until next sitting day in the belief that what it is doing is safeguarding the rights of the citizens of New South Wales. The Opposition is not willing to back down from that decision, despite the threats that may emanate from the Government.

The Hon. W. J. HOLT (Deputy Leader of the Opposition) [6.40]: In view of the comments made by the Minister in referring to the reasons given for the Opposition's approach to this motion, one might be forgiven for feeling that this is the first time in this House that an Opposition has endeavoured to amend legislation, or alternatively has taken the initiative of forcing a vote. I ask honourable members to consider carefully what the Opposition is endeavouring to do. It is Thursday afternoon and this bill was introduced into the House at only 2.30 p.m. today. This is probably one of the most important measures that the House will see for some years and it will have a far-reaching effect upon the business and general communities of the State.

The Government wants to force the measure through on Thursday night. The Opposition wishes to study the measure over the weekend and, accordingly, seeks to adjourn further debate on the matter until next Tuesday. As I understand the situation, the Legislative Assembly is not sitting at this moment and will not resume until Tuesday. If the Legislative Council were to deal with this measure on Tuesday next, as is suggested, and it is returned to the Legislative Assembly on the same day, the Government will pass the bill on Tuesday next in any event. I defy the Minister to give an acceptable reply to that assertion.

The Minister is saying—and I defy him to deny it—that, for its own reasons, the Government wants to bulldoze this measure through this afternoon, on the very day on which it has been introduced, instead of giving the Opposition the opportunity of considering and debating it. I ask the Minister to answer this question specifically: if the House completes the debate on this bill next Tuesday will it not go back to the Legislative Assembly on that day? The Minister is putting to the House that he wants the bill passed tonight so that it will g0 back to the Legislative Assembly three or four hours earlier—or however long it takes us to deal with it next Tuesday. That is the only issue here, despite all the comments the Minister has made about the Opposition

wanting to defeat the Government. If the Government has nothing to fear from this proposed legislation, why is it so determined to get it back to the Legislative Assembly four hours before it would reach there if it were given proper consideration here? It should be borne in mind that the bill was introduced into the Chamber only today.

The Minister described the Opposition's attitude—I think I quote him correctly —as a serious and wilful step and he said that the matter will be put to the people of New South Wales. He has accused the Opposition of defeating the Government by amending three bills--or having them stood over. I propose to refer shortly to what happened in 1965, shortly after the Liberal-Country party coalition Government came to office. The Local Government (Elections) Amendment Bill was introduced into the Legislative Council on 27th Ootober, 1965—a time when the Hon. Sir Heotor Clayton would have been a member of this House. At that time the Hon. A. D. Bridges moved the second reading of that bill and the Leader of the Labor Opposition then, the Hon. R. R. Downing, moved an amendment to omit from the motion the word "now" and to insert the words "this day six months" in lieu thereof.

Yesterday the Opposition was castigated for suggesting that the Anti-Discrimination Bill be stood over until the first sitting day next year. That bill was introduced into the Legislative Assembly and guillotined through in a short time—I understand one and a half hours. Whatever the period, that bill was guillotined through before the Opposition in another place had the opportunity of moving a single amendment. Surely that is not democracy. Instead of allowing that bill to be debated in what it describes as the popularly elected Chamber, the Government prohibited debate on that measure and guillotined adequate discussion upon it. Now the Government has attempted to force the passage of the bill in this House without proper debate upon it. Honourable members are entitled to expect that they are given the opportunity to debate measures that are introduced here. We believe that in order to fulfil our duty to the citizens of this State we must give full consideration to measures placed before us.

Before concluding my remarks, I should like to refer to a couple of other measures that were dealt with in a similar way in 1965. The Gas and Electricity (Sydney County Council) Amendment Bill was introduced into the Legislative Council on 1st December, 1965. Again an amendment was moved by the Hon. R. R. Downing. That amendment followed the lines of one to which I previously referred. The amendment was carried after a division and the bill lapsed. That bill, and the one to which I referred previously, were dropped by the Government. A third bill, the Law Reform (Miscellaneous Provisions) Bill was introduced into this House on 7th December, 1965, six days later. The Law Reform (Miscellaneous Provisions) Bill effected a total of thirty-three amendments to the Act. This led to the Leader of the Opposition in the Legislative Assembly slaying, "I am not sure whether this is the Government's or the Opposition's bill." I think that even the title of the bill was amended.

The Landlord and Tenant (Amendment) Bill was introduced on 9th December, 1965, and it contained a number of amendments to the Act. The Long Service Leave (Amendment) Bill was introduced in March, 1966. At that time certain amendments were moved; they were rejected by the Legislative Assembly but insisted upon by the Hon. R. R. Downing—and so the list goes on. The Minister expresses astonishment and claims that the Opposition is taking the business of the House out of the hands of the Government. All we are asking the Government to do is delay the receipt of this bill in the Legislative Assembly for only four hours.

The Hon. D. P. Landa: I seek the indulgence of the House to respond to the invitation extended to me by the Leader of the Liberal Party in this Chamber. I seek leave of the House to reply to that invitation and to deal with the matters he requested me to reply to.

The PRESIDENT: The Minister has spoken already. He is not entitled to speak again. However, he has been asked specifically by the Hon. W. J. Holt to reply to some questions asked by him, and the House might give him leave to do that. Is leave granted?

Leave granted.

The Hon. D. P. LANDA (Vice-President of the Executive Council and Minister for Planning and Environment) [6.49]: I thank the House for its indulgence——

The Hon. W. J. Holt: We grant you the indulgence.

The Hon. D. P. LANDA: I think the record should show that the Hon. W. J. Holt just said that he has granted me an indulgence. That shows the real spirit behind this motion. The Hon. W. J. Holt said "We grant the indulgence." I should like to know who the honourable member means by "we". Does the Opposition grant the indulgence?

The Hon. Sir John Fuller: On a point of order. My point of order is that the House has just granted an indulgence to the Minister, at his request, to reply to the points made by myself and the Hon. W. J. Holt. The Minister is now turning this into another speech on the subject, following the Hon. W. J. Holt's interjection.

The PRESIDENT: The Minister should confine himself to answering the questions. I think the only questions he has to answer are the ones asked by the Hon. W. J. Holt.

The Hon. D. P. LANDA: Mr President, I respect your ruling. I do not in any way wish to be wanton with the indulgence granted, but during the preamble to my remarks I was distracted by the interjection of the Hon. W. J. Holt when he said: "We grant the indulgence". I was referring to that interjection by the honourable member. I apologize to the House if I have in any way gone beyond the indulgence granted to me. As I said, I wish to direct myself to the questions that I was asked and I want to respond to the invitation to reply to them. I hope that the record will show that the Hon. W. J. Holt said, when I commenced to reply: "We grant the indulgence".

The Hon. W. J. Holt: That is, the House.

The Hon. D. P. LANDA: That is not what you meant. Honourable members know what he meant—us.

The Hon. W. J. Holt: We of the House.

The Hon. D. P. LANDA: The Opposition grants and the Opposition takes away. The Hon. W. J. Holt said that he would like the Leader of the Government to explain why this bill should not return to the Legislative Assembly three or four hours later. I think I have repeated fairly what the honourable member asked me. The reason is, first, what has happened here is that the Opposition has broken an agreement reached between the Leader of the Opposition and myself that this bill would proceed to its conclusion, even if it took until midnight. The second reason why the bill should not be delayed three or four hours is that it is the duty of the Government to have the carriage of its legislation through this Chamber in the normal way——

The Hon. W. J. Holt: You are not answering my question.

The Hon. Sir John Fuller: On a point order. The House granted indulgence to the Leader of the Government to answer specific questions. I submit that, having spoken once on this motion, he is not entitled to speak again unless with the indulgence of the House and I suggest that he is exceeding the normal indulgence of the House in this regard.

The PRESIDENT: The Minister should confine himself to answering the questions asked by the Hon. W. J. Holt.

The Hon. D. P. LANDA: Mr President, I shall confine myself. The Hon. W. J. Holt asked me why the Government should not allow this debate to be adjourned to another day so that three or four hours later it could be in the Legislative Assembly. Although it is creating some discomforture for the Hon. Sir John Fuller to hear the reasons, I must reiterate, first, that there was no mention of any need to adjourn this debate at any stage by the principal speakers on the Opposition. Second, the Government has made it clear that it opposes the motion and will divide on it. It will take to the people of this State the act that was done in 1963 which Sir Hector Clayton said was not proper. That act was identical with the present action of the Opposition. That is why the bill should not be delayed three or four hours.

The Hon. W. J. Holt asked me to comment on the Government's view of the guillotine, as he put it, being imposed in the lower House. He asked me why the deliberations of this House should not, in all propriety, be affected by what occurred in the lower House. My reply is, because what occurred in the lower House was identical with what occurred ad ***nauseam*** and with such relentless frequency throughout the whole eleven years that the previous Government was in office.

The Hon. O. M. Falkiner: And twenty-four years before that.

The Hon. D. P. LANDA: And twenty-four years before, in that Chamber——

The Hon. Sir John Fuller: I must again take the same point of order. The honourable member is exceeding the indulgence of the House.

The Hon. D. P. Landa: On the point of order. The Hon. Sir John Fuller has risen on two occasions to take a point of order directly after interjections made by honourable members in contravention of the standing orders. They were interjections coming from his own side and directed at me while I was speaking. Mr President, I ask you to over-rule the point of order as my remarks are fairly in response to interjections directed to me by members of the Opposition. If anyone is acting outside the provisions of the standing orders, it is those who are interjecting.

The PRESIDENT: The fact is that the Minister has leave to answer the questions, and they are the matters to which he should confine himself. He should take no notice of interjections. All interjections are disorderly and I hope that honourable members on both sides of the House will cease interjecting.

The Hon. Sir Asher Joel: Mr President, perhaps——

The PRESIDENT: Order! I am still talking.

The Hon. Sir Asher Joel: My apologies, Mr President.

The PRESIDENT: Do you want to raise a point of order?

The Hon. Sir Asher Joel: Before the motion is put I should like the opportunity of having a word with the Leader of the Opposition——

The Hon. Sir John Fuller: Mr President, I suggest it might be convenient if you were to leave the chair for a moment or two and allow me to have a brief discussion with the Leader of the Government.

The Hon. D. P. LANDA: This debate has reached the stage of high impropriety. The Leader of the Opposition now suggests that you, Mr President, leave the chair—again, after no consultation. Let me be quite plain. What the Government is attempting to do is ensure the traditional mode of passing legislation in this House. I suggest to members of the Opposition that if they are willing to offer suggestions they should be willing to accept them. The suggestion I make is that they resile from this motion. I further suggest that you, Mr President, accept a suggestion by the Government to leave the chair at some suitable time for the normal dinner break to allow those honourable members who are unable to collect their thoughts or present their arguments to come back after the dinner adjournment and debate this bill to its conclusion, having received whatever legal advice they might wish to obtain. These tail-enders to the debate may want to check up on some small point that they were unable to find during the last three days that the bill has been in public circulation. Let us be clear about what is happening and let each member gauge his own responsibility. I appeal to those senior honourable members who may be in their last term in this Chamber not to disgrace it by an act of——

The Hon. L. **A.** Solomons: On a point of order. The Minister has no right to speak in the manner in which he is speaking. He is making a further speech, presumably in the debate in which he has already spoken.

The PRESIDENT: I do not know whether the Minister is also suggesting that I leave the chair for a sufficient time for members to have dinner. Is it the wish of the House that I leave the chair? That being clear, I shall leave the chair for an indeterminate time and cause the bells to be rung for the resumption of the House.

[The President left the chair at 7.2 *p.m. The House resumed at* 8.17.]

Motion (by the Hon. Sir Asher Joel), by leave, withdrawn.

The Hon Sir ASHER JOEL [8.15]: The Dutch, in 1624, are credited with being the first nation to have invented stamp duties as a means of raising revenue. It must have been a sad occasion for the Dutch people, as it has been for the taxpayers who have been subjected to this levy in one way or another for the past 452 years. On a great variety of legal and other documents, the imposition of a stamp has been found by governments to be a ready and most convenient source of garnering money for the treasury.

In 1694 the stamp duties tax was first imposed in England as a temporary means of funding the war that was then raging with France. Today that temporary measure is a permanent addition on the statute book of most countries. Governments had successively added duties on just about every conceivable printed document—legal instruments such as conveyances, leases, transfers, mortgages, bonds, bills of exchange, promissory and contract notes, bankers' drafts, receipts, policies, bills of lading—the list is endless—and last but not least, death duties.

The very word stamp is itself synonymous with an oppressive act. It means to strike or tread heavily and it is the same whether it is said in old English as *stempen,* in Dutch as *stampen,* German as *stampfen* or French as *etemper.* That is just what this bill does—it stamps on a number of real liberties, notwithstanding an apparent laudable but not necessarily effective attempt to paliate the iniquities of death duties.

The history of stamp duties in Australia is well recorded in the annals of the Parliament of this State. In 1865 stamp duties were enacted in the colony of New South Wales for the first time, for the purpose of assisting towards the defrayal of the expenses of government and of paying off the deficiency that then existed. The Act was in operation until 1871, when it was amended. It continued until 1875 when it lapsed because the Parliament of the day was out of session. In 1876 another bill was introduced to re-enact the duties. It was passed by the Assembly, but it is significant to note that before it was sent to the Legislative Council—this august Chamber---exception was taken to the manner in which it was introduced. The Speaker at that time held that the measure was improperly before the House. For that reason it was dropped. It is a great pity that the Speaker in another place did not exercise a similar discretion before the measure reached this House; it may have saved us all a lot of trouble and embarrassment.

Before continuing with the subject of the bill, in the light of some remarks that were made in the debate relative to the powers of commissioners and to the fact that not at all times have stamp duties measures met with the approbation of all members of Parliament, I refer the House to *Hansard* of 22nd January, 1880, where Mr McCulloch is reported as saying that the Treasurer at that time seemed to have devoted more consideration to the convenience of collecting the tax than to the inconvenience of the persons who had to pay it. Since then little has been done to change the position that now confronts us. In the light of some further remarks regarding the Commissioner for Stamp Duties, about whom I shall have something to say later—particularly as comment was made on the integrity of the officers concerned, though not necessarily at this time but in the past or in the future—I refer the House to a passage in *Hansard* of the same date that expressed a hope that the gentleman who had filled the office of Commissioner of Stamps would not be reappointed. Elsewhere in this *Hansard* report another honourable member said:

> So far as the Commissioner was concerned he hoped the Treasurer would think twice before he re-appointed the gentleman who formerly held the office. That gentleman might be a very good officer to the Government; but he was a most arbitrary and expensive officer to the general public.

I quote those two extracts from a debate in 1880, soon after stamp duties were introduced to the Legislature of this nation because the Minister said that a shameful allegation had been made by the Hon. M. F. Willis against the office of the Commissioner of Stamp Duties.

I am indebted to the Hon. Sir John Fuller, the Hon. L. A. Solomons, the Hon. M. F. Willis, the Hon. W. L. Lange and the Hon. P. S. M. Philips for confirming the grave fears I have about this measure. The Hon. W. L. Lange in particular referred at length to the absolute powers that are conferred upon the commissioner, but each honourable member in his own way directed attention to the fundamental weaknesses of the bill. They spoke on these matters after having drawn upon their considerable knowledge of the law and company affairs as businessmen, as lawyers and as an accountant. I believe that the sum total of their contributions has convincingly demonstrated that this is, for the want of a better description, one of the most circuitous pieces of legislation ever brought down by a government in New South Wales. I say circuitous because I am forced to the conclusion, after a study of the contents of the measure, that duties prescribed by the bill, when taken in conjunction with the principal Act, are payable as, when and to the extent that the commissioner determines.

Reference has already been made in the House to the almost omnipotent powers enjoyed by the Commissioner of Stamp Duties, but I want it to be clearly understood

that there is not the faintest suggestion of criticism of the present commissioner or his deputy, who are both estimable, competent and admirable persons, willing to assist at all times. But this measure will not always apply to the present situation.

I, unlike my colleagues, am not speaking with the authority of legal training or with the intimate knowledge of company laws so ably demonstrated by the Hon. W. L. Lange, who practises in the accountancy profession. However, I do claim to have had some experience as a businessman over a number of years, conducting my own affairs, and as a company director in a private company and public companies. As I have already said, I am forced to the conclusion that stamp duties are payable as, when and to the extent the Commissioner of Stamp Duties determines, irrespective of the policy of the State Government at the time. I again emphasize that this is not an attack upon any encumbent of that office of the present time, but upon the personality of an individual who might occupy the position at some future date.

The Hon. D. P. Landa: That is not what the Hon. M. F. Willis said.

The Hon. Sir ASHER JOEL: As I have said in this House on a number of occasions, when I speak I do so with an independent mind. I am more than a little concerned, therefore, that any person who seeks to challenge the commissioner's assessment can do so only by way of appeal to the Supreme Court, and perhaps uitimately to the Privy Council—and then only after having paid the assessed duty. That is provided for in section 124 of the principal Act. With the indulgence of the House I believe it might be necessary for me to read at some length some of the provisions of the Act, for the benefit of the honourable members who could not take advantage of the extra time afforded by the adjournment, which gave me an opportunity to obtain these references. Section 124 provides:

> (1) Any person liable to the payment of duty (other than death duty), and any administrator or other person liable to the payment of death duty, who is dissatisfied with the assessment of the Commissioner may, within sixty days after the date of the assessment in the case of duty (other than death duty) and within sixty days after notice of the assessment has been given to the administrator or other person in the case of death duty, and on payment of duty in conformity with the assessment, and of the sum of forty dollars as security for costs, deliver to the Commissioner a notice in writing requiring him to state a case for the opinion of the Supreme Court.

I am sure all honourable members are aware that the huge expense and inordinate delay involved in court cases constitute a form of blackmail by governments. When it comes to litigation, few people can meet the delays and expense involved, notwithstanding the obscurity and uncertainty of the provisions upon which the commissioner seeks to rely.

I shall now examine the implications of the proposed amendment to section 100. This amendment is contained in schedule 2 of the measure. I claim—I do not submit or present—that the dragnet provisions of proposed substituted section 100 are so much of the character I have described that the Government should undertake to make an immediate application to the Supreme Court for a declaratory judgment as to the meaning of those provisions, with the Government bearing the whole cost, because anyone to whom I have spoken, including my colleagues, cannot understand what is meant and is completely confused by the complexities of the measure. Speaking as a layman, although I have been living with this for at least a few days, my examination of the principal Act suggests that there are about twenty instances where the liability to duty is dependent upon the opinion of the commissioner, or upon his being satisfied as to certain facts. or that it has been shown to the commissioner's satisfaction

that certain circumstances exist. I have not counted these—I have not had the time—but at numerous places the Act allows to the commissioner an absolute discretion. I shall refer honourable members to just a few—at pages 151, 152, 166, 171, 181, 185, 188 and 189 of the Act.

These provision contain phrases such as "in the opinion of the commissioner", "unless the commissioner is satisfied", "the commissioner thinks just and proper"—it has to be proper as well as just; "may in his discretion", and "be shown to the satisfaction of the commissioner". Is there even one member of the Government service who has this power that is spelt out at least twenty times? It is not spelt out in indistinguishable or undefinable terms, but coldly and deliberately.

The Hon. W. J. Geraghty: Why did not the previous Government take the opportunity to correct this anomaly in the eleven years it was in office.

The Hon. Sir ASHER JOEL: I welcome the interjection. It was inevitable that a paltry interjection of that sort should be made. I do not say that as a reflection on the honourable member. When governments go out of office, whether they be from the honourable member's side or my side of politics, somebody will always jump up and say that the previous Government had eleven years to correct anomalies in legislation. When Labor lost office in 1965, we said that Labor governments had twenty-three years to correct anomalies. Governments make mistakes, and governments cone and go. It is up to them, when introducing amending legislation, to do everything possible to make it effective. I make no apology for what has happened in the past. I criticize this Government for not updating the Act if, as it says, it is genuine in attempting to make the Stamp Duties Act operable and workable in the State of New South Wales. I accept criticism of the shortcomings of the former Government, as I criticize the new Government for its failure today to bring forward amendments that I think are necessary.

The Hon. W. J. Geraghty: It is a line ball there.

The Hon. Sir ASHER JOEL: The interjection was unnecessary, and I hope it is not raised again. All members are aware that as commissioners come and go, so the attitudes of commissioners vary. I have made a note "praise the commissioner again". I do not intend to. We are now being asked to add materially to the system of guesswork in the principal Act, which has been amended forty-eight times. Whatever arguments existed in the past for a cheaper form of review of the commissioner's decisions, surely, as I said to the honourable member opposite, the position is now being reached where this can no longer be denied.

I believe there should be an administrative tribunal that can expeditiously and economically determine whether the commissioner has reasonably formed his opinion, or acted reasonably, when refusing to be satisfied of matters which under the Act he may determine, or in exercising a particular discretion under the various headings that I have mentioned. It is only an amending bill of this kind which starkly reveals the dragnet approach of a tax-gatherer—a highly impersonal, cold-blooded, mulcting approach—to get as much out of the community as comes within the scope of his operations. Nobody denies this, least of all governments that benefit by his application to duty.

Under this bill, if the commissioner were a rabbit skinner, and rabbits eluded his snares, parrots and horses could be deemed—and I want that word "deemed" noted—to be rabbits so that the commissioner could continue his skinning and, what is more, if so minded, assess values applicable to mink, to the feathers and hair, or horsefeathers he obtains. In short, under this legislation, the commissioner must not be impeded

in his skinning or skinnery. I shall defy anybody to prove that, given the terms under which he operates, I am incorrect in that assertion. In this frame of mind, I tried to understand the reason for proposed subsection (19) of section 100. I commend this provision to the Hon. W. *C.* Peters, who suggested that I should not speak for more than an hour and a half. It reads:

> Where a person dies and within three years before his death, he was either an associate, referred to in paragraph (c) of the definition of "Associate" in subsection (1), of a controlled company or was an associate of a controlled company by reason of his possessing, or possessing a right the exercise of which would directly or indirectly have enabled him to acquire, the majority of the voting power or control over the majority of the voting power at a meeting of, or in relation to, a controlled company in relation to any disposition of property by the company, whether or not he has that power in relation to any other disposition of property by the company (that person being referred to in this subsection as a controller of that company)—
>
> (a) he shall be deemed to have been, immediately before the prescribed time, possessed of an interest in the company and that interest shall be deemed to be property of which he shall be deemed to have made a disposition at the prescribed time;
>
> (b) the value of the property in the disposition shall be deemed to be an amount equal to the net value of the assets of the company immediately before the prescribed time less, where the company was wound up within three years before his death, any amount received by him on the winding up out of those net assets;

The Hon. D. P. Landa: That is a standard anti-disposition avoidance clause. Stick to the rabbits and the horses, you are better at that.

The Hon. Sir ASHER JOEL: Despite his undoubted legal knowhow, the Minister's knowledge of this form of legislation is not nearly as great as that which he applies in the field of industrial law. As I said to him earlier, I hope he will bear with me. This is tortuous legislation. One must go through it carefully, and it will be of benefit even to the Minister if he does so. Then he, too, will understand what is being said. As I read the subsection that I have just read, and taking into account definitions and cross-references it would seem, broadly speaking, that a person who, within three years of his death, possessed the majority of the voting power at a meeting of the board in relation to a mortgage of the property of a company which is controlled by less than six persons, the shares of which are not quoted on a stock exchange, and in which persons other than the controlled company could not not exercise more than 25 per cent of the voting powers at a general meeting, is, upon his death, deemed to have disposed of an interest in the company immediately before his death-or immediately before the liquidation of the company—to his "other associate or associates", and that interest is deemed to be the property disposed of, having a value equal to the net value of the assets of the company immediately before his death. I have singled out mortgage as a "disposition of the company's property" referred to in proposed subsection (19) of section 100; I shall not go on reading these provisions.

Honourable members will observe that the definition of disposition of property in the bill covers all possible dispositions—if in fact some are not duplicated. I am quite mystified by this provision. If the Government and its advisers are fair they will admit that they too should be mystified by it. It commences with the bare statement as to voting rights which, however the proposed new section is read, do not seem to require to have been exercised. It is the mere possession of the majority voting rights, and this perhaps even by holding proxies, which gives rise to the liability.

It is to be observed that the definition of associate in paragraph (c) of the definition in the bill refers to certain rights given by the constitution of the company, whereas paragraph (b) makes no such reference to the constitution of the company.

I ask the Minister this: does the proposed subsection then mean that a person who, perhaps under a charge given by the controlled company, can control the company's transactions such as mortgages, but not the creation of trusts nor the exercise of a general power of appointment—to single out but two of the transactions specified in the definition of disposition of property—is nonetheless caught up by subsection (19)? Is it the right to control the company's mortgages which he is deemed to dispose of by death to his other associate or associates? Who are the associates? The definition of associate makes reference to directors and members of the company as well as to persons who may have voting rights or, by the constitution of the company, the right to veto decisions at a general meeting. Are these his associates? Why are they deemed to be parties to a deemed disposition of property? Do they give substance to the shadow? The subsection first will deem a mere voting power to be an interest in the company and thus it will be deemed to be property. Then it will deem this deemed property to have a value equal to the net value of the assets of the company even though those voting rights do not appear to extend to all the assets of the company.

I am sorry that some honourable members will necessarily find this debate somewhat boring. It is important because in voicing these views I know that they are being heard by the advisers to the Minister. Undoubtedly they are being taken into consideration by the Minister. I am anxious, as are a great number of people outside, to understand the implications of these new amendments as suggested by the Government. Having got this far, the property that is deemed to be property is then deemed to be personalty within New South Wales. Finally, the deemed disposition of the deemed property is deemed to have been made with some person or persons whose only relevance appears to be the necessity of having someone as party to a disposition that never took place.

No matter how I have looked at the matter, I cannot determine how the commissioner will observe the requirements of proposed subsection (22) that he have regard to "any resultant increase in the value of the total property of the person or persons to whom the disposition is made". I had thought that paragraph (b) of subsection (19) had fixed the value of the property in the disposition at the net value of the company assets. Just why the increase in value to which I have referred permits the commissioner to apportion the disposition among the other associate or associates of the company is beyond my comprehension. Though the Minister's attention is occupied by greater affairs of state I ask that the Minister's advisers pass to him the necessary information so that we may have the benefit of their advice. I appreciate the problem but I ask that the Minister be, not necessarily in the House but even behind the bar of the House--so long as I can be heard.

I ask that the Minister clearly state, whether in reply or in Committee, what death duty is, in fact, attracted by reason of this deemed interest in a controlled company, and what provision is made to ensure that innocent transactions are not caught by the subsection (19). The commissioner is given a discretion by proposed subsection (17) to exclude that subsection where he is satisfied that a payment of interest was made in the course of a normal commercial transaction. I shall be criticizing that expression later, but is not some such safeguard essential for proposed subsection (19)? It is absolutely vital—if completely unnecessary penalties are not to be imposed upon innocent persons. If honourable members have followed that—no doubt those associated with public accounts, public companies and legal activities will have followed it—they will now be appreciative of my earlier analogy to rabbit skinning.

In asking the Minister this, I should like assurances regarding safeguards, and not opinions. If honourable members do not get those safeguards the legislation will produce injustice. I should hope that was never the intention of the Government.

Let me, in case the Minister has not followed, give a classic illustration. If a finrnce company had an equity investment in another company which is a controlled company, and under the charge given by that company is empowered to exercise majority voting in disposition of the controlled company's property, then if it appoints a nominee for that purpose, he would appear, under the amending bill, to be an associate. As I mentioned earlier, in 1880 when the Act was first introduced there were cases of fraud. Honourable members know that there will always be cases of fraud. White collar crimes are going on all the time.

The Hon. D. P. Landa: May I ask——

The Hon. Sir ASHER JOEL: No. If government business is not taken control of, at least the Opposition's speeches on this measure are not being taken control of. I ask, what is being done to protect the honest transaction where a person is a nominee under an equitable charge or is merely the possessor of proxies which gives him the majority power for one meeting only? I submit that to clarify this point, it would be very desirable for paragraph (b) to refer to the constitution of the company as is being done in paragraph (c). There really must be a reason and let the Minister give it.

The Hon. D. P. Landa: When they operate in that way only to avoid duty.

The Hon. Sir ASHER JOEL: When they operate to avoid duty. But what about the innocent person who is caught up in this situation? What does he have to do--go to the Supreme Court or to the Privy Council? How does such a person get over the extraordinary powers to be vested in the commissioner? There must be some reason for what is proposed, and if there is, honourable members should be told what it is. I can, with some difficulty, visualize the position where a mortgage has been executed; but what is the "interest" in the company constituted by a right to mortgage which will become the dutiable estate of a person who, though not a director, has the voting power over mortgages held by a controlled company? If the position relating to mortgages is clear to the Minister, perhaps he will explain the situation where the voting power is over transactions that involve only agreements to enter into a transaction, such as mortgage.

The Hon. D. P. Landa: The Hon. Sir Asher Joel wants a lot of free legal advice.

The Hon. Sir ASHER JOEL: It would have been a jolly good idea if the Government had got some good, though not free, legal advice before it brought in this legislation. I am giving the House the benefit of a layman's interpretation, supplemented with a little legal advice. I have tried to find some assistance in paragraph (e) of the definition of "disposition of property", in that it would appear to be designed to catch up any transaction that is not otherwise caught by paragraphs (a) to (d) in section 100 of the Act and repeated in this legislation. I shall say a little more about that later.

I note the word "agreement" in that same paragraph (e), and have in mind that under section 5 of the Sale of Goods Act a "seller" is specifically defined so as to extend to a person who "agrees to sell" as well as to one who "sells". Similarly, and perhaps more analogous, section 5 of the Companies Act defines "charge" to include a mortgage and any agreement to give a mortgage, whether on demand or otherwise. I have a note here, which I wrote only this afternoon, to watch at this stage for an interjection by the Minister. The Minister has not interjected. Therefore I shall take

advantage of his kindness and proceed as though he had interjected. I expected the Minister to say, "Cut it out, is this not a tax bill? You must be joking." The Minister should familiarize himself with proposed subsection (19). If he says that "an agreement" to mortgage is an equitable mortgage and thus will be caught by subsection (19), I am impelled to explain—and I hesitate lest he feel that because he is a lawyer and I am not I am being presumptuous—that the series of transactions commencing with "a conveyance" does not permit "an agreement" to become an equitable conveyance, and it would be extremely doubtful whether an agreement of mortgage would be an equitable mortgage. That is why mortgage was chosen as an illustration. I thank the Minister for his unspoken interjection.

The Hon. D. P. Landa: What about the principle of the exercise of the discretion as laid down in the Avon Downs case?

The Hon. Sir ASHER JOEL: I have not read that case, though I have read others. If the Minister will give me the benefit of his experience later, I shall be pleased to have it. Is there then a distinction to be drawn in proposed subsection (19) between a person who has the voting control over mortgages to be entered into by a controlled company, and one who has voting control only over agreements to mortgage? A company that fails to execute a mortgage that it has agreed to can be sued only for breach of contract, but that does not necessarily result in the mortgage being executed.

When a company does enter into a mortgage as the result of a prior agreement, is not this a separate step as to which the "controller", to use the word used in proposed subsection (19), does not have a controlling vote? Can it be argued, therefore, that so long as the person controlling the voting power can do so only in respect of agreements, he is no longer deemed to make a "disposition of property" to his "associate or associates", whoever they might be, when he dies? Paragraph (e) will obviously not apply to that situation because that paragraph can apply only to a natural person and not to corporations. I return to my original question. Is the purpose of paragraph (e) to close the gap between a contract and an agreement to enter a contract? If this be so, why is it limited to natural persons?

The Hon. D. P. Landa: On a point of order. There is no paragraph (e) of proposed subsection (19).

The Hon. Sir ASHER JOEL: There is a paragraph (e) and I shall come back to it. With all the "deeming" required under the clause, how will the commissioner have regard, as required in proposed subsection (21), to the extent to which the value of the rights and powers referred to in the bill are, in his opinion, reflected in a dutiable estate? In short, what are honourable members being called upon to agree to?

The bill might well be described as a bludgeon to be handled in the way that the commissioner decides—and let us not forget the assistant commissioners and the deputy commissioners. Again I say that this does not reflect upon the exercise by the commissioner of his existing powers. I should have thought that the bill could have been wrapped up in one short sharp provision, namely that any transaction which in the opinion of the commissioner is designed to avoid death duty is itself dutiable to the extent determined by the commissioner in his absolute discretion. Is not this all that the "deeming" in the bill is intended to provide for?

At least the Act made this clear in paragraph (e) of section 100 dealing with the disposition of property, which the bill proposes be deleted. The Minister felt that I had misplaced the letters of the alphabet. There is a paragraph (e). I am not going to suggest that what has been done is snide, but it is, if not that, certainly cunning. Why not merely add new paragraphs (e), (f) and (g)? This surely was the simple thing to

do and would have followed normal practice. The removal of the word "intent" in paragraph (e) of the definition in the Act surely has been designed to catch everyone—and this is the point Opposition speakers have been making—and that is why I want to see safeguards provided, particularly as the original safeguard in the Act is being removed.

I suggest that this is the principle underlying the commissioner's powers in proposed subsection (9) in which reference is made to a normal commercial transaction. As I have already mentioned, that proposed subsection will entitle the commissioner to declare that a debt or contract was not "a normal commercial transaction". Can the Minister himself with any confidence, even with his legal knowledge, which he has demonstrated in the House is vast, declare a commercial contract to be "normal"? When is it abnormal? One possible answer is, when its real purpose is to avoid death duty. But that is not the only answer. I wonder whether the liquidity problems of the Bond empire in Western Australia were solved by "normal commercial transactions". I imagine that they were very much tailor-made for the situation. Does that make them abnormal?

Why do we not see also in proposed subsection (9) the well known phrase "in the ordinary course of business", even though that does not necessarily mean what it says? Perhaps I should have read out the proposed subsection, but I do not intend to do so. In bankruptcy matters I understand that the courts have held that the phrase "in the ordinary course of business" means "without the thought of bankruptcy in mind". Would that not be preferable to the clumsy and equivocal phrase "normal commercial transaction"? Must there be an appeal to the Supreme Court to settle something that obviously could be avoided? I venture to say that the use of the words "ordinary course of business" in proposed subsection (9) will soon attract the meaning "without the thought of the Stamp Duties Act in mind". I strongly deprecate the confused and convoluted provisions of proposed section **100** as set out in the bill, and repeat my criticism that too much reliance is placed on the difficulties confronting any persons who seek to challenge the commissioner's assessment.

There is reason definitely to believe that in this bill there are defects which the Government might wish to cure. If cured, there may be added reason for the Government to establish a tribunal, as is available to consumers, to deal with factual situations, with questions of law left to the Supreme Court. Finally, I should like to ask the Minister a question: if the real purpose of this bill is to assist spouses of deceased persons, why did not the Government do the decent thing and extend the benefits to the surviving closest of kin where there is no surviving widow or widower? Plenty of grounds exist for such action. Since the enactment of the original legislation in **1933,** benefits of the kind to be provided under this measure were given not only to a surviving spouse but also to children under the age of **21** years. Section 101c confirms what I say.

In 1964, a Labor government extended exemption from stamp duty to wholly dependent adult children and a wholly dependent widowed mother. But that proviso does not exist in this measure. As well as considering a surviving spouse we should be weighing up the possibility of husband and wife being killed in a motor car accident, leaving behind them, say, four mourning children. By this legislation there will be no money for those children. The tax man will take it all. The provisions to which I referred earlier have not been included in this measure. Surely if the Government were genuine in its desire to relieve people from paying death duties it would have included provision, though for lesser amounts, for an orphan, an invalid child or a mongoloid child. Instead of this legislation referring to anything like that, there is no provision at all for them.

The Hon. Sir Asher Joel]

Let us not stop there. There is still one decent thing which could be done. As was pointed out by the honourable W. J. Holt in the debate on the Appropriation Bill, these extensions would not cost the Government one cent extra this year as in the normal event estates are not finalized for up to six months. Why does not the Government set a date for the commencement of the Act three months prior to the date of assent? Otherwise, it will be a lottery whether people die before or after the date of assent. This whole bill is a lottery with the cards stacked against the player; or should I say in conclusion, with all the marbles in the Government's bag?

The Hon. H. J. A. SULLIVAN [9.7]: It is with some diffidence that I enter this debate. I have a natural reluctance to join in with those who have made a highly intellectual contribution from this side of the House. Having heard members of learned professions speak to this bill, I am convinced of two things: first, it is bad legislation and, second, if I were a fortunate tall poppy I should be happy to have any of them represent me either legally or in the field of accountancy.

This is a highly legal, complex bill. I do not look at it from the aspect of its legal complexity but rather from the simplicity of common experience with ordinary, every day people who live, work and play, as do members of this Chamber, in the interests of their families and in developing their businesses irrespective of whether they be engaged in real estate, agriculture, grazing or something else. It matters not what they do. There is an absolute determination by the Government to place in this category of tall poppies everybody who at some stage of his life seems to have shown some thrift and has succeded in putting together a little money. Naturally, those who have done this want the fruits of their labour to be shared by those whom they love. That is a perfectly natural thing.

There is an inference in the whole tenor of the Government's attitude to this measure that anybody who has a dollar should be brought down to size. Only two weeks ago in this Chamber I heard my colleague, the Hon. O. M. Falkiner, speak at some length about a great Australian family that had made a major contribution to the national wealth. He spoke of a family that has given much to our nation, but alas, has been destroyed. And, I felt, 99 per cent of the reason for that destruction was the effect of death duties and land tax.

The Hon. D. P. Landa: That is not what he said.

The Hon. H. J. A. SULLIVAN: The Minister has said that that is not what the Hon. O. M. Falkiner said. Of course it is not; we all know that. His natural modesty would inhibit him from saying anything like that. But, I have placed my own interpretation on what the honourable gentleman said and I do not think I do him any injustice. If I do and I offend the honourable gentleman, I apologize to him. If we try to get everybody to believe that everyone else is a tall poppy we will destroy this State.

The Hon. W. C. Peters: The Hon. O. M. Falkiner's grandfather bought more land rather than sell his sheep. That was the mistake he made.

The Hon. H. J. A. SULLIVAN: The Hon. W. C. Peters could easily have fooled me. It is incredible that two or three people who listen to the same speech and then go their own ways later give quite different accounts of what happened. I should like to arrange for my colleague the Hon. O. M. Falkiner to sit down with the Minister and the Hon. W. C. Peters to discuss this matter.

I admitted at the commencement of my remarks that I am at some disadvantage when speaking on legal matters. I look upon this issue more from the point of view of a journalist than a lawyer. The grammatical construction in one paragraph in particular in the bill is most confusing. An editor of a paper objects if a reporter repeats himself.

To do so is bad enough in a story; it is pardonable in a paragraph but it is unforgivable in a sentence. I refer to proposed new section 103A (3) b which appear in the bill in this form:

> . . . the Commissioner may, in his absolute discretion, refund such part of the death duty paid under this Act as he, in his absolute discretion, thinks fit.

The point is driven home that the commissioner will have absolute discretion. My colleague, the Hon. W. L. Lange, said that we should not give that kind of power to any Comissioner of Stamp Duties, no matter how just, honourable or skilled he may be. The trouble is that there is no way in which a person can appeal from the commissioner's decision.

The Hon. D. P. Landa: That is not so.

The Hon. H. J. A. SULLIVAN: Though the Minister suggests that I do not know what I am talking about, I do know what I have been told by people. I have met only one man who thought he could beat the Commissioner of Stamp Duties. This old fellow reminded me of Mad Jack, a character in one of Steele Rudd's stories. No doubt the Hon. W. C. Peters would appreciate hearing me recount this story. Steele Rudd, when writing about Mad Jack, said something to this effect: "He works seven days a week, from before sunrise until after sunset. He lives on the smell of an oil rag. He will take no pay and he refuses annual holidays, and Dad said that he was the best man he ever had."

The old fellow I am talking about reached the age of about 67 or 68. For some time a friend of his tried to encourage him to spend some of his wealth. He urged him to go and enjoy himself—perhaps to buy a racehorse. It would not have taken him long to spend all his money if he had done that. His friend also suggested that he go overseas or even take a look round his own country. This old fellow replied: "I do not want to do that. I get enjoyment out of making money." His friend's answer was, "Well, you cannot take it with you," to which the old fellow rejoined, "If I cannot take it with me I am not going to go." He thought that he had been sent to earth to disprove the truth that all men are mortal—but he surely went, the same as everybody else will go. I propose now to read something that was said by a great jurist—and no doubt the lawyers here will appreciate it more than I and my laymen colleagues. In the case of ***Ayrshire Pullman Motor Service and D. M. Ritchie*** v. ***The Inland Revenue Commissioner,*** which is reported in XIV Tax Cases at page 754, Lord President Clyde said:

> No man in this country is under the smallest obligation, moral or other, so as to arrange his legal relations to his business or to his property so as to enable the Inland Revenue to put the largest shovel into his stores. The Inland Revenue is not slow—and quite rightly—to take every advantage that is open to it under the taxing statutes for the purpose of depleting the taxpayers profits. And the taxpayer is, in like manner, entitled to be astute to prevent, so far as he honestly can, the depletion of his means by the Inland Revenue.

The Hon. W. C. Peters: That is why they appoint counsel to save them paying taxation.

The Hon. H. J. A. SULLIVAN: The Hon. W. C. Peters may know more about these things than I do. I have no illusions about myself. I am not trying to impress the House by appearing to have a great knowledge of the law. However, when I read something that impresses me either I commit it to memory or I make a

note of where I can find it in the future. Sometimes I use what I have read to enlighten honourable members. The argument put forward by Lord Clyde in 1929 is just as sound today as it was then.

The Hon. W. C. Peters: He must have been an accountant.

The Hon. H. J. A. SULLIVAN: I would not have thought so. If the honourable member is not satisfied with that quotation I shall read another passage that is closer to home. What I propose to quote was said by Sir Frederick Jordan, an eminent jurist and a former Chief Justice of New South Wales. No doubt many of our colleagues in the legal profession would have known him personally and would have had great respect for his opinion. Sir Frederick Jordan, after referring to a comment by Lord Macnaghten, in the case of ***Commissioner for Stamp Duties*** v. *Byrnes*, made the following comment, which is recorded in volume 45 of the New South Wales State Reports at pages 93 and 94 in the matter of the estate of William Vickers deceased:

> No one may act in contravention of the law. But no one is bound to leave his property at the mercy of the revenue authorities if he can legally escape their grasp; and Lord Atkinson in ***Attorney-General*** v. ***Richmond*** said, "It is admitted that the motive which prompted the late Duke to enter into these transactions was to relieve from the payment of estate duty those estates which upon his death would pass to another or to others. That motive does not, however, vitiate the transaction, no more than it vitiates a voluntary alienation of property made with the same purpose and object twelve months before a donor's death. Just as there is nothing illegal or immoral in making such a gift, or in living for twelve months afterwards so as to make it an effectual means of escape from death duties, ***so*** there is, in my opinion, nothing illegal or immoral in making the dispositions of property which were made in this case.

Sir Frederick Jordan went on to quote Viscount Simons, who did not hold that view. He concluded with these words:

> On the contrary, one result of such methods, if they succeed is, of course, to increase ***pro tanto*** the load of tax on the shoulders of the great body of good citizens who do not desire, or do not know how, to adopt these manoeuvres.

The Hon. W. C. Peters: That is right.

The Hon. H. J. A. SULLIVAN: I am trying to be impartial.

The Hon. D. P. Landa: Will you adopt that?

The Hon. H. J. A. SULLIVAN: I have only quoted part of what I wish to place before honourable members. Perhaps the Minister is in a hurry to get home. I am not for I shall not be catching a train to Moree until tomorrow. I have no one to go to where I live in Sydney and it is lonely, but here it is lovely being in good company. The former Chief Justice, Sir Frederick Jordan, continued:

> No doubt those who, like Viscount Simon, regard it as a patriotic duty to pay the largest amount of taxes lawfully exactable will so arrange their transactions as to attract a maximum of liability (although without, it is to be hoped, going to the length of a timely suicide, as foreshadowed by Lord Atkinson), and those who, like Lord Macnaghten and Lord Atkinson recognize no such duty, will order their affairs so as to incur liability for no more than is legally necessary. We are not, however, concerned with the desirability or morality of the course taken in the present case, but only

> with its legal operations and legal consequences. It is now well-settled that the substance, in law, of a transaction can be determined only by ascertaining what the transaction really was. If the ostensible transaction is a sham, a mere facade concealing a different transaction, it must be disregarded, and legal rights and liabilities determined according to the real transaction. But, if it is ascertained that purported transactions were intended to be legally operative according to their actual purport, their substance is "that which results from the legal rights and obligations of the paries ascertained upon ordinary legal principles." You cannot "brush aside deeds, disregard the legal rights and liabilities arising under a contract between parties, and decide the question of taxability or non-taxability upon the footing of the rights and liabilities of the parties being different from what in law they are".

I have given the opinions of men learned in the law. They were three to one in favour of that point. In all those years only one of them had the same opinion as the Government. What we are saying to the community in this legislation—I refer especially to clause 137—is that it has been legal, right, proper and moral from way back up until now, but suddenly by this amendment set out in clause 137 of this bill we propose to declare illegal arrangements that were made legitimately. There is nothing improper in trying to protect one's property. If a person is given two choices—to walk down one alleyway in the knowledge that he will be waylaid and flattened, or walk down another alleyway and come through it unscathed, on the assumption that they are both legitimate areas in which to walk, which one would a prudent person use? Commonsense dictates that one should go where one will come through unscathed. That is why people have adopted certain courses in respect of their property. The Hon. P. McMahon, who has just joined us, might think that I am seeking to protect my own great assets. I shall tell him before he interjects, interrupts, distresses and upsets me, that I am not the proprietor of any family company. Poverty does not need this type of protection.

The Hon. J. R. Johnson: Humility is your strong point.

The Hon. H. J. A. SULLIVAN: Humility is a great virtue. There is no greater, for humility is truth. I should love to stand here and tell the Minister that he is hurting me. He would get a great deal of pleasure out of that. His attitude is, waylay those tall poppies. He may call me robust, stout, but certainly not tall. I am not here pleading a cause for myself. I have nothing to protect, no family companies, no 2-share companies or proprietary companies. But I live among people who have worn out my carpet coming to tell me of their distress over probate problems. I thank the Hon. Edna S. Roper for remembering many of the cases that I have brought to this House. I do not bring them all; it would weary the House and I would need to speak every evening on the motion for the adjournment of the House.

The Hon. P. McMahon: Don't do that.

The Hon. H. J. A. SULLIVAN: I assure the honourable member that in 1977 I shall make it my job to do that so that each night he will have the benefit of what I have learned from country people who are distressed and distraught because of what is being done to them by stamp duties legislation. My attitude on this issue is no different now than from when I supported the Liberal-Country party Government that was in office. I have never had any affection or attachment for death duties. I have not gone as far back with my research as did the Hon. Sir Asher Joel. He went back to the Dutch in the 14th or 15th century. I am not as old as the honourable member. Perhaps in my later years I shall incline more to earlier history.

Death duty was first imposed in this country at about the time of World War I. It was introduced to finance the war effort. Few taxes that are introduced are ever abolished. I acknowledge that the previous administration, the Willis–Punch Government, did abolish certain taxes. That is unusual, not general. But this death duty tax is designed to cripple, destroy and pull down. Not everyone is big. Honourable members may still have the thought that I held as a child—that everyone who owns a few acres of land is a millionaire.

When I started work as a young man I became—I shall use the glorified title, though it did not really apply to me—a private secretary. In saying that, I give myself the benefit of a grave doubt. I took dictation from my employer. He would send letters to the woolbrokers of people whom I considered to be big, wealthy landholders—people who hold 4 000, 5 000, 6 000 or 8 000 acres of good country. He would send a letter to a woolbroker explaining that one of them had 3 000 sheep but owed £3,000 on them—and that was before inflation. He would say also that the property was worth £3 an acre, with a total value of £18,000. However, the debt with the bank was £11,400, with interest due two months hence. And so it would go. The letter to the wool firm would represent that shearing would begin on 8th September, that the wool would be in store by the 24th and £100 was needed to tide the woolgrower over from 4th May until the proceeds from the sale of the wool were due. Such were the great, wealthy people of my childhood dream. They certainly had had their moments of success, the wool booms; also they had had to face droughts and the depression.

In my district a few wheatgrowers will have their best wheat crop ever. They need it, because there have been a lot of times when their crops have not been the best. With the present high price of equipment they need to continue to get good wheat yields. These are the people who try to arrange their affairs to ensure that the property will remain in the family. They will not succeed if we are to say to them at this moment: "You have always met your obligations. All the things you have done over the years, and all the things you have done without, especially all the gift duty you have paid, are no longer to be effective".

The Hon. J. R. Hallam: What rot.

The Hon. H. J. A. SULLIVAN: The honourable member says, "What rot". Parliament should phrase its legislation in language that ordinary people can understand. Shall I read proposed new section 137 to the honourable member? The Minister knows it off by heart. At the risk of offending him, I shall read it to the Hon. J. R. Hallam. I should like any member on any side of the House to tell me whether this does not mean what I am trying to understand it to mean. Not that I want to understand it to mean this; I want it to mean something else. I shall be the happiest man in the House if it does not mean what I think it does. Section 137 states:

> Every contract, agreement or arrangement made or entered into orally or in writing whether on, before or after the date of assent to the Stamp Duties (Amendment) Aot, 1976, so far as it has or purports to have the purpose of effect of in any way directly or indirectly—
>
> (a) relieving any person from liability to pay any death duty or file any statement;
>
> (b) defeating, evading or avoiding any death duty or liability imposed on any person by this Act;
>
> (c) affecting the value of any property which forms or is deemed to form part of the dutiable estate of any person under this Act; or
>
> (d) preventing the operation of Part IV or V in any respect,
>
> shall be absolutely void . . .

The Hon. D. P. Landa: it is exactly the same as section *,260* of the Commonwealth Act. Although it has been around for many years you have never said boo about it.

The Hon. H. J. A. SULLIVAN: The Minister has the benefit of his legal training. I wish to refer the House to an article that appeared in ***The Australian Accountant*** of October, 1974. I shall not quote the whole article, which is of some length, but shall read the pertinent introductory paragraph and one other paragraph which report the remarks of the Hon. Frank Crean, who was then Commonwealth Treasure. The article reads:

> The Treasurer, Hon. Frank Crean, M.P. announced today that, after considering the consequences of the High Court decision in the gift duty case of ***Ord Forrest Pty. Ltd.*** v. ***Federal Commissioner of Taxation***, he had decided to ask the Government to approve the introduction of legislation that will confirm the application of that decision in comparable cases in future. Mr Crean said that he would also ask the Government to introduce amendments to the gift duty law to reverse the effect of an earlier decision of the High Court in the case of ***Gorton*** v. ***Federal Commissioner of Taxation.***

The second part of the article to which I wish to refer reads:

> Mr Crean said he hoped that these amendments, and those relating to the Ord Forrest Case, would be introduced as soon as practicable and they would, when enacted, apply to arrangements put into effect and to allotments of shares made after today [2 August, 1974].

If the Minister said that it would apply as of today I would go along with it without hesitation. We are finished with the past and should not go back. If one goes back and says that arrangements made between two people some two, three, four or five years ago will be caught up in this wide, sweeping legislation, there can be no limit. The net will be cast. Mention has been made of the inevitable flow of capital from New South Wales to Queensland. The other night I spoke to the Minister about Queensland, particularly about wheat and freight charges in the two States. I was quite genuine in my remarks that I understood and appreciated the need for increases at times of an inflationary spiral. On the one hand, freight charges are increased and on the other the price of commuter tickets are reduced. That does not demonstrate consistent thinking. If there is a large outflow it must eventually depress prices. People must be drawn from New South Wales to Queensland. Must we lose the benefit we can give to New South Wales from the arrangement with the federal Government in regard to tax reimbursements? All these things build up.

We want New South Wales to be the best State, not the second-best. The Queensland Premier is stealing a march on us by enticing people away from this State. I warn the Minister that I live close to the Queensland border and I know that he would not want to lose me from this place. If I had any real assets I would be happy to sell them and go to Queensland.

The Hon. P. McMahon: The honourable member might be unhappy if he went there and lost the lot through Bjelke-Petersen seceding.

The Hon. H. J. A. SULLIVAN: If that were the case I might end up anywhere.

The Hon. W. *C.* Peters: It was said before that Victoria would get all the capital investment because New South Wales worked a 44-hour week against 48-hour week in that State. We have all had these bedtime stories before.

The Hon. H. J. A. SULLIVAN: The other night I told honourable members about my old friend Clarrie taking money out of the till. It took him three weeks to learn he could not take out unless somebody put in. When people ceased to put into the till he could not take out. That is what is happening. I have not had the experience nor can I speak with the learning of the Hon. M. F. Willis who gave a delightfully clear enunciation of the principles of the bill, which he described as an abomination. He then referred to the detailed requisitions that come from the Commissioner of Stamp Duties. I am not able to speak about the commissioner's capacity to assess, but I know his integrity is unquestioned. He is sound and consistent, although sometimes consistency can lead to errors.

I wish to refer the House to a family with which I had some involvement. The father died in October, 1973, and the estate was valued at $128,000 plus $105,000 of family debts. Although I have rounded off some figures I have given the House, I know that they are right within a few dollars. On the surface one may say that the family owed to the father. I know people use such words as lurk. In 1963 his son had completed his schooling and his three daughters were living with him. As he was growing old he decided that in justice to his son he should take him into a partnership. He decided also that in the interests of equality he could not see why his son should have everything and his daughters nothing. So he entered into a family partnership with the property. He found that members of his family, particularly his daughters, needed drawings for their education and tax. In the years that followed 1963 there was, first, the 1964–65–66 drought, the worst in living memory back to 1902. The property did not pay, the overdraft was increasing and the family was owing the partnership more money.

This family lived modestly. There were no extravagances or expenditure on high living and their drawings were normal, nominal amounts of money. Any expenses incurred by individual members of the partnership were justifiable by anybody's standards—even by the standards of my wealthy colleagues opposite. The estate was valued by the commissioner at $233,000, and he took into consideration $105,000 of debts. No one would give one cent in the dollar for the $105,000 debts because the family had not succeeded since. The property was sold on terms. When the estate was finally assessed, the total value of the estate was $233,000, the New South Wales duty was $61,837 and the federal duty $28,494, making a total duty of $90,331. The widow and family will get only $23,861.

That is typical of the cases that I see day after day. Everybody on the land is not wealthy; some people on the land, if they were to get the minimum wage, would be better off than working at farming seven days a week. That is why I say to the Government: "Do not get confused about cutting down the tall poppies. They are not all tall poppies." The Parliament should ensure that legislation of this kind is not made retrospective, because in the past people have made honest, genuine and rightful decisions to share their wealth with their families, and in countless instances the families have helped to build the assets. Government should not go back and say, in effect: "Your arrangement was no good. You have paid duty on it as required, but it now has no effect. It will come back into the estate and we will get another slice." I regret that the Government has found the need and desire to bring in this type of legislation. If the provisions of proposed new section 137 were effective from today, tomorrow or the date of assent, I should be more ready to say that I could in conscience agree with it. However, like the Hon. Sir Asher Joel, I cannot support it in its present form.

A friend of mine who is quite well-to-do—the only one I know who has money—made an arrangement like this. When he heard some of the details of the bill he rang his accountant and said, "If this happens I am as good as broke." The accountant

replied, "I must admit you are." My friend then asked, "What can I do to get round it?" The accountant replied, "I can give you only one suggestion—die before the date of assent." I do not think my friend wants to do that. I advise the Government not to proceed with this provision. If it goes all the way with the rest of the measure, I could go along with it, but the basic purpose of proposed new section 137 is to turn back the clock. It would be like cutting a worker's wages in half—and nobody wants to see that. This provision would amount to turning back the clock, and I suggest that any State, nation or government cannot succeed if it looks back over its shoulder. I appeal to the Minister to look ahead, not behind.

The Hon. MARGARET DAVIS [9.46]: When I first saw the bill the other day, I looked at the early provisions that are contained in schedule 1 and thought: "That looks familiar. I have heard about this in the Liberal Party policy speech, and I believe I heard about it in the policy speeches of the Labor Party and the Country Party." I thought that the provisions of schedule 1, rightly, were going to do something about duties on estates passing between spouses, and were in accordance with a promise that had been made. Indeed, it was a promise that all parties should honour. However, like the Hon. H. J. A. Sullivan, I am a simple soul. I have not yet decided whether I am a simple housewife or a simple chemist, but I am not as simple as most people in New South Wales will be when they take a first look at this bill. People have telephoned me, and after they have had another look at the bill they have said, "Mrs Davis, do you know what the Labor Government is going to do to us?" I have replied, "Yes, but you tell me." One by one, these people have telephoned me and said: "We have saved all our lives. We have tried to do this and to make provision for that." I have replied: "You voted Labor into office. You must remember that. You put them there, and you have to take the consequences of the legislation that they try to put through Parliament." I have added: "Remember that we have a Legislative Council, where we have a chance to review legislation. Sometimes things that are conceived in haste can be looked at a second time in this House." I believe my colleagues and I are doing the right thing here tonight.

When I examined the second half of the bill I was quite horrified, as most citizens of New South Wales will be if the bill is allowed to go through. If ever a government used a sprat to catch a mackerel, it is the Labor Government of New South Wales. It has deliberately set out to fool the people of this State. There is no doubt about that. In the first part of the bill the Government has put something that will please everybody. We know that and so do they. But do the people of New South Wales realize just how much the rest of the bill will cost them? It is high time we told them about it. Honourable members from this side of the House who have already spoken during this debate have enunciated very clearly what is involved.

When I had thought for some time about this deliberate piece of legislation, I decided to look back through the records. The Hon. Colin Begg used to be a member of this House and whenever the Hon. Reg Downing, a brilliant Attorney-General, used to bring before the House legislation such as this, the Hon. Colin Begg would say, "But, Mr Attorney-General, I do not see the clear intention." When I examined this measure I saw instances of double negatives. I am sure that this is so, otherwise I did not learn English properly at school. I can see many places where the meaning is not clear. When citizens in this State begin to telephone members of Parliament about this measure, they suddenly start to see the intention of the Government of New South Wales.

Honourable members will remember a story that I told in this House once before about members of a family that had the misfortune to be killed in a plane crash. The plane was struck by lightning. One person was stunned and the other

died almost immediately, but it wuld not be established which one died first. According to estate laws, a woman who dies at about the same time as her husband is presumed to have lived longer. This accident happened in a foreign country. It was ruled that the male, the principal owner of a rather large estate, had died on the day of the crash, the wife a day later, and the daughter some four days later. This family was reasonably well off. They had a proprietary limited company and a store about the size of the old Hordern Brothers building down in Pitt Street. By the time the New Zealand Government had finished taking its share of that estate, and the matter had been through the courts three times, there was not much left for the two surviving children. That family had provided very well for the children. This was before the fashionable idea got around to draft wills in such a way that multiple death duty charges were not levied when parents and children all died as the result of the one accident, for example, but over a period of some days or even weeks. Subsequently the large estate of the family I have referred to became a very small one.

I keep thinking of the Hon. H. J. A. Sullivan's statement that if one wants to preserve an estate, one will have to die before this bill becomes law. I commend the Leader of the Government for some of the ideas that he expresses in this House. The other day when he was speaking on a motion, he said that he did not know why we were making such a fuss about rape when other sections of the Crimes Act were in need of review. I replied that other honourable members should look at other sections of the Act to see what other motions were necessary. I intend to do that. I shall have a look at a lot of things over the Christmas holidays and see what can be done about legislation that has been on the statute book for years.

The Hon. H. J. A. Sullivan took up the Leader of the Government on something that he said tonight. The honourable member said that he could bring up a case every night on the adjournment of the House. I should like to assure the Minister that I could do likewise. The carpet in my home has not yet worn out, but the lounge suite is in quite bad shape. Scarcely a day goes by without people coming to my home with their problems. One Sunday morning my husband tried to have a shower. He does not possess a dressing gown. Unbeknown to him, four people in distress had telephoned me and I had told them to come and see me at different times that Sunday morning. The first appointment was for 8.30, the second 9.30, the third 10.30 and the last 11.30. In my house one has to walk past the lounge room to get to the bathroom. Unfortunately for my husband, everyone arrived early, and when he thought I was about to get rid of one person another would arrive at the house. There was a procession of people. If people think that Legislative Council members do not see people with problems, I assure them that I do.

Some of the people that I see have the problem of protecting the assets that they have built up. It is strange that the Labor Party, which has always purported to be the champion of the little people, is trying to take away from hard-working people everything that they have worked for. We, the Liberals, supposedly the rich people of this State, are reputed to be unconcerned about the interests of these people, but I find in the Legislative Council that we are defending their rights. This shows that this House is playing its true role.

Tonight I thought that surely there must be something in the records that shows how legislation is often conceived in haste. I believe this bill was deliberately rushed through the lower House. On looking at the record, I find that in another place the Attorney-General was gracious enough to give honourable members only an hour—one hour, mind you—in which to debate this important measure which will affect the lives of all citizens in New South Wales. I suppose it will not affect people on pensions, but the way the Rt Hon. J. M. Fraser is increasing pensions these days, sooner or later

it will affect them as well. I looked through the records to find a precedent for the Legislative Council acting in the humane manner in which honourable members are acting tonight. I found a reference that is interesting because the name Landa appears on it. History is repeating itself.

Back in 1953--on Wednesday, 25th November, 1953—the Labor Government introduced in another place the Sydney City Council (Disclosure of Allegations) Bill. Does anybody remember it? I even find the name Freeman in the record. He was a member of the Labor Party, so he could not have been related to the Hon. D. D. Freeman. On that date the Labor Party, the brilliant defenders of the people of this State, brought in that bill. Indeed the Labor Premier of the day moved urgency on it. It must have been urgent. That bill was brought in quickly and it went through the lower House very quickly, though not as quickly as Labor members would have liked. However a wonderfully vigilant person by the name of Askin was wide awake at the time, although it all happened at some godforsaken hour, about 1.58 in the morning. In the lower House there were seven divisions on that bill before it was read a second time. Then there were four more division before the bill was sent to the upper House.

In spite of all those divisions, it did not take long to get that measure through the lower House-only a matter of a few hours. In the Legislative Council the story was quite different. Let us remember that it was then a Labor-controlled Council, so a good precedent has been set for the time taken by the council to debate a bill. The Sydney City Council (Disclosure of Allegations) Bill came to this House on Tuesday, 1st December, 1953. It was not raced through this House. The Hon. R. R. Downing introduced it at 4.35 the same morning. That night sitting in 1953 must have been a very late one. Some honourable members present now might remember it. Probably the Hon. O. M. Falkiner does.

The Hon. O. M. Falkiner: We got to bed at about 7.40 a.m.

The Hon. MARGARET DAVIS: I am glad the honourable member recalls it. I had just left school then. The Hon. O. M. Falkiner might be able to talk about it in a few minutes. The debate on the bill went on and on. The upper House proved its worth. Though there was a Labor government in the lower House, members of the upper House led by the Hon. R. R. Downing were not willing to rush the measure through. The House is acting in a responsible manner by not only giving members time to debate the bill but also providing time for the citzens of New South Wales to find out all about it. When the ciitzens of the State find out what the measure is about they will not be as happy with the Labor Government as they thought they would be. The citizens are finding that out anyway.

The Anti-Discrimination Bill introduced by the Government has been laid on the table of the House until next sitting day. From the reaction I have had from people who have spoken to me on the telephone it is considered to be not a anti-discrimination bill but a discrimination bill. It is best that the Labor Party find out for itself. Why should I tell the Government what is wrong with the bill. It will find out soon enough. No matter which way I look at the bill, I find myself in the same position as my former colleague, the Hon. C. E. Begg. Why did not the Government just introduce the first schedule? Why did it have to go on with the second schedule? After all, the first schedule would have given the people what both political parties had promised—what the people wanted. The Government would not then be setting out to take absolutely everything from people. Honourable members who have spoken in the debate before me have dealt with that aspect.

I am not as familiar with the law as is the Hon. L. A. Solomons. Almost all of the bill is not clear to me except for one thing: the Government is out to fleece the citizens of New South Wales of just about everything they will save in a lifetime.

Once that message gets to the people of New South Wales they will be quite happy with the manner in which the Opposition has debated the measure. After all, this is a House of review. If ever a bill needed reviewing after being rushed through in another place, it is this bill. I do not need to say much more than what has been said. I cannot help thinking of what were the hopes of the Labor Government in introducing this bill at the end of the session. The Government raced it through the lower House and tried to do the same thing here.

If honourable members do not discuss the measure they are failing in their true role as a House of review. When one realizes the stress and distress that the measure will cause to the people of New South Wales I feel certain the Labor Government will be happier that the bill was debated in the House. The Government might like to look at some aspects of the bill. The Hon. W. L. Lange might deal with some matters later. I do not know a lot about these matters but I care about the people of New South Wales. I care what happens to people who work hard and save and are to have things taken away from them. Had the Government just gone ahead with the first two provisions of the bill, surely that would have satisfied the people of New South Wales. Schedule 2 is a sprat to catch a mackerel. I cannot support the bill in its present form. I feel that honourable members should look carefully at the clauses of the bill before they pass them. I thank you, Mr President and honourable members. I hope that it will be realized that I have tried to set a precedent before the House. Honourable members on this side of the House were justified in taking the stand they took tonight.

The Hon. DELCIA KITE [10.7]: I support the bill. The women's movement of New South Wales has looked forward to it for some time. Like the Hon. Anne Press, I worked hard in the early years of my married life. Though she fed pigs and chickens and took eggs to the market, I think I worked harder than she to provide a happy home for the care and good health of my children to provide them with a tertiary education. I feel that my children are now economically independent and citizens of worth who consider other people besides themselves. I consider that the economic responsibility of my husband and myself to our children has ended. The children have every opportunity to work and save as we did and to make a success of their lives. I am quite sure they will do that.

Like the various women's movements throughout New South Wales, I wholeheartedly support this bill. It is long overdue. Its introduction will prevent much distress and pain to widows in the future. Schedule 2 will eliminate the loopholes in the existing law which allows evasion of payment of full probate. Only people of comfortable means like honourable members on the Opposition benches can make use of those loopholes. This is a further inequality between the tall and the short poppies about which members of the Opposition have spoken. It is another example of discrimination.

Only greedy people indulge in using these loopholes, and want to create a hereditary dynasty. They have no wish to contribute to the State on their death, towards the welfare of others less fortunate than themselves. I should be only too pleased to do so because my children are able to look after themselves economically. We provided for their welfare and education throughout their formative years. The Opposition suggested that schedule 2 will drive big business interstate. That is an example of the lengths to which some people will go to create hereditary dynasties. I hope that members of the Opposition will summon their consciecces, consider other people, and support the bill wholeheartedly.

The Hon. D. P. LANDA (Vice-President of the Executive Council and Minister for Planning and Environment) [10.10], in reply: This debate has been long, and at times bitter, but certainly it has demonstrated clearly the difference, the tremendous

gulf, that exists between the commitment of the Government and the commitment of the Opposition. Honourable members opposite failed to follow the example of the Hon. W. L. Lange who, I say without being too considerate, was the only Opposition speaker who remotely dealt with the subject-matter of the bill. Honourable members opposite could not restrain themselves from letting forth all their spleen against death duties *simpliciter*. This was the totality of their contributions: "We do not agree with death duties. We want death duties abolished".

The Hon. W. J. Holt: The Labor Party wants them abolished.

The Hon. D. P. LANDA: The honourable gentleman would have heard me say that if he had been listening. Obviously he listens only half the time, as he demonstrated tonight. The policy statements of the Labor Party show clearly that we see death duties as an anathema. Honourable members opposite followed that line only. They talked about little children, about widows, about mongoloids, about the people struck by tragedy in Lebanon and in every nook and cranny of the State, enlisting these events in a blatant, cynical avoidance of the real issue of the bill, which is as clear as crystal to those who want to see it. I put aside the legal and accounting objections raised by the Hon. W. L. Lange and, to some extent, by the Hon. P. S. M. Philips.

I have no intention of dealing individually with those arguments, including the ones put forward by the Hon. H. J. A. Sullivan, who on several occasions went dangerously close to the topic, even in his ramblings about Mad Jack and rabbits being pulled out of hats. To deal in detail with the arguments put forward by the Opposition would be to dignify them. I lump them together and describe them as avoiding the one issue, the philosophical question, that is under discussion in this bill. That is whether all persons should be equal under the law, and especially under the taxation law, and whether those who have the money or the influence to obtain skilled advice for a fee should be able to take advantage of what the Hon. L. A. Solomons described as a series of tricks in order to escape the intention of the parliaments of the land that all persons should be placed on the same footing so far as their contributions to taxation revenue are concerned.

That is what we are talking about here. Let us get rid of all this nonsense about whether death duties are good or bad. In that respect I joint honourable members opposite: death duties are an inefficient way of dealing with the problem of the great injustice of inherited wealth. If honourable members opposite cannot understand that, especially honourable members who have made it themselves in life without the advantage of inherited wealth, if they cannot understand the philosophical basis for the objection to inherited wealth as it is known throughout all enlightened countries, I cannot do more to help them. Inherited wealth enables a person at birth to be differentiated from his fellow men and women, particularly if it be great or even significant inherited wealth, by giving them a considerable advantage over their fellows.

The Hon. W. J. Holt: Why then does the Labor Party believe in the abolition of death duties?

The Hon. D. P. LANDA: Because I believe, as does the Labor Party, that increasing advantage is being taken of what the Hon. L. A. Solomons described as a series of tricks for avoiding death duty that is available to wealthy persons who wish to pass on their wealth, and that a far better method, in my view, is one called variously "an asset tax", "a wealth tax", and so on, which operates in some countries, whereby persons pay tax during their lifetime on the accumulation of assets. I am sure that the Hon. W. L. Lange agrees with me, as he signifies now.

The philosophical point of view put forward by the Hon. Delcia Kite must be impeccable to just men. After all, the right of a parent to advantage his progeny over the progeny of other people must be seconded to the right of all men to commence life equally.

The Hon. W. J. Holt: Will the honourable gentleman define the word equality?

The Hon. D. P. LANDA: No, but I do say that genes and circumstance produce inequalities among people, either at birth or during their lives, and cause difficulty enough without those persons having to face inequalities oaused by inherited wealth.

The Hon. D. D. Freeman: If the Minister says that he has no objection if a man makes money after he is born, he is being inconsistent.

The Hon. D. P. LANDA: The Hon. D. D. Freeman is now splitting straws. I do not want to digress tool far, but one either accepts commitment to the ideal of as much equality in society as one can provide for legislatively and democratically, or one stands for the perpetuation of inequalities. The Hon. D. D. Freeman must be of the school that believes that the right to pass on inherited wealth takes primacy over the right of a man to commence life on an equal footing with others, not inheriting wealth to advantage him over his fellow members of society.

The Hon. T. S. McKay: Does the Minister say that this is a social rather than a revenue measure?

The Hon. D. P. LANDA: I am talking about the philosophical arguments about death duties. The Hon. Delcia Kite is one, and I am another, who opposes the view that it is to society's benefit that wealth be passed from father to son. I do not deny that it is to their personal advantage.

The Hon. W. J. Holt: Does the Minister intend to leave his children nothing?

The Hon. D. P. LANDA: I said that it is to their personal benefit. The honourable member trivializes.

The Hon. W. J. Holt: Is the Minister disagreeing with hi party's policy?

The Hon. D. P. LANDA: Obviously the Deputy Leader of the Opposition cannot grasp the understanding of those who see death duties as they now operate as not achieving the philosophical importance envisaged by those who have opposition to inherited wealth. That is why I subscribe to the abolition of death duites in time. We must deal with this bill in terms of reality. Until death duties are abolished and the steps commenced by this Government to so abolish them are achieved completely, all men should be equal under death duty law. Those who have estates which, except for a trick, loophole, perk or lurk, would attract duty should pay duty. Those manoeuvres, tricks, loopholes, lurks and perks should come to an end forthwith.

The Hon. W. L. Lange: Does the Minister believe that this bill will stop all the loopholes?

The Hon. D. P. LANDA: Obviously the honourable member is the only member on the Opposition benches who has any real understanding of this measure. In reply to his query I inform him that I have not often been accused of being naive and I shall not leave myself open to such accusation on thii occasion. I do not think this bill will stop every possible loophole. It aims at closing as many as the ingenuity of the draftsmen and the legal officers might envisage. Any suggestions from members

opposite or from other people genuinely trying to assist in the furtherance of its aim to close off these various tricks would be welcomed by the Government. The intention of the bill is clear.

The Hon. W. L. Lange: The bill creates as many problems as it solves.

The Hon. D. P. LANDA: That has yet to be proved. This is not the first taxation measure used to gain revenue from a source the Government decided was proper to charge. This is not the first change in duties payable in this State. This is not really the earth-shattering piece of legislation that honourable members opposite want us to believe it is. This is legislation simple in its intent, unapologetically embracing in its ambition and unashamedly wide in the net it casts to catch tricks, loopholes, lurks and perks. It aims to stop these devices. Honourable members opposite who in their bosom hold a secret desire for the maintenance of as many lurks and perks as possible will receive no apology from the Government for the terms of this measure. There can be only one basis for the breast-beating of members opposite in their protestations against death duty and the wide discretions contained in this bill. Members opposite say they disagree with death duties. Their attitude is one of, do not do anything to close up any loopholes, because that would mean more people would pay death duties. The Hon. R. B. Rowland Smith said that in this House.

The Hon. R. B. Rowland Smith: I did not say that.

The Hon. D. P. LANDA: If the honourable gentleman did not say it, I apologize, though I thought he did. The Hon. Sir Asher Joel raised the matter of safeguards for the innocent. The fundamental right upon which all this argument and nonsense was developed related to the discretion in the Commissioner of Stamp Duties—described as a bureaucrat, the man who will perpetrate the abomination referred to by the Hon. M. F. Willis, the man supposedly sitting there waiting to do what taxgatherers since time immemorial have done, gather in ruthlessly and relentlessly all that might be gathered. The real position, free from the ravings of honourable members who joined with the Hon. M. F. Willis in that shameful castigation of the persons unnamed now and in the future who might be called upon to exercise their duty under the law, reveals a total ignorance of the law of this land in the use of discretion by public servants. Honourable members of the legal profession know that the use of discretion, or an absolute discretion as it is sometimes called, is subject to the most prolific case law which starts with Avon Downes case and includes cases of discretion vested in public servants throughout the State, all of which have said that that discretion must be exercised bona fide. It must be exercised in a way that is not wilful or capricious, and in such a way that the person entrusted with the discretion does not take into account considerations that he should not properly take into account.

The Hon. W. J. Holt: Has the Minister ever taken a case to the Supreme Court and tried to have set aside someone's discretionary ruling?

The Hon. D. P. LANDA: I can only assume that the Deputy Leader of the Opposition has done so without success. I know many counsel who have successfully taken this sort of matter on appeal. The honourable gentleman's remark is obviously a reflection upon his own competency in the matter in which he was involved. Apparently the honourable member has a disastrous track record in this regard. If a person with a discretionary power takes into consideration a matter that he should not properly take into consideration, his discretion has been improperly exercised and will be overruled. If he fails to take into consideration something which he ought to, again his discretion will be overruled. For the benefit of non-legal members of this Chamber, that is what might be described as a potted version of the law on the use of discretion.

The Hon. Sir Asher Joel: It is an expensive exercise and beyond the reach of most people.

The Hon. D. P. LANDA: Yes, and that is where double standards exist. The Hon. Sir Asher Joel suggests that these matters are beyond the reach of ordinary people. That may be so, though it is not the real point. In this debate we are talking about people avoiding death duties.

The Hon. H. J. A. Sullivan: Avoiding is different from evading, is it not?

The Hon D. P. LANDA: We are talking about the people who have an estate of sufficient magnitude to warrant the establishment of a scheme, or a trick—something that is now estimated to cost anything up to $15,000 or $20,000 and sometimes more—to establish. These schemes have cost as much as $8,000 in legal fees to establish. Let us not beat about the bush. The Hon. M. F. Willis spoke about the $200,000 man as being average Joe or the average Aussie battleaxe, as Norman Gunston would put it. But we are talking about the people whose estates exceed $200,000, and they comprise the top 1.2 per cent of all estates assessed. These are the people from Opposition members are standing up for and seeking to ensure that these loopholes are maintained. Let us not be idle and talk about the average citizen—the average man in his thousands—whom the Hon. M. F. Willis spoke about—the person who accumulates assets in an estate worth $200,000. The latest Treasury figures available to the public puts estates of that value in the top 1.2 per cent of all estates.

The Hon. W. L. Lange: You are speaking about the value of estates at the time of death?

The Hon. D. P. LANDA: I gave the honourable member some credit before but I now withdraw it. He should realize that I am talking about the value of estates at death.

The Hon. W. L. Lange: I did not hear what you said.

The Hon. D. P. LANDA: They are the people we are talking about; they are the people for whom Opposition members are rushing in to make sure that loopholes are kept in existence. The members of this Chamber who represent those people—and I am convinced that there are quite a number of them, having regard to the battery of legal and accounting experts who rushed to the table to give us their contribution to this bill—know that a tax avoidance scheme it is not worth a candle, having regard to the heavy costs and risks involved, unless the estate assumes the proportion of approximately $200,000.

The Hon. O. M. Falkiner: Are you talking about estates or income?

The Hon. D. P. LANDA: Estates.

The Hon. T. S. McKay: I think you are wrong.

The Hon. D. P. LANDA: Some honourable members are plucking figures out of the air. I shall defer, even if they will not, to the advice of the Treasury of this State. If we are to believe all this talk about farms being mortgaged and the terrible plight of the man on the land, perhaps the properties that some honourable membars are thinking about will not reach the $200,000 mark. Perhaps those farms are mortgaged and their owners are in trouble.

The Hon. H. J. A. Sullivan: I gave an example of one property.

The Hon. D. P. LANDA: I do not propose to get sidetracked; what we are talking about is the value of an estate. I should like to be allowed to get to the point of the bill. This measure is designed to close the loopholes to which I have referred; it is designed to give the equity to the widow or widower promised by the Premier in his election speech—and that is what it will do. We believe that the amendments outlined in my second-reading speech, particularly in regard to schedule 1, cover the situation adequately. Let me put one thing at rest: I have no intention of engaging in a blow-by-blow legal discussion on whether the bill covers every conceivable estate situation raised by the Hon. Sir Asher Joel and the Hon. W. L. Lange. As I said, I refuse to dignify their arguments in that way or by examining the figures involved in estates that are engaging in these lurks. There is an estate, which is now notorious in its repution, involving names I shall not present to this Chamber, the value of which was estimated at $15 million in the State of New South Wales but paid less than $50 in death duties. Let us not talk about the avoidance that can be indulged in and the tricks that can be used.

The Hon. T. S. McKay: Has that estate been caught?

The Hon. D. P. LANDA: I have not looked at the scheme, and I do not suppose that I ever shall. All I can say is that good conscience and equity would demand that a government acting responsibly would not allow such injustices to continue. As I said before, I have no intention of indulging in legal arguments about individual estates. I want to make the position as clear as I possibly can. The Government's position on this bill is that it is all or nothing. This bill will not be amended; amendments will not be accepted in this Chamber and the bill will not be accepted in the other Chamber if it is amended. The responsibility for the deprivation of the benefits that would flow to the widows and widowers from the application of schedule 1 will be on the head of the Opposition. Those benefits will be denied so long as the Opposition obstructs the passage of this bill. The Government will not be dictated to in this Chamber to help this 1½ per cent of people and estates that are indulging in these lurks, perks and tricks. The Government's attitude is that amendments will not be accepted; the bill will be a subject of division in this Chamber and in the other place.

I only have this to say in relation to some of the matters that have been raised: this bill does nothing more than enforce the law as it was intended to do under the principal Act, when it sought to strike down any transaction entered into by any person with intent thereby to diminish, directly or indirectly, the value of his own estate and to increase the value of the estate of any other person. The bill attempts to do that as widely and as properly as it can. The Government believes that it will do that; that it will put an end to a lot of the schemes and tricks that have been indulged in in the past. The Government hopes that it will put an end to the machinations for the creation of further schemes. If it does not do that and these lurks and perks that cause death duties of this State to be borne by those who either cannot afford them or do not know about these manoeuvres, the Government will again unashamedly seek to close those loopholes and block those lurks and perks. The matter is clear so far as the responsibility of this House is concerned. This bill is essentially a money bill in character, seeking to gain increased revenue for the Government of the day; in its intent it is designed to stop the avoidance of death duties so far as it is legislatively possible to do so. It is nonsense to refer in this Chamber to statements made by the judiciary on the principle of the difference between evading and avoiding death duties: it has nothing to do with what this Chamber's deliberations are about.

The duty of the court and the duty of this Parliament are totally different. It is the duty of the court to determine whether something is being done legally; it is the duty of this Parliament to legislate to see that it is done ethically as well as legally. That is the clearest distinction and is cited even in some of the statements read by the Hon. H. J. A. Sullivan. Let me put at rest this pettyfogging about retrospectivity and the fear that it will strike down existing schemes. It is the intention of the Government to strike down existing schemes and to prevent as far as possible their being used as a trick to avoid death duties. It is not the Government's intention to act against any estate before Royal assent. An estate does not exist until there is a death.

The Hon. W. J. Holt: And that includes the section 137 ramifications?

The Hon. D. P. LANDA: That is so. It will operate on estates that come into existence after the date of assent, following deaths that occur after the Royal assent, but not on deaths or estates before then.

The Hon. W. J. Holt: What about arrangements entered into thirty years ago upon which people have built their lives?

The Hon. D. P. LANDA: If the arrangement is a trick to avoid death duties, then it will be liable. That has been the position with every other change of death duty law and tax law throughout this country's history.

The Hon. W. J. Holt: Not the tax laws. The Minister is quite wrong.

The Hon. D. P. LANDA: If a person has engaged in a manoeuvre to avoid death duty or gift duty, and that manoeuvre subsequently is no longer legal, then he could not avail himself of the benefit from that date onwards. That is what we are talking about—availing oneself of the benefit of it. The only time when that can be done is not when the scheme is introduced or when the manoeuvres were carried out, but when it comes to paying a proper share of estate duty, as other citizens who cannot afford or do not wish to indulge in these schemes have to pay theirs. That burden of the activities of the State which is funded by death duties, to the benefit of all citizens of the State, is borne inequitably by the person who faces up to his responsibilities—as I said, not in the legal sense—and does not indulge in these manoeuvres.

I am not saying that an individual should not have the right to do something that is legal, but once the Parliament of the day declares that, as a money measure, these schemes are to end that is the end of the innings. Accountants, lawyers and people with large estates are constantly changing their schemes. One scheme wmes into vogue; it is successful for a while, then it is overthrown judicially. That is just the same as a change in the law. Honourable members know of decisions that have altered schemes and made people change from the Robertson scheme to the Gorton scheme or to the Neische scheme. They transfer their assets to the Bahamas or Norfolk Island. These actions are not taken for the benefit of their health but because of the constantly changing law of death duties. The citizen must pay his proper share of taxation.

The Hon. W. J. Holt: If a person entered into an arrangement twenty or thirty years ago to try to help his children, his estate might be bankrupt, his widow will get nothing—and he did it on the faith of the law as it then existed. Is that fair?

The Hon. D. P. LANDA: The honourable member again clutches desperately at the concept of helping his children.

The Hon. W. J. Holt: It affects other people as well.

The Hon. D. P. LANDA: The honourable member, being engaged in the field, from time to time, of helping in the successful implementation of tax avoidance schemes, should not insult the intelligence of this House by suggesting that the purpose of tax avoidance schemes is other than to avoid taxes.

The Hon. W. J. Holt: Sir Owen Dixon said in the High Court that one can avoid tax—that is totally legal—but to evade it is totally wrong.

The Hon. D. P. LANDA: The hononrable member is again displaying his obtuseness. The difference between avoidance and evasion has nothing to do with the duty of a government to see that the taxation burden is distributed as equitably and equally as possible upon all citizens before the law. This bill attempts to do that. The bill will do two things: it will grant the benefit promised by the Premier in January—not in April, as the Hon. M. F. Willis said. The Premier was first berated and later imitated by the Leader of the Opposition in the other place. In April, in his policy speech at the time of the elections, he made the promise and it has been implemented by this Government. As the Premier said in his press releases and frequent statements, there would be closing of the loopholes.

The Hon. W. L. Lange: There is no copy in the library of any press statement prior to May that said the Government would close loopholes.

The Hon. T. S. McKay: And did he mention that it would be retroactive?

The Hon. D. P. LANDA: The honourable member says there was nothing in the policy speech. Honourable members opposite have the most absurd fixation about policy speeches. It would be absurd to suggest that one needed a mandate to close loopholes in the law in which people were unjustly——

The Hon. W. L. Lange: You claimed that the Premier said he was going to do it.

The Hon. D. P. LANDA: I still claim that.

The Hon. W. L. Lange: Then show me.

The Hon. D. P. LANDA: The honourable member will have to bear with me until the Chamber rises. I undertake to show him the press release; I do not have it with me in the Chamber at this moment. I undertake to show him at the close of the debate. As I said at the start, the bill is a twofold measure to assist widows and widowers who, in a great number of cases with which we are all familiar, find themselves in a difficult situation as a result of the imposition of death duties. We make no apology for that. The bill will relieve the position of a widow and allow her to maintain herself at the standard to which she was accustomed during her life with her spouse. That will be unchanged. The Government believes that those who indulge in tricks, lurks and perks should no longer continue to do this in New South Wales. The measure will go some way towards stopping those practices. It will receive the great support of the community at large who are outside that 1.2 per cent of exclusive people who can afford or wish to avoid death duties for which the other 98.8 per cent of the people are liable.

Motion agreed to.

Bill read a second time.

In Committee

New clause 3

The Hon. Sir JOHN FULLER (Leader of the Opposition) [10.52]: I move:

That at page 2, after line 9, there be inserted the words

3. The Stamp Duties Act, 1920, is further amended by inserting after section 123 the following section—

123A. Notwithstanding anything elsewhere contained in this Act no duty shall be assessable or assessed, paid or become payable or recoverable on or in respect of the estate or non aggregated estate of any person dying on or after the first day of July, 1977, and all obligations upon administrators and other persons to file returns and to account with a view to assessment shall no longer in respect of such estates be thereafter in force.

I noted with a great deal of interest the reply given by the Minister to matters raised during debate. Having listened to the Minister I am certain that he will offer no criticism of the amendment. He has stated that he believes in the abolition of death duties. The policies of the Labor Party and of the Opposition support the abolition of those duties. The Minister and every other honourable member who spoke on the measure supported schedule 1 which relates to the elimination of death duties spouse-to-spouse. There is no argument between the Opposition and the Government in that regard. I referred in general terms to schedule 2 and the Hon. W. L. Lange and other honourable members referred to that schedule in more detail. The Opposition stated that it was most concerned at matters relating to restrospectivity in relation to new section 137, and to the difference between the commissioner operating in the income tax field and in the stamp duty field.

Reference was made also to the new concept of controlled companies, which was introduced and abandoned in Western Australia and is the subject of amendment in Victoria. Honourable members mentioned the unprecedented priority of State taxes. Opposition members made reference to the complete abolition of death duties in Queensland as from 1st January next and emphasized that the Queensland proposal will have a most adverse economic effect on New South Wales. By some method New South Wales must counter these effects of the abolition of death duties in Queensland, and the move towards the relaxation of death duties in Victoria and South Australia.

The Opposition has decided in broad terms that it will not oppose the legislation that has been brought forward by the Government. In other words, we shall not move amendments to schedule I or schedule 2 which outline the provisions relating to the spouse-to-spouse concession and the closing of loopholes. In no way will the Opposition be interfering with the Government's legislation in this regard. However, the Opposition considers that in the circumstances it is proper to move the amendment to insert new clause 3 to which no one in New South Wales should have any objection. It will not in any way affect the revenue of the State in the current financial year as it does not come into operation until 1st July next year, which is six months after the introduction of the Queensland legislation. In the following financial year, as death duty revenue has been running at approximately 3.3 per cent of the total of the State's revenue, by the time the spouse-to-spouse death duty is eliminated and one takes into account the possible loss of many estates from New South Wales to Queensland and elsewhere, the State will not lose revenue in the future by the Government's action to incorporate the amendment in the bill.

The Minister said that he agrees with the entire abolition of death duties. There is no argument against abolition. The Minister may come back and say that it is a question of time. I have endeavoured to explain that the Opposition's action will in no way react against the revenues in this year's Budget. I have suggested also that there will be minimal, if any, adverse effects on subsequent budgets. The action that is being taken will reduce the estates that are held in New South Wales. Further, the abolition of spouse-to-spouse death duty will have the effect of reducing the total revenue from death duty. Being mindful of the need to safeguard the economic future of New South Wales and job opportunities, and acknowledging the existence of Government policy, the Opposition has decided not to attempt to amend in any way that policy. The amendment is put forward as a practical solution to the great problem facing New South Wales at present as a result of the actions being taken by other States and the general approach by all political parties to the abolition of death duties. I am certain that the amendment I have moved will have the full support of the Government.

The Hon. D. P. LANDA (Vice-President of the Executive Council and Minister for Planning and Environment) [11.0]: I assure the Leader of the Opposition that this amendment will not have the support of Government. I shall explain why. First, as he said, it is Australian Labor Party policy to abolish death duties. I shall indulge in a short lesson in what is the policy of a political party, so far as the Australian Labor Party is concerned, and what it apparently is in relation to the Opposition parties. In the Labor Party we have a policy for Labor governments to implement, without interfering with the organs of the party, with the right of the Government to pursue its legislative priorities as it sees fit and in accordance with the mandate given to it by the people.

At the last elections we did not go to the public with the totality of Australian Labor Party policies. Indeed, the Premier said at times that they would not be implemented by the incoming administration in the forseeable future. In both the Government and Opposition parties the platforms are statements of intent. Therefore, it is pure humbug to talk about governments being obliged to implement these policies forthwith, in three months, in six months, one year or two years after taking office—or, indeed, their first or second term of office. It is pure humbug to say that a government is obliged to implement the totality of the parties political platform, and it is nonsense to suggest that it should. This is well understood by everybody who indulges in politics in this State and in this country.

I have here the State platform of the Liberal Party, and I can pluck from it at random items that honourable member opposite failed to implement during the eleven years they were in office. Therefore, we shall not have any discussion about being joined inextricably to our party's policies. These are statements of the intentions of a political party for implementation in accordance with the ordinary democratic processes and in accordance with the mandates sought during election campaigns.

We shall not be dictated to by what occurs in Queensland. We shall not be dictated to by a short-sighted grab for some financial advantage, to the detriment of the other States of the Commonwealth, by a sectional State interest, resting in the mind of Joh Bjelke-Petersen. We shall not be dictated to in our 1976 Budget by the Opposition parties in this House or in the other Chamber; indeed, we shall not be dictated to in respect of 1977 or 1978. Implicit in this amendment is a direction by the Opposition parties to the Government to reorganize its Budget.

The amendment amounts to this statement by the Opposition to the Government: "Take from your 1976 Budget the $98 million of revenue that will be received from estate duties; also, remove that revenue from your estimates from 1977 onwards."

The Opposition, which is saying to the Government that it must take this revenue out of this Budget in **1978,** makes not one suggestion of how that **$98** million will be replaced. It is fiscal irresponsibility at its worst to suggest by an amendment of this nature that the budgetary commitments of an elected government shall be dramatically altered. I can assume only that it is an attempt to gain some political mileage by saying to the people of New South Wales that the Opposition parties favour the abolition of death duties.

The Hon. H. J. A. Sullivan: Don't you?

The Hon. D. P. LANDA: That is a curious remark bearing in mind that your leader in the other place never said that if a Liberal-Country party government were returned to office, it would propose an amendment to the Stamp Duties Act, or that it would bring in an amendment that would have the effect of revoking death duties legislation from July, **1977.** Neither did he say that nor that he would do what is now being proposed by the Opposition in this House. After the Premier had said that he would abolish death duties on estates between surviving spouses, the Leader of the Opposition in another place did not say that. This is an attempt to gain some political mileage. If the Leader of the Opposition in another place had made a statement of intent along those lines before the elections, it might have had some credibility. However, his only statement was that the only relief he would give if a Liberal-Country party government were returned to office was the same relief promised by the Hon. Neville Wran—and no more. As he said this after it had been announced by the present Premier, it shows the hollowness of this gesture in this Chamber.

I shall not weary or delay the House any longer at this late hour. The Government will not accept the amendment and will not be treated in this cavalier way in regard to its budgetary estimates. The Government opposes the amendment.

Question—That the words be inserted—put.

The Committee divided.

Ayes, 25

Dr de Bryon-Faes	Major Humphries	Mr Rowland Smith
Mr Calabro	Sir Asher Joel	Mr Sandwith
Mr Darling	Mr Keighley	Mr Solomons
Mrs Davis	Mr Kennedy	Mr Sullivan
Mr Duncan	Mr Lange	Lieut-Colonel Willis
Mr Falkiner	Mrs Lloyd	
Mr Freeman	Mr MacDiarmid	*Tellers,*
Sir John Fuller	Mr Moppett	Mr Evans
Mr Holt	Mr Pickering	Mr Philips

Noes, 17

Mrs Anderson	Mrs Kite	Mrs Rygate
Mr Burton	Mr Landa	Mr Thom
Mr James Cahill	Mr McPherson	Mr Turner
Mr Coulter	Mr Melville	*Tellers,*
Mr Geraghty	Mr Peters	Mr Hallam
Mr Healey	Mrs Roper	Mr Johnson

Question so resolved in the affirmative.

New clause agreed to.

Schedule 1

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(ii) being property which, or the value of which, is included by this Act in that dutiable estate where the beneficial interest in the property on the death of the deceased is vested in or passes to the widow or widower of the deceased; or

The Hon. EDNA S. ROPER (Deputy Leader of the Government) [11.19]: I move:

That at page 3, lines 9 and 10, the words "on the death of the deceased is vested in or passes" be omitted and there be inserted in lieu thereof the words "was vested in or passed on the death of the deceased".

The Government feels that the amendment will clarify the situation. I hope that Opposition members will agree to the amendment, especially as tonight they have made great play of the fact that the bill contains some areas of uncertainty.

Amendment agreed to.

Schedule as amended agreed to.

Adoption of Report

Bill reported from Committee with amendments, and report adopted, on motions by the Hon. D. P. Landa.

Third Reading

Bill read a third time, and returned to the Legislative Assembly with amendments, on motions by the Hon. D. P. Landa.

DAIRY INDUSTRY AUTHORITY (AMENDMENT) BILL

First Reading

Bill received from the Legislative Assembly and, on motions by the Hon. D. P. Landa, read a first time and ordered to be printed.

Suspension of Standing Orders

Suspension of certain standing orders agreed to on motion by the Hon. D. P. Landa.

PUBLIC HOSPITALS (AMENDMENT) BILL

First Reading

Bill received from the Legislative Assembly and, on motions by the Hon. D. P. Landa, read a first time and ordered to be printed.

Suspension of Standing Orders

Suspension of certain standing orders agreed to on motion by the Hon. D. P. Landa,

SPECIAL ADJOURNMENT

Motion (by the Hon. D. P. Landa) agreed to:

That this House at its rising today do adjourn until tomorrow at 2.30 p.m., ***sharp.***

House adjourned, on motion by the Hon. D. P. Landa, at 11.32 p.m.