



Queensland  
Government

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AUTHOR

PHONE

FAX

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Office of

**State Revenue**

Mr Brian Salter  
Chairman  
Australian Securitisation Forum  
PO Box H68  
AUSTRALIA SQUARE  
SYDNEY NSW 1215

Dear Mr Salter

I would like to take this opportunity to thank the Australian Securitisation Forum for its submission on the consultation draft *Duties Bill* that was released late last year. I have pleasure in enclosing a copy of the second consultation draft *Duties Bill*, together with a table setting out responses to the submission and a paper outlining the proposed approach to be taken to transitional issues that will arise on the commencement of the Bill.

The further draft Bill has been prepared after careful consideration of comments made in the various submissions received on the first consultation draft. You will recall that the *Duties Bill* is intended to be a rewrite of the *Stamp Act 1894*, not a full scale review of the State's stamp duty laws. The *Duties Bill* was undertaken in accordance with principles set down by the Queensland Government and published during the consultation. Where a change requested in a submission is consistent with the principles for the *Duties Bill* and the policy underlying the provisions and provided the change would not have adverse revenue consequences, the draft Bill has been amended to accommodate the request. However, where the change does not meet these requirements of the rewrite, it has not been included and this has been indicated in the table.

Your comments on the further draft Bill and the proposed transitional arrangements would be appreciated by Friday, 13 July 2001. In order to meet the Government's announced introduction of the Bill into Parliament in September, it will not be possible to extend this period. I suggest therefore that, given the tight timetable and the explanations provided, you may wish to confine your comments to the changes made to the Bill rather than reiterating previous submissions.

For your information, the draft Bill is available electronically on the Office of State Revenue's website, [www.osr.qld.gov.au](http://www.osr.qld.gov.au). If you have any questions regarding the further draft Bill, please contact Mrs Elizabeth Goli on 3244 8572.

Yours sincerely



James Green  
Executive Director

Section	Comment	Response (References are to clauses in the 2 <sup>nd</sup> consultation draft)
<p><b>Transfer duty</b> general - exemptions</p>	<p>A deemed transfer under 32(1) must be eligible for corporate reorganisation relief under Chapter 10 Division 3 as if it were an actual transfer.</p> <p>The exemption for cancelled agreements is generally superior to the existing rescission provisions. The “benefit” referred to in clause 87(2)(b)(i) should be restricted to a financial benefit as in the existing section 54(9).</p> <p>The exemption for pre-incorporation contracts is a welcome change from the present practice: see SD 18.</p> <p>The definition of corporate debt security is missing. Is this intentional? If not, it should be made available for review. Define “corporate debt security”.</p>	<p>Agreed. This is already covered as cl 38 deems the transactions to be a transfer. The corporate reconstruction provisions will apply.</p> <p>Agreed. Amend to replicate current provisions.</p> <p>Noted.</p> <p>Agreed. Definition inserted.</p>
<p><b>Exemption – Debts &amp; Securitisation</b></p>	<p>A specific securitisation exemption should be introduced either:</p> <p>(i) reflecting the NSW exemptions in s282, 283, 284, and 259(1)(e); or</p> <p>(ii) comprehensively dealing with mortgage backed security structures and asset backed security structures, in other words, all receivables-backed securities.</p>	<p>Qld currently taxes debt transfers made by instrument or on a business acquisition. The move to a transactions tax is facilitated by the following to align the instrument and transaction models where possible:</p> <ol style="list-style-type: none"> <li>1. Debts are now only dutiable property if they are a business asset. Unsecured debts have been removed from the definition of “existing right”.</li> <li>2. An exemption for factoring/discount transactions has been provided.</li> <li>3. However, no general exemption has been provided for securitisation of debts other than those secured by mortgages over land and fall within the new definition of “mortgage-backed security”. This is consistent with the Victorian provisions and the previous Qld exemption for these securitisations. No extension of these concessions are proposed under the rewrite.</li> </ol>
<p>193(3)</p>	<p>This section should be deleted. It is a “wait and see” rule which expands the traditional tax base (in that traditionally, stamp duty is levied by reference to property which is in existence and affected by the instrument in question when it is executed). Also the section goes way beyond its nearest equivalent, NSW s208(3) which relates only to fixed securities over land acquired within the 12 months after signing.</p> <p>In the contexts of securitisation structures, the securitisation industry</p>	<p>In relation to security trusts, see new exemption in section 120.</p> <p>This provision has been amended to reflect the NSW provision but will also reflect the anti-avoidance nature of the provision by bringing in property which was identified under an arrangement as being intended to be secured.</p> <p>The changes proposed for securitisation will address this issue for mortgage-</p>

	<p>has relied on the absence of a retesting nexus provision in Qld. This section re-tests nexus. It means that as soon as a Qld mortgage or receivable is transferred into a securitisation vehicle, ad valorem duty applies at 0.4%. The stamp duty costs on securitisation loans, which are normally enormous, would render the structure non-viable and Qld assets would have to be excluded from the security package and the securitisation itself.</p> <p>As a matter of broader tax policy, it is questionable whether the inclusion of this section achieves any sort of balance between the benefits of its inclusion to the revenue and the costs to the taxpayer community. The section has the capacity to attach in entirely unexpected ways and at unexpected times.</p>
<p>backed securities.</p> <p>As above.</p>	<p>195</p> <p>The distinction between limited and unlimited securities should be reinstated. The draftsman has failed to recognise the distinction between what is "secured" and what is recoverable under a mortgage. It is important that the duty is only payable on the "cap" or limit", not the total amount secured.</p>
<p>See cl 252. This has been amended to recognise capped securities, however, we do not want to re-instate the problems with the limited/unlimited distinction. E.g. Where the security is stated to be limited to \$200,000 and there is only ever an amount of \$10,000 advanced under it.</p>	