



*Australian  
Securitisation  
Forum*

GPO Box 4294  
Sydney New South Wales 1164  
**Telephone** 02 8232 6390  
**Facsimile** 02 8232-4966

13 July 2001

Mr James Green  
Executive Director  
Office of State Revenue  
Queensland Treasury  
200 Mary Street  
BRISBANE QLD 4000

Dear Mr Green

**Second Exposure Draft: Duties Bill 2001**

Thank you for your letter dated 15 June 2001. Once again the Australian Securitisation Forum would like to take this opportunity to put forward submissions in respect of the proposed legislation.

The ASF notes that whilst a number of its requests have led to drafting changes, others have not. The materials which you provided to us indicate a general willingness on the part of the Government to support mortgage-backed securitisation but a general lack of willingness to support asset backed securitisation.

Whilst we appreciate that this is not a "full scale review of the State's stamp duty laws", we believe that any rewrite of stamp duty legislation necessarily involves policy decisions.

The single greatest benefit for Treasury in the rewrite process is the removal of the distinction between written and unwritten transactions. This reflects a policy decision. Yet it is the removal of this distinction that impacts most heavily on the securitisation industry (both mortgage backed and asset backed), which, like the factoring industry, has relied on unwritten transactions.

The current drafting of the Bill does not satisfactorily address the industry's concerns. Thus the industry, if it is to survive in Queensland, must seek the fine tuning of existing policy and the creation of new policy.

It is our view that more work needs to be done in order to (at least) bring into effect the Government's generally supportive stance towards mortgage securitisation. Furthermore we submit that there is a need for policy change in order to support asset back securitisation in Queensland and ensure that Queensland is not markedly out of step with New South Wales, Victoria, Australian Capital Territory and Tasmania in that regard. None of those jurisdictions levy duty on the transfer of debts or receivables.

Our submissions are attached. Unfortunately in the time available it has not been possible to write extensively about each one. However each is significant. We also attach for your assistance (and to provide some background) an extract from a letter issued to one of our Queensland members by John Loxton at Clayton Utz. The advice assumes (except where otherwise indicated) that at all points in the transaction the

Queensland nexus tests are satisfied. Please bear in mind that that Bank was mainly concerned with mortgage backed securitisations, not asset backed securitisations. The advice reflects that.

If you would like to discuss any of the submissions please do not hesitate to contact me.

Thank you once again for giving us the opportunity to comment on the proposed law.

Yours sincerely

Brian Salter  
Chairman

## **Submissions**

### 1. **Section 246**

- (a) The expression "land" in section 246 should expressly exclude interests in land to make this point clear.
- (b) To bring section 246(3)(b) strictly into line with New South Wales (section 205(b)), floating securities should be excluded.
- (c) The words "or stamped exempt" should be inserted after the words "similar duty" in section 246(4). The typical securitisation involves a mortgage which is stamped exempt in New South Wales.

### 2. **"Existing Right" definition paragraph (h) and Section 24(3)**

- (a) Either:
  - (i) delete these paragraphs to facilitate the transfer of mortgages and the creation of security trusts; or
  - (ii) restate paragraph (h) in clearer terms (making it clear that the debt itself is not relevant and removing the words "the holder of" in line 3) and delete the words "that is solely" from paragraph (a) of section 24(3).
- (b) Paragraph (m) of the definition of "existing right" should also be deleted or a carve out included for securitisations. It provides that an existing right to the income from dutiable property is an "existing right". There are many difficult questions raised by this paragraph. For example:
  - (i) Ordinarily merely owning dutiable property will automatically carry the right to income. If a debt carries interest is the right to receive interest regarded as a separate (or "existing") right to receive income? If so, the removal of unsecured debts from the existing right definition is meaningless.
  - (ii) if not, is the creation of the right effected by the first assignment of the right to receive income a dutiable event? Or must the right already be in separate hands to the debt, or other dutiable property itself.
  - (iii) does the reference to "dutiable property" include or exclude other "existing rights"?
  - (iv) does the paragraph capture only dealings with the "tree" (ie. the right) or does it capture dealings with the fruit (ie. the income itself)? On the current drafting we believe it captures only the former.

### 3. **Queensland business asset**

Either

- (a) delete "debt of a business" from Section 34. If debts are to be dutiable property then they should be "existing rights", and only if they are located in Queensland; or
- (b) redraft section 10(1) so that Queensland business assets are dutiable property only if they are the subject of a transfer, or agreement to transfer, a Queensland business. This would substantially assist asset backed securitisations as well as mortgage backed securitisations.

4. **Mortgage backed security provisions - ss 280 - 284**

- (a) The definition of "mortgage backed security" should include paperless securities as well as instruments of security.
- (b) The typographical error in section 280(2)(a) should be corrected.
- (c) Section 280(2)(c) should be deleted.
- (d) The references to "corporation" in section 280(1)(b) should be replaced with "person", so as to make it clear that a corporate trustee (rather than a corporation) can issue the debt securities. "Person" is the word used in paragraph (a).

5. **"Corporate Debt Security" definition**

- (a) This should include debts owed by "corporate trustees", for the sake of clarity.
- (b) It should also contain the words "(whether or not comprising an instrument)" after the words "similar security", again for the sake of clarity and to line up with modern commercial practice.

6. **Transfer of mortgage backed security exemption**

Unless the corporate debt security exemption can be amended to achieve the same result, there should be a separate exemption for the transfer of mortgage backed securities.

7. **Security Trust Deed exemption - Section 120**

Section 120 should be rewritten to prevent note transfers, issues and redemptions being trust acquisitions: delete "being held for the benefit of the beneficiaries of the trust who have provided, or will from time to time provide financial accommodation and insert "providing security to the beneficiaries of the trust".