



*Australian
Securitisation
Forum*

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The Commissioner of Stamp Duties
State Revenue Office
505 Little Collins Street
MELBOURNE VIC 3000

Attention: Mr Rod Rogers and Mr David Ogilvie

Dear Sirs

Further Submission in relation to Securitisation and the Duties Act

I refer to our letter to you dated 2 February 2001 and to our extensive submissions accompanying that letter.

Now that the Duties Act is operational it is appropriate that we draw to your attention our continuing concerns:

1. **Definition of "mortgage backed security"**
 - (a) Very few, if any, securitisations these days result in the issue of debt instruments; rather they result in the issue of inscribed stock or paperless securities registered on a central register. However paragraph (b) of the definition requires a debt instrument. In this regard it is out of step with New South Wales as well as commercial practice. We submit that it would be appropriate to refer to a "debt security (whether or not in writing)" instead of "an instrument".
 - (b) Usually such debt securities are issued by corporate trustees of securitisation funds. Yet paragraph (b)(ii) states that the securities must be issued or made by a "corporation". It is not clear whether this would include a corporate trustee. Paragraph (a), in contrast, uses the more general expression "person". We submit that the paragraph should be amended to make it clear that a mortgage backed security can be issued by a corporate trustee or a "person".
2. **Section 152(3)**

We gratefully acknowledge the work done by your office in respect of the redrafting of this provision.

However 2 issues remain with it:

- (a) Subsection (3) adopts language similar to section 208(3) in New South Wales, however it differs in effect. There is an inconsistency in the New South Wales Act between section 208(3) which refers to an "instrument of security" and section 205(b) which refers to a "mortgage or charge (not being a floating charge)". When this inconsistency has been raised with the New South Wales Office of State Revenue it was indicated that it is not intended to give section 208(3) a wider operation than section 205(b); as a result the exclusion of floating charges should be read into section 208(3). (This seems to be the only sensible way to resolve the ambiguity).


Thus in order to adopt the New South Wales position in respect of section 152(3) the words "except where the instrument of security is a floating charge" should be inserted before the words "affects land".

- (b) The expression "land" in section 152(3) has a very broad meaning which includes interests in land, including security interests. This meaning is derived from the Victorian Interpretation of Legislation Act 1984 which contains a definition of "land" quite different to the definition in the New South Wales Interpretation Act 1987 and its Queensland equivalent.

This means that if a chargor, such as a securitisation trust, acquires a mortgage of land (Torrens Title) within 12 months after granting a charge, mortgage duty will become payable unless the charge has been "stamped" in another jurisdiction. We submit that there is a need to exclude security interests in land from the operation of section 152(3).

We would be grateful if you could give these matters your urgent consideration. As you will appreciate the sum of these concerns is that doing a securitisation over Victorian assets at the present time is problematical.

Yours sincerely



per
Brian Salter
Chairman