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The Treasury
Langton Crescent
Parkes ACT 2600

By email: CompetitionTaskforce@treasury.gov.au

Consultation on the Treasury exposure draft of the Competition and Consumer (Notification of Acquisitions) Determination 2025 (Exposure Draft Consultation)
The Australian Securitisation Forum Submission

On behalf of The Australian Securitisation Forum (ASF) and its members, we are writing to address and respond to the Exposure Draft Consultation. In particular, Treasury is seeking stakeholder views on Division 2 of Part 2 (Exemptions for certain acquisitions of shares or assets), and whether other types of acquisitions of shares or assets should be exempt from the merger system on this same basis as provided in that Part. The ASF would like to comment on this question on behalf of the securitisation markets it represents.

In providing this response, the ASF wishes to emphasise the importance of certainty in financial markets and, in particular, of certainty in the parts of financial markets that do – or could – involve the acquisition of assets. Legally, certain 'true sale' of assets is a fundamental cornerstone of securitisation markets. Given the breadth of the underlying legislation, the ASF is concerned that securitisation markets may be required to navigate the technicalities of the new merger regime in circumstances where they are not within the policy objectives of that legislation. Were securitisation markets to be captured by the merger regime – or were it necessary to assess the application of the merger regime to securitisations on a case-by-case basis, or to have residual uncertainties around its application in undertaking a securitisation transactions – this could have adverse implications for an important Australian funding market.

Accordingly, as part of this response, the ASF is seeking a clear exemption for securitisation markets from the application of the new merger regime. The ASF considers an exemption of this nature to be consistent with the underlying policy aims of the reforms, including to provide for clear definitions and rules to enable businesses to identify whether they are (or are not) required to notify under the new system, in circumstances where securitisations are very unlikely to result in a lasting change to the competitive structure of a market or to adversely affect competition, and – conversely - fettering these transactions would cause unwarranted disruptions to capital markets and has the potential to impede the ability of originators (particularly non-bank financial institutions) to access funding to support loan originations and compete effectively in lending to consumers.

1. Australian Securitisation Forum

The ASF is the peak industry association representing the securitisation and covered bond sectors in Australia and New Zealand. The ASF's role is to promote the development of securitisation and covered bonds in Australia and in New Zealand by facilitating the formation of industry positions on policy and market matters, representing the industry to local and global policymakers and regulators and advancing the professional standards of the industry through education and market outreach opportunities. The ASF is comprised of a governing National Committee, standing subcommittees and a national membership of over 210 financial institutions and market organisations. Further information on the ASF and its activities can be found at www.securitisation.com.au

2. Overview of the Australian securitisation market

Brief description

2.1 Securitisation is an important part of Australia's financial system and is a flexible funding tool for regulated banks, non-banks and new emerging lenders seeking to fund their businesses through the debt capital markets. The Australian securitisation market is a very successful and active financial market segment that serves a vital role in facilitating the supply of finance for homeowners, consumers and SME businesses and, in fact, enables lenders to serve parts of the market that some regulated banks find less attractive due to regulatory risk weights applied to certain asset classes. It also provides a competitive dynamic in Australia's concentrated banking market to exert downward pressure on margins for mortgages and other consumer and SME finance than otherwise would prevail in the absence of the public securitisation market.

How is securitisation created?

2.2 Securitisation is a form of secured funding backed by a portfolio of financial receivables. The process involves the creation of a bankruptcy remote special purpose vehicle (SPV) which issues debt securities to purchase a pool of financial assets. Investors in those securities are insulated from the corporate insolvency risk of the lender or originator of the assets and are dependent on the cash flows of the assets for the repayment of principal and interest on the debt securities. This insulation allows the credit of the portfolio to be rated by credit rating agencies more highly than the credit of the lender or originator, which in turn allows borrowing to be made available at lower rates.

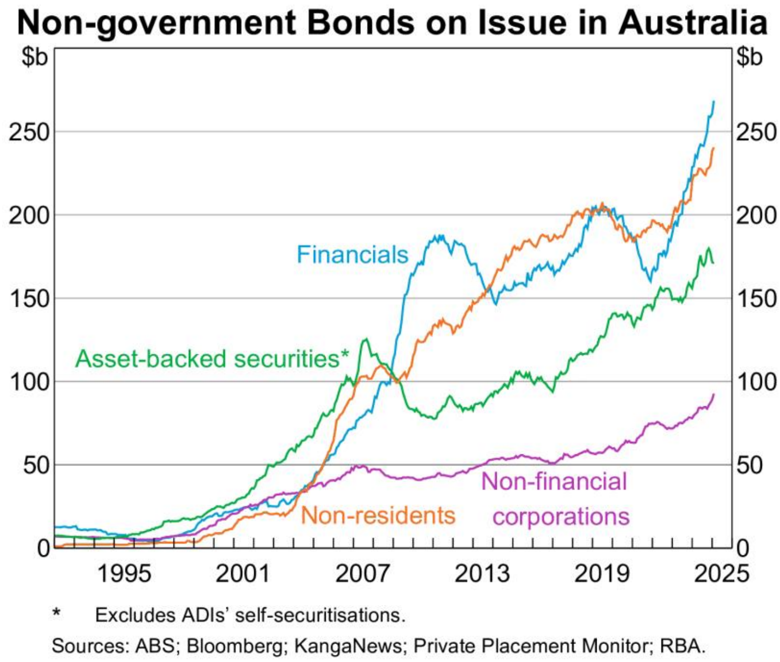
2.3 A portfolio of financial receivables can typically comprise of assets such as mortgage loans, auto loans and SME receivables. The bank or non-bank originator of such assets provides the lending service to the consumer or the SME and typically continues to act as the customer interface during the term of the transaction.

2.4 When a securitisation is refinanced, in addition to any sale of the principal financial assets backing that securitisation (for example, to a new SPV funding the refinancing) other financial rights or assets may also be transferred – for example, the debt securities issued by the SPV may be transferred to a new investor and/or hedging transactions may be novated from the existing SPV to the refinancing SPV. These positions may also be transferred during the course of a transaction – for example, debt securities may be transferred between investors from time to time as part of their general portfolio management.

Size of the Australian securitisation market

2.5 Total public issuance over 2024 reached A$80 billion across 100 individual transactions and 57 organisations. This total eclipsed the 2023 post GFC record issuance volume of A$52.3 billion and the previous high-water mark of A$64 billion that was set back in 2006. The auto and other ABS market also set its own record with more than A$16 billion being issued by the end of 2024. The first quarter of 2025 saw A$15.55 billion issued across 17 transactions. While this volume is less than the previous quarter, the volume of the first quarter this year is the busiest first quarter of issuance since 2007. The overwhelming majority of issuance was from the non-bank lending sector, accounting for 90% of the volume placed.

2.6 According to the Reserve Bank of Australia (RBA), asset backed securities represent a significant proportion of non-government securities outstanding in the Australian bond market.



This demonstrates that securitisation represents an important part of the funding requirements of Australian lenders including both banks and non-banks. Annexure 1 to this letter sets out further key Australian securitisation market statistics.

Government support for the securitisation markets

2.7 The Federal Government, through the Australian Office of Financial Management (AOFM), first became involved in the public RMBS market at the time of the global financial crisis in 2008 to provide liquidity to a market that had been disrupted at a global level. The scheme was an enormous success, with all government investments eventually refinanced and rather than creating any losses, yielding a profit to the Australian taxpayer.

2.8 This successful form of government support led to the design and implementation of the Structured Finance Support Fund (SFSF) during the COVID period commencing in 2020, again to ensure that in an adverse domestic and global bond market with limited liquidity brought about by a global pandemic, non-bank originating lenders would still be able to raise funds from the public bond market and continue to provide home loans and other credit products to Australian borrowers.

2.9 The SFSF allocated public funds for qualifying investments in both public securities and private warehousing. The SFSF complimented the RBA's Term Funding Facility (TFF) by providing liquidity to qualifying ADIs. The corollary of these forms of sponsored intervention in the form of Government investments was that as soon as the private bond markets were fully functional, the investments would be refinanced over a period of time. This arrangement was to ensure that the SFSF (and even the TFF) would be made whole and despite the advantageous pricing of the schemes, there would be little risk of any losses to the Australian taxpayer. In fact, the TFF has been refinanced and all remaining SFSF commitments were successfully sold into the wholesale capital markets in January this year by a way of a BWIC process.

2.10 The Federal Government also identified securitisation as a tool to overcome barriers that SMEs have faced when accessing finance by establishing the Australian Business Securitisation Fund (ABSF). The ABSF is a AUD2 billion government fund established in 2019 and aimed at boosting competition/liquidity in the SME lending market. The intention of the ABSF has been to increase the availability and/or reduce the cost of credit provided to small business owners. Like the SFSF, the ABSF is administered by the AOFM and targets investments in securitisations of loans made by SME eligible lenders, via warehouse facilities and/or public term transactions. The ABSF also seeks to invest in parts of securitisation structures where other investors are rare or cannot be found.

2.11 The 2022 Government review of the ABSF confirmed that it has made progress towards meeting its objectives (despite being impacted by COVID-19 and the rollout of related economic support measures such as the SFSF) and that it has broad industry support to continue operating. The review noted that industry participants are supportive of the ABSF moving into segments of the market that have less funding support from banks and other investors. The review also noted that, securitisation market outcomes, such as the emergence of a public term market with frequent issuance and the achievement of triple-A credit ratings for SME lenders, should be the ultimate aim of the ABSF over the medium to longer term.

Non-bank sector's relationship with securitisation

2.12 In the absence of a balance sheet and without the ability to access deposit funding, many non-bank lenders have been instrumental in developing and utilising 'securitisation' as a primary source of debt funding enabling them to reduce the cost of borrowing for mortgagees and other consumers and SMEs. Securitisation allows investors to be quarantined to the risks in the pool of financial receivables (rather than the broader corporate risks of the originator) and for their recourse to be limited to the credit in that pool (rather than the credit of the originator more generally), thereby enabling the creation of efficient funding. However, the originator remains incentivised to maintain the performance of the pool through its roles and the returns it earns for those roles, typically including as servicer (and primary customer interface) and as the party entitled to excess income on the portfolio after servicing debt and structural costs.

Types of securitisation transactions

2.13 Securitisation funding in Australia is dominated by funding residential mortgages followed by other consumer loans such as auto, personal and SME loans. Funds are typically raised in the public wholesale debt capital markets by issuing residential mortgage-backed securities (RMBS) or asset backed securities (i.e. for auto, consumer and SME loans) (ABS). The securitisation market also includes private asset backed structures which represent a significant part of the funding cycle for Australian bank and non-bank lenders and in which wholesale investors actively participate. Although private asset backed structures (private securitisations) function in a similar way to public asset backed issues, investments are essentially private agreements and the contractual terms including pricing information are not publicly available (as they are for public issues) because it is considered to be commercially sensitive in nature. However, private securitisations are not speculative and have similar credit profiles to public securitisations. In addition, public securitisation markets, particularly for non-bank lenders, cannot operate or function efficiently without private securitisations. This can be demonstrated by the most common form of private securitisation commonly known as 'warehouse financing facilities'.

2.14 Warehouse financing facilities in Australia are essentially private securitisations and are arranged as a pre-cursor to public (term) RMBS or ABS issues. For many years they have enabled banks and non-bank lenders to originate and fund homogenous consumer loans or receivables until the loan portfolio has reached significant size and the loans are eligible to be refinanced through a public term RMBS or ABS transaction. They can allow more tailored flexibility for newer originators to build a new portfolio of assets and for existing originators to move into new lending products. Whilst in the 'warehouse', the pool can grow to a size that can support a public transaction and generate the data history that is necessary to support a ratings analysis and the detailed upfront disclosure required for a public transaction. It can also enable the originator to develop the systems necessary to support the level of data capture and reporting needed for a public securitisation.

2.15 In addition to their role in developing a new originator or asset class for public securitisation, within the securitisation funding cycle, private warehouse facilities are also structured to be complimentary to and not as an alternative to public securitisations. In fact, it is common for investors in a private warehouse facility to invest in loans which are refinanced through a term RMBS or ABS transaction. That is, private securitisations do not exist in isolation of public securitisations but rather co-exist with them and are a necessary part of the funding cycle that supports public securitisation markets.

2.16 Some securitisation transactions involve the sale of all of the debt interests supporting the pool of financial receivables or the sale of the pool of financial receivables to the third-party investor or to a vehicle established by that third-party investor. These transactions can be in relation to a defined portfolio of financial receivables or to financial receivables with agreed characteristics from time to time. These transactions are commonly referred to as 'whole loan sale' transactions (or, where they involve an ongoing commitment to purchase financial receivables as ‘forward flow’ transactions), but for simplicity we will collectively refer to them as whole loan sale transactions in this response (and to these transactions together with public and private securitisations as securitisation transactions).

2.17 Whole loan sale transactions are distinct from genuine third-party portfolio transactions as their fundamental purpose is to allow originators to finance the entirely of the portfolio rather than just certain tranches of risk in the portfolio. They are typically executed using similar techniques to more transaction securitisations, including that the assignment will (subject to certain triggers) not be visible to the underlying customers and the originator (or a related entity) will continue to be the interface with customers for servicing purposes. They provide an important alternative to public securitisations to allow funding diversification and provide important support to originators who need to raise funding for the first loss tranche of its financial receivables (for example, for newer originators).

Investors in securitisations and whole loans sale transactions

2.18 Investors in private and public securitisations and whole loan sale transactions include local and foreign banks and also real money institutional investors such as licenced credit investment managers, insurance companies, superannuation funds, ‘private credit’ investors in the broader sense described above and overseas investors who may invest (directly or through investment managers) in private and public securitisation and whole loan sale transactions. These transactions allow the dissemination of risk in these assets to local and global market participants to match their risk tolerances.

Current regulatory framework

2.19 Current regulation and market practices within the securitisation sector adequately underpin market integrity without the need for additional forms of regulation. The prudential framework in Australia for securitisation is contained in APRA’s Australian prudential standards (APS120 – Securitisation and APS112/113 – Capital Adequacy) which are specifically applicable to authorised deposit taking institutions (ADIs) in their capacity as ADI issuers and as ADI investors in securitisations, including in securitisations originated by non-bank lenders who rely on bank funded private warehouse facilities as a fundamental stage in their originations funding cycle. In addition, the provision of financial services activities within a securitisation structure is regulated by Australian financial services licensing requirements, and the offer and sale of securities issued by a securitisation vehicle are governed by existing Corporations Act 2001 (Cth) and ASIC Act disclosure and conduct requirements.

2.20 Beyond these legal requirements, the Australian domestic market has also developed strong customs and practices which assist to self-regulate on both the buy and sell sides within the securitisation market, and the ASF assists to facilitate the development of these practices through its sub-committees and working groups on legal, prudential, industry and market issues.

2.21 The functions of market stakeholders within the securitisation sector coupled with the strength of the credit profile of both public and private securitisations demonstrates a market that is exposed to a relatively low residual risk when compared to credit which is invested in products or ventures that are perhaps less homogenous and transparent than public and private securitisations.

3. Need for an expansion of Division 2 Part 2 to exclude securitisation transactions

3.1 The specific question posed by Treasury is as follows:

Division 2 of Part 2 Exemptions for certain acquisitions of shares or assets *–the draft instrument provides exemptions from notification for certain types of acquisitions of shares or assets that are not likely to result in a lasting change to the competitive structure of a market, unlikely to affect competition, and/or to avoid disruptions to capital markets and other activities. Should other types of acquisitions of shares or assets be exempt from the merger system on this same basis?*

3.2 An acquisition will require ACCC clearance under the new regime if it is a relevant acquisition, subject to certain exceptions and notification thresholds.

3.3 For these purposes, relevant acquisitions and assets are both very broadly defined, notably extending to an acquisition of any assets of a corporation, and to the acquisition of any kind of property, a legal or equitable right that is not property, and a part of or an interest in either of these.

3.4 As described above, securitisation transactions by their very nature are fundamentally based on the acquisition of assets (being the pool of financial receivables that back the securitisation). In addition, securitisations (and refinancings of securitisation) may also involve other acquisitions or transfers, such as transfers of accounts, hedging transactions, cash balances and/or debt securities. These transactions are often, by their nature, very large and completed quickly to take advantage of market pricing and volume opportunities. As seen by the data in section 2 and Annexure 1, they are also frequently executed. Adding any legal friction or uncertainty to these transactions could meaningfully impact the operation of the market. Indeed, adding any uncertainty to the validity of the transfer of financial assets backing the securitisation could fundamentally undermine the market – as financiers are generally limited in their recourse to the financial receivables in the pool, they typically require unqualified legal comfort (in the form of a closing opinion) on the 'true sale' of the assets to the SPV.

3.5 The ASF submits that securitisation transactions satisfy not just one but all of the components of the question posed by Treasury – that is, the ASF considers that securitisations are very unlikely to result in a lasting change to the competitive structure of a market or to adversely affect competition, and fettering these transactions would cause disruptions to capital markets. Indeed, as highlighted above, securitisations actually support competition in underlying lending markets, as they enable non-bank lenders to access funding to support loan originations.

The ASF would welcome the opportunity to discuss how an exception could be developed to exclude securitisation transactions from these provisions in a manner that would support the ongoing operation of these important funding markets with legal certainty.

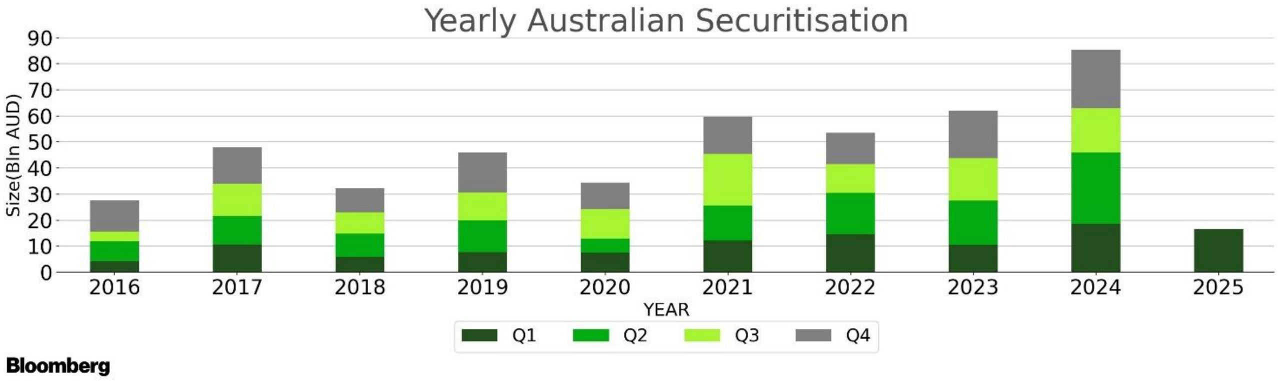
If you have any queries or would like to discuss any aspect of this letter, please do not hesitate to contact either Chris Dalton, Chief Executive Officer at cdalton@securitisation.com.au or Robert Gallimore, Policy Director at rgallimore@securitisation.com.au

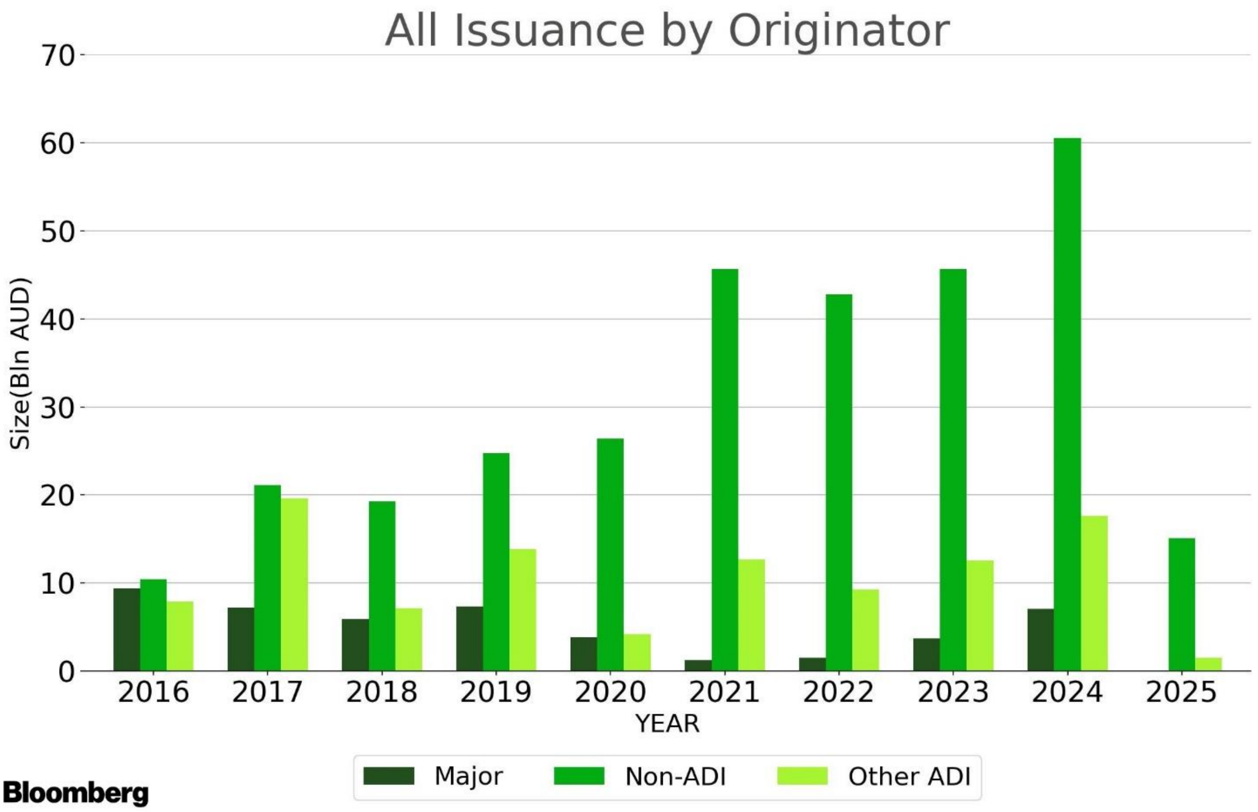
Yours sincerely,

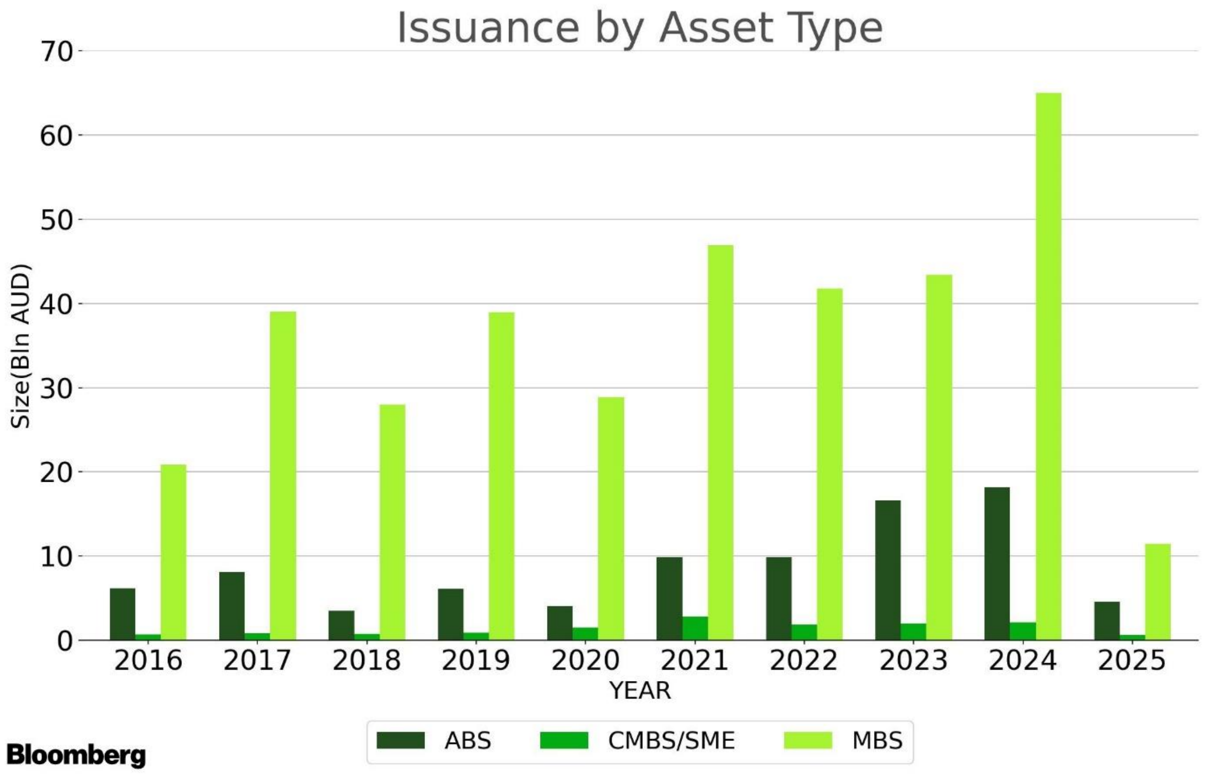
Chris Dalton

Chris Dalton, Chief Executive Officer – Australian Securitisation Forum

Annexure 1 – Statistical overview of the Australian securitisation market






Issuance by Asset Type
Size(Bln AUD)
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20
30
40
50
60
70
2016
2017
2018
2019
2020
2021
2022
2023
2024
2025
YEAR
ABS
CMBS/SME
MBS
Bloomberg