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The Treasury
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Targeted consultation on the limited circulation Treasury exposure draft of the Competition and Treasury Laws Amendment Bill 2026: Critical changes to the mergers and acquisitions framework (Exposure Draft Consultation)

Asset securitisation market

On behalf of The Australian Securitisation Forum (ASF)[1] and its members, we are writing to address and respond to the Exposure Draft Consultation. In particular, the ASF would like to comment on the first component of the Exposure Draft Consultation – namely the "void to voidable" changes – on behalf of the securitisation markets it represents.

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

[1] 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 240 financial institutions and market organisations.

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 securitisation market.

As detailed in the ASF's previous engagements with the Treasury on the merger control regime, the ASF wishes, in providing this response, to emphasise the importance of certainty in financial markets and, in particular, of certainty in the parts of financial markets that involve the acquisition of assets, such as the securitisation market. Legally, the 'true sale' of assets is a fundamental cornerstone of the securitisation market. This context frames the ASF's submissions below on the void to voidable changes in the Exposure Draft Consultation.

Void to voidable changes

1. Before commenting on the specifics of the void to voidable changes, the ASF would like to note its thanks to the Treasury for its constructive engagement with industry and with the ASF on the development of the "*asset securitisation arrangements*" exemptions to the now implemented merger control regime (following the enactment of the *Competition and Consumer (Notification of Acquisitions) Amendment (2025 Measures No. 1) Determination 2025*). Treasury's engagement on these exemptions has greatly assisted the securitisation market to navigate the implementation of the new merger control regime without material interruption to this important funding segment.

2. The ASF also welcomes the proposed void to voidable changes, and thanks the Treasury for pursuing these changes in response to industry feedback. The ASF sees the void to voidable changes as an opportunity to further reduce risk and uncertainty in the operation of financial markets within the new merger control regime. Whilst the securitisation exemptions have greatly assisted the continued functioning of the securitisation markets, any remaining uncertainties must still be assessed in the context of the current automatic voiding outcome, which amplifies any residual risks for market participants. Any legal frictions or uncertainties for these transactions can meaningfully impact the operation of the market. Indeed, any uncertainties in the validity of the transfer of financial assets backing the securitisation could have the capacity to undermine the market or participants' confidence in it – and 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 securitisation special purpose vehicle (SPV), which can be challenging where risks remain. Accordingly, any further steps available to reduce residual uncertainties can help support the continued safe and efficient operation of this important funding market and enhance market confidence.

3. As previously discussed with the Treasury, securitisations and their life cycle steps can involve multiple and frequent transfers. For example, a securitisation transaction can involve multiple transfers as part of its establishment (for example, but not limited to, the transfer of the initial pool of receivables to the securitisation SPV), but may also involve numerous other transfers throughout its life cycle (for example, but not limited to, ongoing transfers of receivables (which may for a warehouse transaction occur as frequently as daily), calling receivables back to the originator's balance sheet and moving receivables between securitisation SPVs (for example,

from a warehouse transaction to another warehouse transaction or from a warehouse transaction to a term transaction or vice versa).

In this context:

a) The first aspect of the void to voidable changes that the ASF would like to comment on is the position on retrospectivity. Having a period where asset transfers have a lesser degree of legal certainty than for other periods may have unintended consequences for securitisation markets. Many receivables and related assets will have been transferred during the period between the merger regime commencement and implementation of the void to voidable changes (not necessarily as part of the exempted asset securitisation arrangements) and may accordingly have a transfer in their history which was made within the automatic voiding period. If the void to voidable changes do not apply retrospectively, these assets may retain this amplified risk for the duration of their life, which may create an element of segmentation in the market across receivables pools based on their transfer histories.

b) The second aspect of the void to voidable changes that the ASF would like to comment on is the 6 year limit on the ACCC's ability to seek a voiding declaration. Whilst this is expressed in the explanatory materials as being intended to support business certainty, in a securitisation context such a long look-back period is detrimental to business certainty. This is because, with such frequent transfers of receivables, any diligence investigation of an underlying receivable pool could require a cumbersome consideration of multiple past transfer steps within the 6 year look back period (some of which may extend to previous owners from which the current transaction parties have no access to information). The ASF submits that this period should be substantially shortened or, in the alternative, that the ability to make orders relating to previous transfers should be expressly qualified having regard to the impact those orders may have on subsequent bona fide purchasers.

In the ASF's previous submission to the Treasury dated 2 May 2025 in response to the consultation on the Treasury exposure draft of the *Consumer (Notification of Acquisitions) Determination 2025*, we provided an overview of the Australian securitisation market, further context on how these markets operate and data on market activity. Should any update to or further details on these matters be helpful for the Treasury's consideration of this submission, the ASF would be happy to provide these.

If you have any additional 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,

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