



## Hayne Royal Commission: Impact on Development Sector

The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry released its report today

[<https://www.royalcommission.gov.au/sites/default/files/2019-02/fsrc-volume-1-final-report.pdf>].

The Government has responded to the Hayne Royal Commission by agreeing to take action on all 76 recommendations made.

The Development Industry held concerns in relation to the way the National Consumer Credit Protection (NCCP) Act was more recently being applied. The Household Expenditure Measure (HEM) is a statistical measure that was previously used to calculate expenditure based on the median spend on absolute basics plus the 25<sup>th</sup> percentile spend on discretionary basics as the default measure for a verification of a borrower's expenditure. UDIA National has been concerned about moving away from this standard measure and toward an overzealous approach to calculating expenditure.

UDIA National made a strong submission warning of the impacts of this over-tightening on the residential property market. Whilst UDIA supports responsible lending and a proper examination of a prospective borrower's capacity to repay, the drastic tightening of these criteria was largely in response to a non-existent problem - household debt defaults have not been rising significantly, and there does not appear to be any near-term rapid escalations in home loan interest rates which would threaten repayment ability. UDIA has warned that if expenses were not considered appropriately, then an over-inflated measure of expenses may prevent a large cohort of buyers from being able to purchase a home and would unnecessarily depress the property market.

Positively, the Commissioner has not proposed any strengthening of the NCCP Act to further tighten already-strict lending criteria.

There are two reasons

- In November 2018 the Federal Court refused to accept a proposal made jointly by ASIC and Westpac to resolve proceedings brought by ASIC alleging Westpac had contravened the NCCP Act, based on Westpac's use of the HEM. Hayne is conscious of not influencing the Court's decision; however, he does not see the HEM as verification of the borrower's expenditure. Hayne has however recommended that if the court processes were to reveal some deficiency in the law's requirements to make reasonable inquiries about, and verify, the consumer's financial situation,

possibly that the HEM is sufficient verification, then amending legislation to fill in that gap should be enacted as soon as reasonably practicable.

- The Commissioner has also noted that banks have significantly increased the level of borrower information gathered at application stage: he points towards CBAs mandated expense breakdown, ANZ moving toward digital tools to capture and categorise expenditure, and Westpac expanding its home loan application to 13 expenditure categories. Again, whilst UDIA supports a proper examination of a prospective borrower's expenses and overall financial position, these expense measures should not be applied too rigidly - It has been a truism in Australian culture for generations that households will sacrifice discretionary expenditure, such as holidays and dining out, to buy their first home and pay the mortgage.

Hayne is less concerned with the impacts on the property market saying:

*I consider that the steps that I have referred to above – steps taken by banks to strengthen their home lending practices and to reduce their reliance on the HEM – are being taken with a view to improving compliance with the responsible lending provisions of the NCCP Act. If this results in a 'tightening' of credit, it is the consequence of complying with the law as it has stood since the NCCP Act came into operation*

UDIA believes on balance that banks will not and should not tighten consumer home loan credit any further; this scenario is welcome and should provide consumers with ongoing certainty. Importantly, policy makers nation-wide should be cautious in the current environment about introducing any changes which have the potential to disrupt property markets, given their current uncertain state and their importance to the overall economy.

The Commissioner has made a series of recommendation in relation to intermediate lenders, particularly mortgage brokers recommending amending the law so that mortgaged brokers must act in the best interest of the intending borrower; the borrower, not the lender should pay the mortgage broker; and mortgage brokers should be regulated as financial advisers. UDIA National, considers this may have a short-term impact on the availability of finance for homebuyers as the broking sector goes through a period of transition.

UDIA National is ready to partner with Government at all levels to give Australians the best possible chance at home ownership, and we look forward to assisting the Government in the implementation of the Royal Commission's recommendations to benefit the country and its large cohorts of property owners and aspiring first home buyers.