Submission to the Senate Economics References Committee

# Financial Regulatory Framework and Home Ownership

10 October 2024

**CPRC**

The Consumer Policy Research Centre (CPRC) is an independent, not-for-profit, consumer think-tank. CPRC aims to create fairer, safer and inclusive markets by undertaking research and working with leading regulators, policymakers, businesses, academics and community advocates.

**Mortgage Stress Victoria**

Mortgage Stress Victoria (MSV) is a free statewide service funded by the Victorian Government.

We are specialists in mortgage stress – providing legal, financial counselling and social work support to clients who meet our eligibility criteria.

Our aim is to keep clients in their mortgaged homes if it's sustainable for them. We prevent home repossessions and relieve pressure on a tight rental market, and on housing and homelessness support services.

**Contacts for submission**


Erin Turner

Chief Executive Officer, CPRC

Email: erin.turner@cprc.org.au

Nadia Harrison

Chief Executive Officer, Mortgage Stress Victoria

Email: nadia.harrison@mortgagestress.org.au


**Statement of Recognition**

We acknowledge the Traditional Custodians of the lands and waters throughout Australia. We pay our respect to Elders, past, present and emerging, acknowledging their continuing relationship to land and the ongoing living cultures of Aboriginal and Torres Strait Islander Peoples across Australia.

**https://www.cprc.org.au**

**https://www.mortgagestress.org.au**

**Frequently used acronyms**

**AFCA –** Australian Financial Complaints Authority

**APRA –** Australian Prudential Regulation Authority

**ASIC –** Australian Securities and Investments Commission

**NCCPA -** National Consumer Credit Protection Act 2009 (Cth)

**NCC –** National Credit Code

**RLO –** Responsible Lending Obligation

***Next to a name in a case study indicates it is not the person's real name**

# Financial regulation to help people afford and keep their homes

The regulatory settings for financial markets should be designed to help Australians to finance a purchase of a property that they can afford, and to ensure as many people as possible can maintain that property in times of hardship or stress. This submission combines the insights of consumer organisations with the cases we see from our work helping people in financial stress.

Our strong view is that responsible lending protections are working as intended.

Any proposal to weaken protections for lenders to issue credit responsibly will cause harm, with especially devastating consequences for vulnerable communities. The most affected groups include survivors of financial abuse, low-income families, elderly Australians, people with disabilities, and culturally and linguistically diverse (CALD) communities. Consultations with financial counsellors in 2024 and 2021 identified cases of irresponsible lending, where individuals were burdened with unmanageable debts that they could never repay.[1] Fortunately, our current policy settings ensure that this only occurs in a minority of cases.

The responsible lending laws, established in the *National Consumer Credit Protection Act 2009* (NCCPA)[2], are critical for protecting consumers from predatory and unaffordable lending practices and should remain intact to safeguard consumers from misconduct and mismanagement by lenders. These protections ensure that borrowers are not sold loans they cannot afford, a fundamental measure to prevent widespread financial distress.

Crucially, removing safe lending laws would not fix issues with housing supply and the housing market more broadly. Access to sufficient credit is not the barrier keeping first homebuyers out of the market, and data indicates mortgages are already being written at near record rates and amounts.[3] The Committee should focus on interventions to stabilise and ideally lower housing prices alongside support to help people keep the homes they purchase. Our policy reform agenda is aimed at increasing the accessibility and fairness of mortgages. A critical part of this objective is to make the experience of owning a home less stressful, and to ensure hardship provisions are consistent and readily available for people when they experience a period of vulnerability in their life.

An open letter signed by over 39,000 people and 123 organisations to save safe lending laws when they were proposed to be axed in 2020 shows there is strong community and public support to safeguard these protections.[4]

---

[1] Financial Counselling Australia (2021), *Save Safe Lending: The Views of Financial Counsellors about Proposals to Wind Back Responsible Lending Laws*, https://www.financialcounsellingaustralia.org.au/docs/save-safe-lending-the-views-of-financial-counsellors-about-proposals-to-wind-back-responsible-lending-laws/.

[2] *National Consumer Credit Protection Act 2009, Chapter 3 – Responsible lending conduct*, https://www.legislation.gov.au/C2009A00134/latest/text.

[3] ABS (2024), *Lending indicators, https://www.abs.gov.au/statistics/economy/finance/lending-indicators/latest-release*.

[4] Marianna Longmire (2020), *'Block this harmful plan: Consumer groups issue an open letter calling on parliamentarians to protect safe lending laws'*, https://www.choice.com.au/money/banking/everyday-banking/articles/open-letter-calling-on-parliamentarians-to-protect-safe-lending-laws.

There are clear actions the Federal Government can take to either make it easier for some people to afford a home or keep their home by adjusting financial market regulations.

We have also put forward recommendations to improve the experience of people who rent.

# Recommendations

| | |
|---|---|
| Recommendation 1. | **Retain safe lending protections**<br><br>As per the first recommendation from the Banking Royal Commission, the current responsible lending obligations should be preserved to ensure ongoing consumer protection from harmful financial products and irresponsible lending. |
| Recommendation 2. | **Address first home buyer affordability by focusing on how to maintain or lower the cost of housing rather than increasing levels of debt**<br><br>The Committee should assess its recommendations based on how they will address housing affordability, particularly for first home buyers, with a goal of stabilising or decreasing house prices rather than increasing levels of debt. |
| Recommendation 3. | **Further regulate non-bank lenders**<br><br>Bring regulations guarding non-bank lenders more on par with bank lenders to improve the standard of service provided and ensure consistency across all lending providers. |
| Recommendation 4. | **Provide greater support for people experiencing hardship**<br><br>Increase Federal Government funding for the National Debt Helpline and frontline services working to help people in mortgage stress. |
| Recommendation 5. | **Explore ways to standardise hardship help**<br><br>Invest in further research and direct APRA to assess how to introduce minimum offers for people experiencing hardship, such as a two-year mortgage repayment pause feature or minimum standard responses to people experiencing major life challenges. |
| Recommendation 6. | **Explore how to introduce long-term fixed interest rates into Australia**<br><br>The Federal Government should direct the Productivity Commission to thoroughly investigate how governments could intervene in the lending market and make mortgage costs more predictable for people by enabling Australian mortgage holders to secure long-term fixed interest rates. |
| Recommendation 7 | **Make it easier for people to get a good deal on their existing home loan** |

| | |
|---|---|
| | Encourage tracker mortgages and other market interventions to support existing customers. This can be achieved by implementing recommendations 33, 34 and 36 of the Better Competition, Better Prices Report**.** |
| Recommendation 8 | **Address conflicted remuneration in retail bank lending**<br><br>The Committee should recommend new laws to formalise the recommendations of the 2017 Retail Banking Remuneration Review, including that retail banking staff are not paid directly or solely on sales performance. |
| Recommendation 9 | **Confirm if mortgage broker market protections are working**<br><br>ASIC should be directed to undertake new research into mortgage broker remuneration and the quality of recommendations by brokers. |
| Recommendation 10 | **Make sure that people borrowing for an investment property can afford to maintain and repair the property**<br><br>ASIC should provide clear guidance that a lender must consider whether someone seeking an investment loan can afford reasonable maintenance and repair costs. This should consider the state of the property at the time of purchase and the natural lifecycle of household basics, including heating/cooling systems, age of appliances and general annual upkeep. |
| Recommendation 11 | **Regulate to stop risky property lending advice**<br><br>Implement the recommendations from the 2016 Scrutiny of Financial Advice Inquiry.<br><br>• Make the regulation of property investment advice a Commonwealth responsibility (recognising that services provided by licensed real estate agents would remain under state and territory regulation);<br>• Insert a definition of property investment advice into the Corporations Act and the Australian Securities and Investments Commission Act; and<br>• Require that anyone providing property investment advice should hold an Australian Financial Services Licence (with appropriate exceptions). |

# History and context – responsible lending obligations and the Banking Royal Commission

## Responsible lending laws and obligations were introduced to ensure a robust and resilient banking sector

With housing loans making up two thirds of banks' domestic lending, it is in everyone's interest that Australia's banks are protected from excessive risk and from loans without consumer safeguards. [5]

While the Global Financial Crisis (GFC) may have taken place mostly in America and Europe, it has been well documented that Australia had its own home-grown lending problems at the same time. From around 2000 onwards there had been a general and growing awareness in the financial services industry of problems with inappropriate lending practices. Between 2002 and 2010, improper, lax and even predatory lending practices became increasingly common. There was a real prospect that consumers would lose confidence in the stability of Australian banks.[6]

Responsible lending obligations (RLOs) were introduced in the face of this crisis. The government of the day acted swiftly to guarantee bank deposits. At the same time, the then Assistant Treasurer and Minister for Financial Services said, "the new obligation requiring loan-makers to comply with RLOs was just as important" to insulate our banking sector from risk and contagion.[7]

Prior to the introduction of RLOs, consumer advocates commonly saw a variety of poor lending practices that caused risk to people and the banking system. At the time of the RLO introduction, consumer advocates were raising concerns about:

- Increasing use of low doc and no docs loans to lend money to people who had no capacity to pay;
- Inappropriate promotion of line of credit loans which were more expensive and poorly suited to many borrowers, including in some cases to elderly people in lieu of reverse mortgages;
- Increasing complaints about the conduct of mortgage brokers;
- Poor quality valuations;
- Loans for interstate investment properties with inflated prices resulting in significant borrower/investor losses;
- Scams involving fake "savings" provided by high-cost fringe lenders, to sell overpriced properties to newly arrived migrants and refugees with no capacity to pay;

---

[5] Ryan Morgan and Elena Ryan (2024), *Recent Drivers of Housing Loan Arrears*, https://www.rba.gov.au/publications/bulletin/2024/jul/recent-drivers-of-housing-loan-arrears.html.

[6] CALC Joint Submission (2020), *Treasury Consultation: Consumer Credit Reforms*, *Treasury consultation: Consumer Credit Reforms our submission - Consumer Action Law Centre*.

[7] Assistant Treasurer and Minister for Financial Services the Hon Stephen Jones, *Address to the Responsible Lending and Borrowing Summit*, (2022), https://ministers.treasury.gov.au/ministers/stephen-jones-2022/speeches/address-responsible-lending-and-borrowing-summit-sydney.

- Equity/asset stripping lending (high interest, high fees and brokerage and no capacity to pay);
- Repeated limit increases on credit cards, unsolicited or otherwise, based on repayment history of minimum amounts, rather than affordability, resulting in unmanageable limits;
- Interest–free deals in-store which resulted in backdated high interest debt if the borrower could not pay off 100% of the debt within the interest free period; and
- Car yard loans and leases for poor quality vehicles at high interest, with inadequate supporting documentation, and sometimes fraudulent documentation provided on site.[8]

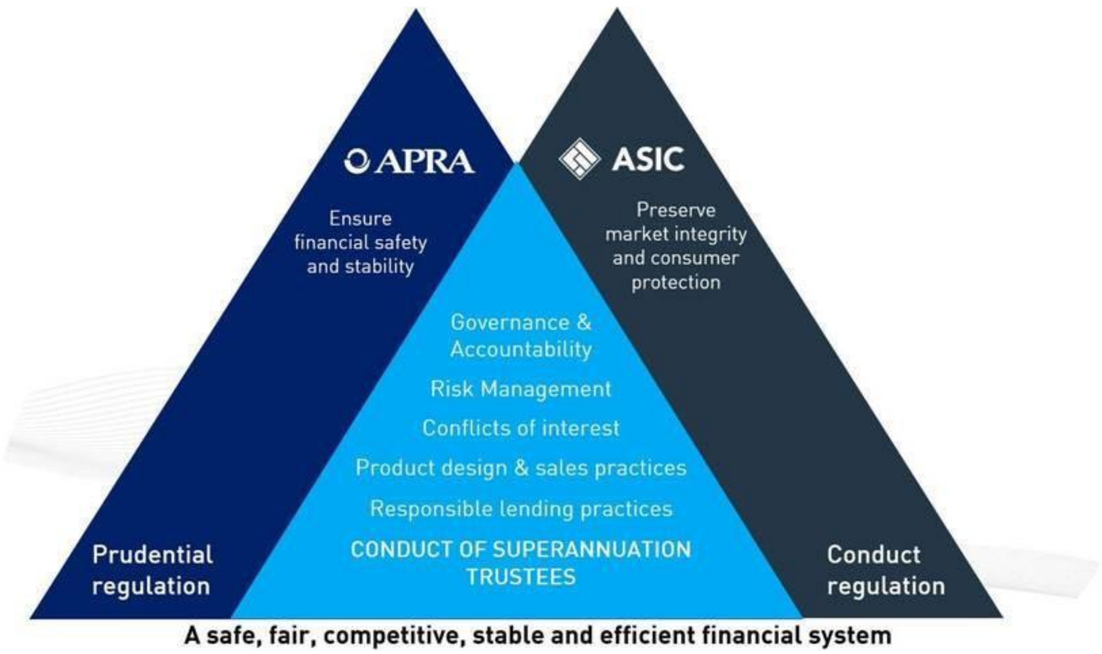
This conduct was carried out by both banks and non-bank lenders.[9] Many of these issues have reduced significantly since the introduction of RLOs and other important financial sector regulations.

## The Twin Peaks model

Australia's model for the regulation of consumer lending, and the financial system more broadly – the Twin Peaks model – is characterised by two equal and independent peaks: the Australian Securities and Investments Commission (ASIC) and the Australian Prudential Regulation Authority (APRA). Because Australia fared relatively well during the GFC and because our regulatory model has been credited with much of our success, a number of other countries have adopted the model (the UK, New Zealand, South Africa) or have signalled a desire to adopt it (South Korea, Hong Kong, and the federal level of the EU).[10]

Under the Twin Peaks model, one peak is responsible for financial system stability (APRA) while the other (ASIC) is responsible for good market conduct and consumer protection. Crucial to the success of the model is the notion that both regulators are equal in power and importance, and that neither should play second-fiddle to the other. Both agencies share an interest in achieving a safe, fair, competitive and efficient financial system. Both agencies play an important role in ensuring consumer lending is done responsibly and sustainably.

[8] Ibid.
[9] Ibid.
[10] Andy Schmulow (2016), *Financial regulation: Is Australia's 'twin peaks' model a successful export?,* The Lowy Institute.



[11]

## The Banking Royal Commission

In December 2017, the government appointed the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (the Banking Royal Commission) to investigate misconduct, driven by practices such as irresponsible lending, poor financial advice, and conflicted remuneration structures. It aimed to restore public confidence and recommend systemic reforms.[12]

In 2019, the Banking Royal Commission made a total of 76 recommendations in its Final Report, with key recommendations focussing on improving governance, accountability, and consumer protections in Australia's financial sector.[13]

The Banking Royal Commission highlighted the importance of responsible lending laws by revealing widespread misconduct in Australia's financial services sector. It uncovered instances where banks and lenders approved loans without adequately assessing a borrower's ability to repay, resulting in significant financial distress for many consumers and over $350 million remediated to nearly 600,000 affected Australians.[14] This emphasised the need for strict lending standards to prevent predatory practices, protect vulnerable individuals, and promote ethical financial practices.

Removing responsible lending laws would go against the very first recommendation of the Banking Royal Commission: *The NCCP Act should not be amended to alter the obligation to*

[11] APRA (2024), *A safe, fair, competitive, stable and efficient financial system*, graphic, https://www.apra.gov.au/apra-and-asic-a-new-era-cooperation#:~:text=APRA%20and%20the%20Australian%20Securities,Inquiry%20into%20the%20financial%20system.
[12] The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (2019), *Final Report*, https://www.royalcommission.gov.au/banking/final-report.
[13] Ibid.
[14] The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (2019), *Final Report*, https://www.royalcommission.gov.au/banking/final-report.

*assess unsuitability* (Recommendation 1.1). Commissioner Hayne also recommended greater enforcement to keep banks and lenders accountable.

**Recommendation 1. Retain safe lending protections**

**As per the first recommendation from the Banking Royal Commission, the current responsible lending obligations should be preserved to ensure ongoing consumer protection from harmful financial products and irresponsible lending.**

# The current system works

## RLOs are working exactly as intended to mitigate consumer harm

RLOs do not prevent or aim to prevent people from obtaining credit. The primary outcome the obligations seek is to minimise consumer harm when borrowing money.[15]

It must not be forgotten that RLOs were introduced purposefully through the NCCPA as consumer credit was too easily available and many Australians were overcommitted and facing financial hardship.[16] Repealing them will completely ignore the impending financial crisis they were introduced to curtail and wind back years of positive progress by the courts, the Australian Financial Complaints Authority (AFCA) and ASIC, who have interpreted these obligations and set standards for consumer protection.

The RLOs imposed on licensees, namely banks, non-bank lenders and brokers, are simply and easily applied and require a credit contract to be deemed 'unsuitable' for a consumer if:

- The consumer is unable to comply with their financial obligations under the contract, or could only comply with substantial hardship; or
- The contract does not meet the consumer's requirements and objectives.[17]

This requires a licensee to assess whether a consumer can afford the credit contract and whether it fulfils their intended purpose for it.

To complete the assessment and approve a loan a licensee must obtain a reasonable amount of information to satisfy themselves an applicant can afford the credit contract.[18] The assessment is not a rigid one-size-fits-all assessment. Rather, it is scalable and there is flexibility as to the amount of information to be gathered. Deeper scrutiny of a consumer's financial position or their requirements and objectives is called for when circumstances deem it necessary.

Examples of such circumstances are provided to licensees by *ASIC's Regulatory Guide 209* (RG 209):

- When it is apparent the applicant does not understand the credit contract or product;
- When the applicant will receive no benefit from the credit contract;

[15] RG 209 at 209.02.
[16]CALC Joint Submission (2020), *Treasury Consultation: Consumer Credit Reforms*, [Treasury consultation: Consumer Credit Reforms our submission - Consumer Action Law Centre]().
[16] Ibid.
[17] NCCPA section 131.
[18] NCCPA section 130.

- When an applicant communicates conflicting objectives for the credit;
- When a significant portion of the applicant's income is required to meet their obligations under the credit contract;
- When an applicant requires hardship assistance or has defaulted on another credit product(s) recently or at the time of their application;
- When the credit provider believes the information provided to be false.[19]

These circumstances may suggest that a consumer cannot afford the credit contract, that they are experiencing financial abuse, or in egregious cases that the application is fraudulent amongst other things that may make the loan unsuitable. The above RLOs act as prompts to ensure a licensee investigates potential consumer harm in the provision of its loans and prevents it from occurring, as well as preventing having fraudulent loans on its books.

Further, when licensees do not comply with RLOs, consumers and consumer advocates rely on RLOs to minimise the harm caused.

The cases provided below demonstrate how RLOs work in practice, demonstrating how they help people in difficult situations.

***Case Study 1 - Provided by MSV***

*Tracy* approached MSV in 2023 with significant arrears on a mortgage of around $450,000 and monthly repayments of $2,000. She was struggling to live on Centrelink income while raising six children as a single mother. She applied for the mortgage as an act of desperation to flee family violence and find stable housing following a string of violent attacks by her ex-partner. MSV identified that the loan was irresponsibly lent and complained to AFCA following an unsuccessful internal complaint with the lender.*

*AFCA agreed that Tracy's loan was irresponsibly lent and it should not have been approved. The outstanding loan balance was reduced to make her repayments affordable.*

*If the property were instead sold, Tracy would have found it extremely difficult to obtain an affordable and adequate rental property on Centrelink income with six children. Now that her housing security has stabilised, she can concentrate on the difficult work of recovering from severe family violence and giving her six children the care and attention they need.*

***Case Study 2 – Provided by MSV***

*Molly* was receiving the Disability Support Pension from Centrelink as her main source of income when her refinance application was approved. Her loan was refinanced from a principal and interest loan to an interest only loan. The refinance caused her to experience mortgage stress almost immediately. She was living frugally and only buying bare essentials. She worried about what would happen when the interest only period ended and her repayments increased. Sale of the property seemed like the only option, but she did not have enough equity to purchase another property and she could not afford a rental property. Molly felt trapped and feared becoming homeless as it seemed there was no good option for her, which exacerbated*

---

[19] ASIC (2019) *Regulatory Guide 209, Credit licensing: Responsible lending conduct*, [RG 209 Credit licensing: Responsible lending conduct | ASIC.]()

*her mental ill-health. She spoke of her fear of becoming a statistic in the fast-growing number of older women who are becoming homeless.*

*MSV made an irresponsible lending complaint to AFCA on Molly's behalf. The complaint was successful, resulting in the outstanding balance and the loan repayment amount being reduced to an affordable level to enable Molly to keep her home. Without RLOs, Molly would likely be homeless.*

***Case Study 3 – Provided by Westjustice Community Legal Centre***

*Sara* was a middle-aged woman from a culturally and linguistically diverse background who had recently ended a 25-year marriage that was marked by serious family violence. She was working in the early childhood sector and, despite the continued violence and control, had been able to save the minimum for a deposit on a newly built three-bedroom house of her own on the city fringes.*

*Sara signed up for a bundled mortgage and credit card package with separate suitability assessments recorded for each on the same day through the same broker. Both products were approved almost immediately on the same day. When Westjustice viewed these assessments several years later, it was apparent that neither assessment was completed as if a simultaneous significant financial commitment was being made. The mortgage assessment made no reference to the credit card, and the credit card assessment recorded Sara's existing, lower living expenses with no reference to the mortgage. Additionally, the credit card assessment omitted an existing car loan and relied on an unrepresentative pay period where she had received penalty rates and overtime to reach her annual income.*

*Sara was in financial hardship almost immediately after the loan repayments commenced – relevantly, she advised she had to use the credit card to afford immediate costs with construction that were not incorporated into the mortgage, and ended up with a credit card debt of nearly $10,000 that she could not afford along with the servicing of her mortgage.*

*Westjustice was successful in obtaining relief from the lender when it advocated on her behalf alleging a breach of RLOs in the NCCPA. Without the present laws, it is likely that Sara would have been set up to fail and rendered homeless – the conduct of the broker and lender would have been permissible, and her options to negotiate with the bank would have been very limited.*

***Case Study 4 – Provided by Westjustice Community Legal Centre***

*Like Sara, Isaac* signed up for a credit card and mortgage as a bundled package. Isaac said that when he went into the bank, he had expressed his concern about the credit card – he told the mortgage specialist at the bank that he had struggled to manage using a credit card before and incurred significant interest and fees, and did not want another one. The specialist said that the products could not be separated in order to obtain the special mortgage rate, and that Isaac could just "leave the credit card in a drawer".*

*We consider that there could not be a clearer example of the "consumer requirements and objectives" test than a banking customer expressly saying that he did not want a particular product because he considered it too risky for him. Ultimately, Isaac relied on the credit card to* *his detriment to manage his business expenses as a sole trader. Even after he had sold the house several years later, he had a default for $9,000 of credit card debt listed on his credit report.*

*Westjustice's intervention meant that an arrangement was made leading to the removal of this default listing. Isaac's improved credit record meant he could continue his self-employment and obtain appropriate business finance as needed. While it is very much the case that the bank breached the present responsible lending laws, being able to identify and argue that this breach should be remedied saved him from a damaging and destabilising period of unemployment shortly before retirement.*

## RLOs protect against financial abuse

Consumer advocates rely frequently on RLOs to support victim-survivors, predominantly women, fleeing or experiencing family violence and financial abuse. Debt accrued through coercion and financial abuse is a common factor in the inability for victim-survivors to leave a violent relationship and re-establish their lives.

Financial abuse is a serious and far-reaching problem that can happen to anyone, however some people, such as the elderly, or vulnerable and isolated people (like newly arrived migrants) are at greater risk, as they often depend on others for assistance with financial tasks or decisions.

Compliance with RLOs, if done correctly, results in licensees identifying red flags in financial abuse. The requirement to verify information and objectives of a loan applicant alerts licensees to coercion and plays an important role in preventing financial abuse.

In 2022, Deloitte Access Economics on behalf of the Commonwealth Bank found that financial abuse costs victim-survivors and the economy a combined $10 billion a year.[20]

When the red flags are not acted upon, the RLOs can provide appropriate remedies.

***Case Study 5 – Provided by MSV***

*Pria*, who is deaf and cannot communicate verbally, sought help from MSV when she received a default notice for a loan of more than $600,000 for which she was jointly liable. At the time of lending, she was experiencing financial abuse by her partner. She knew little about banks or loans and went along with what her partner said when they applied together. When they met with the bank, the banker did not communicate with Pria individually and took all instructions about the loan from her partner. She was never given an opportunity to tell the banker if she wanted the loan or not.*

*Soon after Pria signed the loan documents, her partner told her he had cancelled the loan. Despite this, he never in fact cancelled the loan, and he hid bank letters and statements from her. She discovered the default notice because she got to the mail before her partner. Around the same time, she discovered her partner was hiding many other debts from her and putting*

[20] Redfern Legal Centre (2022), *More than 600,000 Australians experienced financial abuse in past year*, More than 600,000 Australians experienced financial abuse in past year | Redfern Legal Centre (rlc.org.au).

*their housing at risk. She received no benefit from the loan and her partner used the loan funds on his own personal expenses.*

*The bank acknowledged they failed to consider her partner's other debts when assessing the suitability and affordability of the loan. If the bank had made basic inquiries before approving the loan it would not have gone ahead. The bank's initial failure allowed her partner to further abuse her. After raising allegations of irresponsible lending, Pria was monetarily compensated by the bank, allowing her to take the next steps to leave the abusive relationship.*

## Homeownership to repossession is a destructive path

Repeal in whole or part of RLOs will likely lead to a significant increase in mortgage stress across Australia. Many households would be facilitated to take on higher debt with less scrutiny of their financial capacity, increasing reliance on community and support services for help.

RLOs apply to almost all forms of consumer credit: credit cards, personal loans, home loans, and residential investment loans, amongst other credit products. Consumers are not often aware that it is not only defaulting on their home loan that may put their housing security at risk. Defaulting on any form of credit contract can put their housing security at risk. MSV has seen many cases of consumers being issued a notice to vacate their property by the Sheriff's office for credit card debts worth only a small percentage of the value of the property.

The protections offered by RLOs are far reaching and are relevant for the protection not only against home repossession but against other risks such as loss of a vehicle which is integral to a household's ability to work and earn income, or poor credit history which prevents people from entering the housing market and buying a property for a long time into the future.

The long-term effects of repealing RLOs could include higher rates of Australians defaulting against loans, greater financial instability for households, and heightened pressure on housing markets.

There is also a common misconception that homeowners who have their property repossessed will immediately land on their feet in a rental property. The rental property market is stretched, and the cost of rent is often higher than mortgage repayments depending on the locality. Homeowners are at great risk of falling from homeownership straight into homelessness.

***Case Study 6 - Provided by MSV***

*Meg* is a culturally and linguistically diverse single mother of four children who was evicted from her home. MSV suspects irresponsible lending and is assisting Meg to explore the potential breach with her lender. Her life has been thrust into turmoil, unable to obtain a rental property and forced in the meantime to house her family in an Airbnb property with exorbitant fees which is perpetuating her financial hardship. While desperately trying to find a rental property, she is still working to make ends meet and support her children. The MSV social work team is helping Meg to apply for rental properties.*

***Quotes from MSV caseworkers***

*"I've assisted many clients who are being forcefully evicted from their home because of unaffordable debt. Many of those clients were suicidal."*

*"My client was set up with a loan by a dodgy broker. She lost everything and had been trying to recover her loss from the broker for almost two years so she can rebuild her life. She was homeless for months until we assisted her to find a rental property."*

*"In the eight years I've worked as a community legal centre lawyer, I never saw such extreme levels of emotional distress from clients relating to their legal matters until I joined Mortgage Stress Victoria. The clients were about to lose their homes due to mortgage stress, many of them were suicidal."*

## Robbing superannuation will not significantly increase home ownership – looking beyond the short term

One of the Government's stated policy objectives is to allow effective entry into the housing market. The proposed Opposition policy solution to utilise surplus superannuation to increase rates of home ownership should be approached with caution.[21]

This proposed solution relies on house prices continuing to increase more than superannuation balances.

To enjoy a comfortable retirement, a 35-year-old Australian should have accumulated a $101,500 superannuation balance while a 40-year-old should have acquired $156,000 in superannuation. However, the average superannuation account balance for a 35- to 39-year-old is $85,861, with women accumulating $20,000 less superannuation than men.[22] Allowing younger Australians to withdraw from their already insufficient super balance poses significant risk.

Analysis by Super Consumers Australia (SCA) concluded that using superannuation would not assist the vast majority of renters (80%) aged 35-45 to purchase a modest home. For the remaining 20% who are helped, half of these (10%) already had adequate savings outside of their superannuation to purchase a home, meaning they do not require the proposed policy in order to enter the housing market.[23]

Many older Australians would also be no better off under the proposed policy, with increasing rates of women aged 50 and older experiencing homelessness, of which a significant contributing factor is insufficient superannuation.[24] A woman in this cohort who draws on her superannuation to purchase a home may be required to sell it down the line due to unaffordability. A woman in this situation would be left far worse off financially by withdrawing from her superannuation to purchase a home.

---

[21] Commonwealth of Australia (2024), *The Senate Economics References Committee 'Improving consumer experiences, choice, and outcomes in Australia's retirement system'*, https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/RB000377/toc_pdf/Improvingconsumerexperiences,choice,andoutcomesinAustralia%e2%80%99sretirementsystem.pdf.

[22] Hanan Dervisevic (2024), *How does my super compare to others? Here's a breakdown of average super balances by age*, https://www.abc.net.au/news/2024-03-17/how-does-my-superannuation-compare-to-others/103427026 .

[23] Super Consumers Australia (2024), *Improving consumer experiences, choice, and outcomes in Australia's retirement system – further submission*, https://superconsumers.com.au/wp-content/uploads/2024/08/20240705-SCA-further-submission-Improving-consumer-experiences-choice-and-outcomes-in-Australias-retirement-system.pdf

[24] Parkes-Hupton (2023), *Inquiry lays bare homelessness crisis facing older women in NSW*, https://www.abc.net.au/news/2023-02-26/homelessness-older-women-55-nsw-inquiry/101891388.

# Alternatives to create a more inclusive housing market

## Focus on making housing cheaper rather than increasing debt

Successive Australian governments' attempts to make housing more affordable and accessible through interventions such as home purchase assistance and first home owner grants has not had the intended impact of boosting home ownership. Since the early 1990's, rates of home ownership have steadily declined over generations in Australia.[25]

This trend also applies to older Australians, who have historically had high rates of home ownership. Census data from 2003-2004 shows 79% of Australians aged 65 or over owned a home without a mortgage, compared to 74% in 2017-18. Even less single person households aged 65 or over owned a home without a mortgage in 2017-18 (69%).[26]

There are multiple complex reasons for the decline in home ownership. One obvious reason needs to be called out for the purposes of this inquiry: housing values have increased at a significantly faster rate than wages.[27]

Incomes have also become more unstable and uncertain, with fewer Australians having a permanent job that they stay in for decades. While Australians are living longer and earning higher wages in real terms on average, a Senate inquiry reporting its findings in 2022 concluded job insecurity in Australia is at a crisis point.[28] The inquiry found that the number of Australians employed in permanent full-time positions with paid leave entitlements dropped below 50 per cent for the first time in 2018.[29] The increase in the Organisation for Economic Cooperation and Development (OECD) Affordable Housing Database price to income ratio index over time shows that house prices are increasing at a faster rate than income.[30] As at June 2024, the median price of a home in Australia is nearly $800,000, a $59,000 increase from the year prior.[31]

If the Committee wants to help more Australians buy their first home, it should focus on how to stabilise or reduce the cost of housing overall, not on helping people borrow more money and increasing house prices even further.

---

[25] ABS (2022), *Owning a home has decreased over successive generations*, media release, https://www.abs.gov.au/media-centre/media-releases/owning-home-has-decreased-over-successive-generations.
[26] AIHW (2024), *Older Australians*, https://www.aihw.gov.au/reports/older-people/older-australians/contents/housing-and-living-arrangements.
[27] Alan Kohler (2023), *The Great Divide,* Quarterly Essay Magazine Issue 92.
[28] AIHW (2023), *Aussies are living older than ever before, but will this trend continue?*, https://www.aihw.gov.au/news-media/media-releases/2023/2023-july/aussies-are-living-longer-than-ever-before-but-wil; Commonwealth of Australia (2022), *The Senate Select Committee on Job Security: The job insecurity report*, https://oia.pmc.gov.au/sites/default/files/posts/2023/09/3%20Job%20Insecurity%20Report.pdf; Melbourne Institute: Applied Economic & Social Research (2018), *HILDA shows Australians are wealthier than ever, but worrying signs for some*, https://melbourneinstitute.unimelb.edu.au/news/news/old/2021/hilda-shows-australians-are-wealthier-than-ever,-but-worrying-signs-for-some.
[29] Commonwealth of Australia (2022), *The Senate Select Committee on Job Security: The job insecurity report*, https://oia.pmc.gov.au/sites/default/files/posts/2023/09/3%20Job%20Insecurity%20Report.pdf
[30] AIHW (2024), *Housing affordability: Housing prices (OECD),* Housing prices (OECD) | Housing affordability | Housing data.
[31] Elissa Steedman, *Here's how much you need to earn to afford a mid-range home in your capital city*, ABC News, https://www.abc.net.au/news/2024-07-09/how-much-you-need-to-earn-to-afford-mid-range-home-in-cap-cities/104052164.

**Recommendation 2. Address first home buyer affordability by focusing on how to maintain or lower the cost of housing rather than increasing levels of debt**

The Committee should assess its recommendations based on how they will address housing affordability, particularly for first home buyers, with a goal of stabilising or decreasing house prices rather than increasing levels of debt.

## Improve how non-bank lenders are regulated to ensure consistent protections

Despite still making up a very small overall market share (particularly of first homebuyers), borrowing from non-bank lenders is on the rise in Australia, and consumers who borrow from non-bank lenders are typically higher risk borrowers.[32]

Non-bank lenders providing credit to consumers are subject to identical obligations as banks in the NCCPA (administered by ASIC), but are not prudentially regulated by APRA.[33] Slightly different protections can also apply to mortgages during dispute resolution depending on the industry code of conduct that applies. In dispute resolution processes, the ombuds service AFCA will consider specific protections someone has under the law and any industry code.

Australians can have different protections available to them through industry codes. There are three possibilities:

1. If someone borrows from a large mainstream bank they are typically captured by the Australian Banking Association's Banking Code of Practice.[34] This is a well-established code that has been recently reviewed, with a new version taking effect in early 2025.
2. If someone borrows from a customer-owned bank, including a mutual or cooperative bank, they will be protected by the Customer Owned Banking Code of Practice.[35]
3. Finally, someone borrowing from a non-bank lender will not have protections under a code. The industry body for non-bank lenders has proposed a draft code and is currently seeking comments.[36]

Protections under codes or draft codes can vary significantly. For example, someone borrowing from a bank captured by the Australian Banking Association's Code of Practice has some specific protections for joint accounts, with any account holder able to ask to have the account changed to require all account holders to approve any changes or withdrawals. In contrast, there is nothing specific about joint accounts in the draft non-bank lending code.

There are two typical consumer archetypes who have borrowed from non-bank lenders and seek assistance from MSV:

---

[32] Callum Hudson, Samuel Kurian and Michelle Lewis (2023), *Non-bank Lending in Australia and the Implications for Financial Stability*, https://www.rba.gov.au/publications/bulletin/2023/mar/non-bank-lending-in-australia-and-the-implications-for-financial-stability.html#:~:text=The%20interest%20rates%20on%20loans,major%20banks%20(Graph%202).
[33] APRA (2024), *Register of authorized deposit-taking institutions*, https://www.apra.gov.au/register-of-authorised-deposit-taking-institutions.
[34] ABA (2024), *The Banking Code*, https://www.ausbanking.org.au/banking-code/.
[35] Customer Owned Banking Association (2022), *Customer Owned Banking Code of Practice 2022*, https://member.customerownedbanking.asn.au/storage/COBCOP/customerownedbanking-codeofpractice-v14-1663549591m7BVi.pdf.
[36] AFIA (2024), *AFIA Finance Industry Code of Practice – Public Consultation Draft September 2024*, https://static1.squarespace.com/static/63b7ac2f8485d929e7851d13/t/66e91d6c1a430b522d9c670e/1726553476241/AFIA+Finance+Industry+Code+of+Practice+CONSULTATION+DRAFT+September+2024.pdf

1. They have refinanced from a bank lender due to financial hardship, have defaulted on their non-bank loan, and have low equity which is rapidly decreasing due to the exorbitant default interest and fees generally charged by non-bank lenders;

2. They were denied credit from a bank lender due to their poor credit history, are more at risk of defaulting, and their equity erodes quickly as above when they default.

Both are commonly forced to sell their property and will not have enough equity to purchase another property or extinguish their debt, resulting in consumers being worse off than when they refinanced or initially borrowed.

There are numerous sources of data that indicate the supply of credit for home loans by banks is flowing and is not unnecessarily constrained by current lending laws.[37] Rather than reducing consumer protections that apply to mortgages issued by banks via APRA standards or banking codes, we encourage the Committee to consider how the non-bank industry can improve its standards so that a consumer can receive consistent and fair protections for any loan they take out.

| **Recommendation 3. Further regulate non-bank lenders** |
| --- |
| **Bring regulations guarding non-bank lenders more on par with bank lenders to improve the standard of service provided and ensure consistency across all lending providers.** |

## Increase funding for frontline services to help people experiencing mortgage stress

In February 2024 alone, the National Debt Helpline coordinated by Financial Counselling Australia dealt with 14,871 enquiries, a 17% year on year increase. Housing issues, including mortgage stress, were among the main areas of concern for people contacting the helpline.[38]

Mortgage stress is on the rise and frontline services are stretched. Currently, Mortgage Stress Victoria is the only dedicated mortgage stress service in Australia. Other community legal centres and financial counselling services are able to assist people experiencing mortgage stress or general financial difficulty but also face limited resources and are unable to assist everyone who comes to them for help.

| **Recommendation 4. Provide greater support for people experiencing hardship** |
| --- |
| **Increase Federal Government funding for the National Debt Helpline and frontline services working to help people in mortgage stress.** |

[37] ABS (2024), *Housing loans rose again in August,* https://www.abs.gov.au/media-centre/media-releases/housing-loans-rose-again-august.
[38] FCA (2024), *Big increase in calls to free debt helplines from people in financial hardship*, https://www.financialcounsellingaustralia.org.au/big-increase-in-calls-to-free-debt-helplines-from-people-in-financial-hardship/.

## Introduce new protections to help people deal with life changes while maintaining a mortgage

Mortgage products in Australia are designed to be paid off consistently over a 25-to-30-year period. There is an inbuilt assumption in this product design that a household will have consistent and reliable income over this time.

Mortgages need to be flexible enough to account for a person experiencing a period of instability and vulnerability, such as a change to employment, relationship breakdown, mental and physical illness, and other situational changes a person may go through over the life of their loan.

Currently, the *National Credit Code* provides rights for customers whose circumstances change to receive hardship support from their lender. The Code allows for a customer to give lenders notice they are experiencing hardship, and a lender must consider whether to vary the credit contract to help the customer. The system allows lenders a significant amount of flexibility, often to the customer's detriment.

An ASIC report from 2024 found that lenders didn't make it easy for customers to give a hardship notice and that assessment processes were often difficult for customers. It also found that vulnerable customers often weren't well supported.[39]

This echoes the outcomes that community legal centres regularly see when assisting clients with hardship requests.

It should be easier for Australians to understand what's on offer when they face challenges. Australians should be offered standard support from lenders across the life of their loan, with lenders given the ability to go above and beyond these minimum requirements. Finally, hardship assistance records on credit reports should not prevent people from being able to refinance or downsize if that is the best option for them.

As a starting point, we suggest that government invest in research to assess how a mortgage repayment pause feature could be built into a standard mortgage model, and enlist APRA to assess how such a feature would be viable from a prudential perspective while ensuring consumers are no worse off. This reform could enable customers to pause repayments on their mortgages for up to two years across the life of their loan.

Other interventions to consider include offering help for people in specific situations. This could include standardising minimum responses required for people experiencing domestic and family violence or for people with a terminal illness.

**Recommendation 5. Explore ways to standardise hardship help**

**Invest in further research and direct APRA to assess how to introduce minimum offers for people experiencing hardship, such as a two-year mortgage repayment pause feature or minimum standard responses to people experiencing major life challenges.**

## Long term fixed interest rates

CPRC recently conducted research into what models exist for better and fairer mortgages in Australia, involving views from housing and finance policy experts. This research highlighted a

[39] ASIC (2024), *Report 783 - Hardship, hard to get help*, https://download.asic.gov.au/media/ud5mhogp/rep783-published-20-may-2024.pdf.

lack of transparent pricing in the market for mortgages, amid the large proportion of Australian mortgage holders on variable interest rates.

Fixed interest rate loans are highly sought after by consumers, as many people value having certainty over how much they will need to pay towards their mortgage each month. Despite this, Australia has one of the highest rates of variable rate mortgages in the world.[40] In significant contrast to Australia, approximately 86% of New Zealand mortgages in 2020 were fixed rate.[41] In the US, where fixed rate mortgages were chosen by 85-95% of borrowers between 2008-2022, long-term 30-year fixed rate mortgage models are widely available to consumers.[42] 30-year terms are the most popular, while 20, 15, and 10-year loan options are also available.[43]

The creation of government sponsored agencies from the late 1930's (Ginnie Mae, Fannie Mae and Freddie Mae), who securitise mortgage products and hereby remove the risk to lenders, paved the way for the dominance of 30-year fixed rate mortgages in the US.[44]

Australia has the infrastructure to enable long-term fixed rates, but likely needs to introduce regulatory changes or seek innovative insurance or funding models to make the provision of long-term fixed rates feasible.

Australia needs to move away from short-term variable loans, which do not serve consumers who bear the brunt of dealing with this financial uncertainty. Many households would benefit from securing a long-term fixed interest rate mortgage loan, especially people experiencing disadvantage or vulnerability.[45]

**Recommendation 6. Explore how to introduce long-term fixed interest rates into Australia**

**The Federal Government should direct the Productivity Commission to thoroughly investigate how governments could intervene in the lending market and make mortgage costs more predictable for people by enabling Australian mortgage holders to secure long-term fixed interest rates.**

## Make it easier for people to get a good deal on an existing home loan

Tracker mortgages are loans in which the interest rate reflects the cash rate set by the Reserve Bank of Australia (RBA). Tracker mortgages provide mortgage holders with more certainty than standard variable rates, as people know how and when the interest rate tied to their mortgage will change.

Tracker mortgages are also one part of a solution to the problem of the 'loyalty tax', a reference to mortgage holders who end up worse off financially by remaining with the same lender and who tend to pay higher rates or fees than new customers. Recent RBA research

[40] Michael Read and John Kehoe (2024), *Australian households are world-leaders in interest rate pain: IMF*, https://www.afr.com/policy/economy/australian-households-are-world-leaders-in-interest-rate-pain-imf-20240408-p5fi3u.
[41] Consumer NZ (2021), *Mortgages: Should you fix or float?*, https://www.consumer.org.nz/articles/mortgages-should-you-fix-or-float.
[42] CFPB (2024), *Understand the different kinds of loans available*, https://www.consumerfinance.gov/owning-a-home/explore/understand-the-different-kinds-of-loans-available/.
[43] Kagun, J (2024), *Fixed-rate mortgage: How it works, types, v.s. adjustable rate*, https://www.investopedia.com/terms/f/fixed-rate_mortgage.asp
[44] Kish, R. J (2022), The dominance of the U.S. 30-year fixed rate residential mortgage, *Journal of Real Estate Practice and Education*, 24:1, 1-16, DOI: 10.1080/15214842.2020.1757357.
[45] CPRC (not yet released), *Better and fairer mortgage models research findings.*

shows that arrears tend to be higher on older home loans.[46] Currently, the onus is on consumers to 'shop around' and get a good deal. There are many reasons it might be challenging for a person to do this – someone might be time poor, or may not have the resources or knowledge to confidently seek a better option. A lack of transparency from lenders as to the interest rate options available to people is another barrier.

Few to no lenders offer products that promise to automatically track interest rates with movements in the Reserve Bank's cash rate or to drop rates for existing customers if rates are dropped for new customers. We are only aware of Athena Home Loans, for example, offering a rate drop feature in Australia.[47]

We encourage the Committee to recommend interventions that would lead to more competition in the home lending market, including more offers where consumers are offered tracker mortgages or rate drop features to match rates for new customers. At minimum, the Committee should consider adopting or supporting recommendations 33, 34 and 36 of the *Better Competition, Better Prices Report*, from March 2024.[48]

**Recommendation 7. Make it easier for people to get a good deal on their existing home loan**

**Encourage tracker mortgages and other market interventions to support existing customers. This can be achieved by implementing recommendations 33, 34 and 36 of the Better Competition, Better Prices Report.**

## Address industry remuneration structures that lead to professionals recommending inappropriate loans or encouraging people to take on more debt

Over the last decade, there have been a large number of inquiries and initiatives to address conflicted remuneration in the financial services sector. As part of this, payments to bank staff involved in lending and mortgage brokers have rightly come under scrutiny. When financial services staff are incentivised to encourage consumers to borrow more, this can introduce increased risk into our financial system and mean that more Australians take on unaffordable levels of debt. The Committee needs to consider how to strengthen protections in this space and how to test if existing protections are working.

In 2017, the Australian Banking Association commissioned its Retail Banking Remuneration Review that looked closely at how retail staff bonuses were incentivising sales.[49] The review found that "current practices carry an unacceptable risk of promoting behaviour that is inconsistent with the interests of customers and should be changed." The report recommended that incentives were no longer paid to retail banking staff based directly or solely on sales performance, instead moving to a model where a range of factors are

[46] Ryan Morgan and Elena Ryan (2024), *Recent Drivers of Housing Loan Arrears*, https://www.rba.gov.au/publications/bulletin/2024/jul/recent-drivers-of-housing-loan-arrears.html.
[47] Athena (2024), *Automatic Rate Match*, https://www.athena.com.au/features/auto-rate-match/.
[48] Parliament of Australia (2024), *Better Competition, Better Prices*, https://www.aph.gov.au/Parliamentary_Business/Committees/House/Economics/Economicdynamism/Report.
[49] Stephen Sedgwick (2017), *Retail Banking Remuneration Review Report*, https://www.ausbanking.org.au/wp-content/uploads/2022/06/Remuneration-Review-Report-Sedgewick-2017.pdf.

considered including excellent service and a focus on customer needs. A 2021 follow up review confirmed that banks had substantially implemented these recommendations.[50]

In 2024, major banks have stepped away from their commitments to curb conflicted remuneration in lending. Major change has come from Commonwealth Bank (CBA), which has changed how it structures bonuses to preference sales results.[51] Westpac and NAB quickly followed CBA's lead.[52] This shows that banks cannot be trusted to self-regulate conflicted remuneration. Like with financial advice, limits on conflicted remuneration should be formalised in legislation rather than left for reversible industry commitments.

The other source of potential harmful lending advice can come from the mortgage broking sector. Based on clear recommendations from the Banking Royal Commission, the Federal Government introduced a requirement that brokers must act in the best interests of customers.[53] Despite this obligation being introduced in 2019, it still hasn't been substantially tested by the regulator. We have no sense of how many brokers are complying with the best interest duty. Crucially, we do not know how many brokers are recommending good quality loans from a variety of lenders to their customers.

A 2017 comprehensive study from ASIC into mortgage broker remuneration found that loans obtained through brokers were more likely to be interest-only and for larger amounts, indicating that risky loans were more likely to be arranged through this channel.[54] It also found that brokers tended to recommend loans from a very small number of lenders, with individual broker businesses directing 80% of loans to four preferred lenders.

With mortgage brokers now arranging most loans in the home lending market, regulators need to test if legal protections are working and if brokers are helping or harming competition in the market in 2024.

**Recommendation 8. Address conflicted remuneration in retail bank lending**

**The Committee should recommend new laws to formalise the recommendations of the 2017 Retail Banking Remuneration Review, including that retail banking staff are not paid directly or solely on sales performance.**

**Recommendation 9. Confirm if mortgage broker market protections are working**

**ASIC should be directed to undertake new research into mortgage broker remuneration and the quality of recommendations by brokers.**

---

50 Australian Banking Association (2021), *Final Sedgwick Review confirms banks putting customers first in pay systems for frontline staff*, https://www.ausbanking.org.au/final-sedgwick-review-confirms-banks-putting-customers-first-in-pay-systems-for-frontline-staff/#:~:text=No%20longer%20paying%20retail%20bank,targets%20not%20the%20main%20component.
51 Annie Kane (2024), *CBA hikes bonuses to stop bankers from becoming brokers*, https://www.brokerdaily.au/lender/19015-cba-hikes-bonuses-to-stop-bankers-from-becoming-brokers.
52 Lucas Baird (2024), *NAB dumps Hayne-era bonus caps*, https://www.afr.com/companies/financial-services/nab-dumps-hayne-era-bonus-caps-20240822-p5k4e7.
53 3-5A of the *National Consumer Credit Protection Act 2009* (National Credit Act).
54 ASIC (2017), *Review of mortgage broker remuneration*, https://download.asic.gov.au/media/4213629/rep516-published-16-3-2017-1.pdf.

# Comments on property investments and regulation

Financial regulation can have a flow on effect to people who rent. For example, there is currently no explicit requirement for lenders to consider whether a future landlord can afford to repair or maintain an investment property.

We have identified two reforms that would encourage more appropriate investment strategies for landlords and better outcomes for people who rent.

## Many rental properties in Australia need basic repairs

Research available about the quality of rental properties shows that far too many homes for people who rent are in a very poor state of repair.

A survey of a nationally representative group of people who rent in 2018 found that 51% of people who rent were living in a home in need of repairs. This included 22% of people who had experienced a broken or faulty toilet, 33% of people with mould in the bathroom and 23% of people with faulty kitchen appliances.[55] Research from 2020 found that a quarter of all Australian renters live in housing that makes them sick, with 23% reporting issues with keeping homes warm and 27% reporting problems with mould.[56]

Even in jurisdictions where there are clear minimum standards required for rental properties, research has found a notable portion of properties fail to meet basic requirements to keep a home heated, free of visible mould with the basics like window coverings. A mystery shop from CPRC and Tenants Victoria found that 15 out of 100 rental properties viewed failed to meet minimum standards in Victoria.[57]

It is unclear how many landlords do not repair properties because they cannot afford to as opposed to those that can afford repairs, but fail to conduct them. Regardless, a landlord that cannot afford to repair an oven when it breaks or cannot afford to ensure that someone's home is habitable is not meeting their legal obligations as a landlord. Regulations, including lending regulations, need to recognise this.

## Regulatory guidance needs to explicitly require that lenders consider repair and maintenance costs for loans that fund investment properties

Loans to individuals to invest in residential property are credit products regulated under the consumer credit regime and responsible lending obligations apply.

Regulatory guidance points banks to consider consumer income when making the loan. This can include income from employment, or the income derived from assets (such as rental income).[58] The regulatory guide does point lenders to consider "foreseeable reductions to the amount or frequency of income" but does not specify that a lender should explicitly consider

---

[55] CHOICE, National Shelter & NATO (2018), *Disrupted: the consumer experience of renting in Australia*, https://www.choice.com.au/-/media/b2d020ccaaf84c86a10cae5d3da1879c.ashx?la=en.
[56] Baker, E. and Daniel, L. (Eds.) (2020). *Rental Insights: A COVID-19 Collection, The Australian Housing and Urban Research Institute Limited*, Melbourne, https://www.ahuri.edu.au/research/research-papers/rental-insights-a-covid-19-collection, doi: 10.18408/ahuri3125402.
[57] CPRC and Tenants Victoria (2024), *Is it liveable? A mystery shop of private rental properties*, https://cprc.org.au/wp-content/uploads/2024/02/CPRC_Is-it-livable-Rental-Report_Digital.pdf.
[58] ASIC (2019), *Regulatory Guide 209: Credit licensing: Responsible lending conduct*, RG 209.63

the costs a property investor would reasonably incur to maintain a rental property.[59] Similarly, ASIC's regulatory guide requires lenders to consider someone's outgoings. Specific outgoings of land tax, rates and body corporate fees are listed to consider but there is nothing specified about property maintenance and upkeep.

Informal information from lenders about what is considered when deciding to issue a loan for an investment property can also fail to mention repair and maintenance costs. For example, Unloan outlines that financial position, LVR, property type and potential rental yield will all be considered for an investment loan.[60] There is no mention of reasonable maintenance costs. Another lender, Bank of Queensland, mentions that someone considering an investment property needs to consider ongoing costs including maintenance, repairs and breakages however, their home loan tools and budget calculators do not specifically factor in these considerations.[61]

It is unclear if lenders are specifically requiring property investors to demonstrate if they have the appropriate savings or a plan to maintain and repair a rental property. The regulatory guidance is not specific enough.

**Recommendation 10. Make sure that people borrowing for an investment property can afford to maintain and repair the property**

**ASIC should provide clear guidance that a lender must consider whether someone seeking an investment loan can afford reasonable maintenance and repair costs. This should consider the state of the property at the time of purchase and the natural lifecycle of household basics, including heating/cooling systems, age of appliances and general annual upkeep.**

## A major gap in protections – no laws to prevent poor quality property investment advice

There is a well-known gap in consumer and financial system protections – there are no protections to guard against poor quality property investment advice.

Australia has, rightly, introduced strong and clear protections to ensure that financial advisers need to provide recommendations in the best interests of their clients. These protections do not cover situations where someone is seeking to invest in real estate – they only apply to financial products such as shares.

This issue has been raised in multiple inquiries, including the Scrutiny of Financial Advice Inquiry conducted by the Senate Standing Committee on Economics in 2016.[62]

This gap arises with the issue failing to fall neatly within the responsibility of Federal or State governments. The Federal Government is responsible for regulating financial services markets, including the advice profession. State and territory governments regulate property transactions. Advice on property transactions has not been addressed, leaving investors at the

[59] RG 209.64
[60] Unloan (2024), *How much can I borrow when buying an investment property?*, https://www.unloan.com.au/learn/how-much-can-i-borrow-when-buying-an-investment-property.
[61] BOQ (2024), *Buying an Investment Property*, https://www.boq.com.au/personal/home-loans/buying-an-investment-property.
[62] Senate Standing Committee on Economics (2016), *Scrutiny of Financial Advice: Chapter 8*, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Scrutiny_of_Financial_Advice/Report/c08.

mercy of an unregulated sector that can push people into poor investments counter to their interests, including known high-risk investments like land banking.

It has been eight years since the Scrutiny of Financial Advice inquiry report, yet the committee's conclusion still remains true:

> *Despite the number of reviews recommending that property investment advice be regulated, no concrete action has been taken toward the introduction of a uniform regulatory framework that would include property investment advice, which remains exempt from the Corporations Act.*[63]

This inquiry should consider the ongoing risks that investors and the people who live in investment properties face because of this regulatory gap.

**Recommendation 11. Regulate to stop risky property lending advice**

Implement the recommendations from the 2016 Scrutiny of Financial Advice Inquiry.

- Make the regulation of property investment advice a Commonwealth responsibility (recognising that services provided by licensed real estate agents would remain under state and territory regulation);
- Insert a definition of property investment advice into the Corporations Act and the Australian Securities and Investments Commission Act; and
- Require that anyone providing property investment advice should hold an Australian Financial Services Licence (with appropriate exceptions).

[63] Ibid.