NIMBLE®
SMART LITTLE LOANS

PO BOX 3592 Australia Fair, Southport, QLD 4215
Australian Credit Licence Number 386010
Nimble Australia Pty Ltd (ACN 135 501 807)

15 October 2015

Ms Danielle Press
SACC Review Secretariat
Financial System & Services Division
Markets Group
The Treasury
Langston Crescent
PARKES ACT 2600

Via email: consumercredit@treasury.gov.au

Dear Ms Press

Nimble Australia Pty Ltd (**Nimble**) welcomes the opportunity to make a submission to the independent review (the "**Review**") of the *National Consumer Credit Protection Act 2009* (Credit Act), relating to small amount credit contracts (SACCs) in Australia.

About Nimble

Nimble holds an Australian Credit Licence and is one of the long-standing credit providers in the unsecured consumer credit space, having offered unsecured credit to over one million Australians since it commenced operations 10 years ago in 2005.

Nimble pioneered the use of online financial technology in Australia and has been recognised for achieving a number of significant milestones in the development of the financial technology industry in this country. Nimble's accolades include:

- First company in Australia to launch straight through processing allowing approved customers to receive their funds within the hour (or faster) of the customer confirming the loan.
- Ranked #34 in KPMG's '50 Best Fintech Innovators in the World' 2014 (one of only 4 Australian companies recognised)
- Platinum Award – Australia Customer Service Awards 2013
- Telstra Australian Business Awards Finalist 2014

Nimble employs 175 local staff in its Gold Coast office, and recently placed 33rd in the 2015 *Great Place to Work* survey.

The Nimble Difference

As an online lender, the Nimble business model is fundamentally different to the traditional bricks and mortar businesses in the sector.

Nimble uses its proprietary, sophisticated, credit assessment system, which analyses over 4,500 data points, to complement the regulatory and compliance checks, to assess the suitability of an SACC loan. It is Nimble's strong view that the use of its technology is a superior model to the traditional shopfront model, where the credit decision is more subjective, and difficult to be consistently applied to a distributed network.

Additionally, Nimble has self-imposed a strict lending criteria to deliberately lend to consumers who can comfortably afford to repay, and exclude lending to vulnerable Australians. Specifically:

- Nimble only lends to employed Australians who are able to meet their loan repayments;
- Nimble does not lend to consumers whose primary income is from Centrelink benefits;
- A customer cannot have concurrent Nimble loans, and can only apply for a new Nimble loan after fully repaying any existing Nimble loans; and
- Nimble allows customers to choose their first repayment date, which does not have to align with their payday.

Independent research and internal Nimble customer surveys show that customers that use online SACC products are financially literate, and are making sound and well-informed credit choices.[1]

The combination of a simple, easy and fast application process, supported by a rigorous loan assessment process and strict lending criteria, and a financially savvy customer base means that Nimble's default levels are very low.

Nimble's customers are very pleased with the service provided, supported by the following statistics:

- Nimble's Net Promoter Score for customer service has been externally verified at 57% (compared to the average for the Big 4 banks in Australia of -15%);
- Number of complaints received from the Consumer Action Law Centre over the past 10 years is two (2).
- Customer complaints received from our external dispute resolution provider (Credit & Investments Ombudsman) % Total Loans Issued for FY2015 = 0.0060%.

General comments

Nimble supports the intent of the Credit Act to facilitate a competitive market for SACCs. Nimble, and many other licensed SACC lenders, are providing a legitimate and valuable commercial service to millions of underserved Australians.

In the event of a short term cash shortfall, the only other unsecured credit alternatives are credit cards and personal loans that typically involve far bigger amounts of credit and higher fees and charges that are often less transparent and usually result in the borrower being in debt for a much longer term. Internal research suggests that 55% of Australians do not have access to a credit card[2] or have deliberately chosen not to use credit cards. In light of this, unsecured, short-term credit is an important part of the Australian financial sector.

Nimble submits that a higher degree of competitive neutrality needs to exist across the financial services sector. Online only SACC providers struggle to make sufficient margins, whilst banks and credit card providers who have less regulatory compliance burdens are making super normal margins and profits.

The current SACC regulatory regime is complex. Any further SACC regulation that adds compliance cost could further reduce customer choice and competition in the sector.

It is Nimble's view that the current review of the SACC legislation provides an opportunity to:

- better understand the developments within the sector over the last few years, including the growth of online providers and its financially literate customer base;
- discuss issues and gaps in the current SACC legislation that create compliance problems for credit providers, customers and the regulator; and
- rebalance consumer protection and industry viability in light of the increased expectation and interpretation of compliance following The Cash Store ruling in August 2014.

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[1] Ali, J. & Banks, M. 'Into the Mainstream: The Australian Payday Loans Industry on the Move' in JASSA The Finsia Journal of Applied Finance, No. 3, p. 35–42.2

[2] Centre for Social Impact for National Australian Bank (2014) 'Measuring Financial Exclusion in Australia'

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Nimble supports the other key intent of the legislation to protect financially vulnerable Australians. However, Nimble submits that the current legislative regime reduces choice by financially strong and literate consumers as it imposes significant compliance costs for SACC providers. Therefore, updates to the regulations are required to reflect the typical consumer profile of SACCs, and vulnerable consumers who are dependent on Centrelink benefits.

Format of Response

Appendix 1 provides a summary of Nimble's position and recommendations.

Nimble's responses to the feedback sought by the Panel are outlined in Appendix 2.

Appendix 3 outlines Nimble's commentary on the status of the industry.

To ensure the Panel has complete transparency about Nimble's business model, and the impact of the current regulatory issues facing Nimble, additional supporting material, which is commercially sensitive, is provided in Appendix 4. The information is provided on a *commercial-in-confidence* basis. Accordingly, Nimble respectfully requests for the content in Appendix 4 to be excluded from public view and the information should be maintained confidential, and provided on the basis that they will not be disclosed to any other parties other than with Nimble's express written consent, and subject to appropriate undertakings as to confidentiality. Nimble regards the information contained in Appendix 4 as exempt from release in respect of any application under the *Freedom of Information Act.*

Summary

In this submission, Nimble recommends important regulatory reforms to provide clarity and certainty to credit providers about their compliance obligations, and ensure consumer choice and competitive neutrality across the financial sector.

Nimble will also highlight the need for Government to balance regulatory compliance with practical and commercial considerations to support a viable SACC industry. Otherwise, a whole demographic of financially literate consumers who have the maturity to make informed decisions will be denied access and choice to this category of finance.

Nimble would be pleased to meet with the Panel to discuss its submission in more detail. Nimble advises that it is not a member of any industry body, so we would therefore welcome any invitations extended to industry discussions or forums.

Yours sincerely

Signed

Sami Malia
Chief Executive Officer

Enclosures	**Appendix 1:**	Summary of Nimble's position and recommendations
	Appendix 2:	Full description of Nimble's response to the submission
	Appendix 3:	Nimble's comments on the status of the industry
	Appendix 4:	Commercial-in-confidence information supporting Nimble's submission

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Appendix 1: Summary of Nimble's position and recommendations

	Key Focus Area	Scope of Focus Area	Nimble Position	Nimble Recommendation
1	**Competing objectives**	How is the need to protect consumers balanced with the need to ensure that the industry remains viable and consumers can still access credit?	• The premise that all SACC customers are vulnerable is incorrect. The typical Nimble consumer is financially literate and has a higher income demographic than typical storefront consumers. • When the Consumer Credit Legislation Amendment (Enhancements) Act 2012 commenced in July 2013 the regulations did provide a good balance between the need to protect the consumer and reasonable compliance costs. • Following The Cash Store decision, the costs of compliance have significantly increased, and has led to credible players existing the SACC market. • If additional regulation is imposed on the SACC industry, further providers will exit the market. This will adversely affect competition and may limit SACC options for many consumers.	• Nimble believes the need to protect consumers can be better achieved by updating and simplifying the regulations to provide clearer guidelines on how the industry can meet its responsible lending obligations, and impose stricter rules on lending to clearly vulnerable consumers such as those whose primary source of income is from Centrelink.
2	**Complexity**	Could the current regulatory regime be simplified in a way that provides consumers with the same, or a higher level of, protection while reducing the regulatory burden on industry?	• The current regulatory regime can be simplified with the same or higher level of protection to consumers while reducing the regulatory burden.	• In the interest of competitive neutrality, Nimble proposes that regulations are updated to allow for safe harbour measures for SACC lenders to comply with the responsible lending obligation to reasonably understand the consumer's requirements and objectives where the consumer provides sufficient information for their short-term cash shortfall needs. A list of acceptable purposes and value can be incorporated in the regulation. • The presumption of unsuitability trigger and rebuttal requirements are removed from the Credit Act, and replaced with clearer guidelines on assessing the suitability of a loan based on affordability measures. • Statutory disclosures for SACCs outlined in the Credit Act are updated to give clarity that a consumer can contact the lender in the event of a dispute. • Regulations should be updated to mandate a dispute to go through the IDR process before EDR, and EDR schemes should not be able to charge services fees if the dispute has not been through the lender's IDR process.

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(Continued) Appendix 1: Summary of Nimble's position and recommendations

	Key Focus Area	Scope of Focus Area	Nimble Position	Nimble Recommendation
3	**Sanctions**	The Credit Act imposes three types of sanctions - civil penalty breaches, criminal breaches and infringement notices. • Is the current sanctions regime working? • Are there any enhancements that could be made to the sanctions regime to make it more effective?	• The current sanctions regime needs enhancements to make it more effective.	• The legislation should be clarified to cap the total number of infringement notices that can be issued to lenders as the intent of such sanctions is an alternative to civil proceedings. • Sanctions should be significantly higher when the credit activity is performed by an unlicensed credit provider. • Lenders should be encouraged to self-report material breaches, and provide the regulator evidence of appropriate breach rectifications, and if satisfactory, sanctions should not be imposed to lenders.
4	**Obligation to obtain and consider bank account statements**	The law currently requires SACC providers to consider a consumer's bank account statements for at least the preceding 90 days.	• The requirement to obtain and consider bank statements is useful for lenders to discharge their responsible lending obligation to make reasonable inquiries about a consumer's financial situation and take reasonable steps to verify the consumer's financial situation. • It is appropriate for SACC lenders to use bank statement data for marketing purposes provided the lender has complied with the Privacy Act.	• The requirement should be extended to all lenders, and not just SACC providers, to allow for support competitive neutrality across the credit industry. • To balance industry needs with consumer protection, mandatory industry guides should be implemented to validate and support the use of third party account aggregation third party providers.
5	**Restrictions on repeat borrowing**	There is a presumption that a SACC is unsuitable if either the consumer is in default under another SACC or in the 90-day period before the assessment the consumer had two or more other SACCs. • How do SACC providers determine whether a prospective customer has a SACC with another SACC provider or is in default under another SACC? • Is a restriction on repeat borrowing necessary to protect consumers? • Is a rebuttable presumption or a bright-line test (e.g., an outright ban or a limitation on the number of SACCs that a consumer can take out in a certain period of time) more effective? • Would the objective of limiting a debt spiral through repeat borrowing be assisted by requiring SACC providers to rely on a recognised prescribed benchmark, such as the Household Expenditure Measure or Henderson Poverty Index (with or without an added margin)?	• Imposing additional measures such as a restriction on repeat borrowing would place an unnecessary restriction on consumers choice of finance. • Nimble uses information from the consumer and its internally developed algorithms to determine whether the presumption of unsuitability has been triggered. • The presumption of unsuitability trigger is arbitrary and artificial and does not take into consideration the consumer's ability to service the loan. • Restricting repeat borrowing will make the industry unviable.	• The key principle that should guide the lending decision should be around the consumer's capacity to repay without hardship. • Government policy should continue to focus on increasing financial literacy of consumers. • Mandate SACC lenders to subscribe to comprehensive credit reporting to assist lenders to make better lending decisions.

PO BOX 3592 Australia Fair, Southport, QLD 4215 • Australian Credit Licence Number 386010 • Nimble Australia Pty Ltd (ACN 135 501 807)

(Continued) Appendix 1: Summary of Nimble's position and recommendations

	Key Focus Area	Scope of Focus Area	Nimble Position	Nimble Recommendation
6	**Ban on short term credit contracts**	The Credit Act prohibits loans with a term of 15 days or less. • Has the prohibition on short-term lending been effective in preventing lenders from offering loans with a term of 15 days or less? • Has the prohibition on short-term lending had any unintended consequences that mean it should be changed? If so, please provide examples of these consequences.	• The prohibition on short-term lending has been effective, and it has not had any unintended consequences.	• No recommendations.
7	**Warnings**	The Credit Act requires SACC providers to provide a specific warning statement to consumers. • Are the warning statements effective? Could the statements be improved? • Should SACC providers be required to include a hyperlink to the MoneySmart website when warnings are displayed on webpages?	• The Warning Statements are effective, and appropriate to achieve its objective.	• Nimble supports the requirement for SACC providers to be mandated to include a hyperlink to the MoneySmart website when warnings are displayed on webpages.
8	**Cap on Costs**	The Credit Act currently caps establishment fees at 20 per cent of the credit amount, monthly fees at 4 per cent of the credit amount and the total fees payable in default to twice the credit amount. • The policy intention in respect of the rate at which the cap on cost was set was to provide adequate protection to consumers and continue to allow the SACCs industry to operate. Do stakeholders think the cap has broadly met this objective? • Should the temporary exemptions provided by Class Order 13/818 be made into regulation?	• The current regulatory framework does not allow for lenders to recover the costs of assessing a loan (rejected or approved), and does not take into consideration the increase in financial risk undertaken by the lender. • Nimble does not support the decrease of the current permitted fees under the Credit Act. • The fee structure does not take into account the burgeoning compliance costs associated with ASIC's higher compliance expectations as a result of The Cash Store decision.	• Nimble recommends that the definition of permitted fees in the Credit Code is updated to enable the lenders to charge, at cost, fees incurred in discharging the responsible lending obligations such as obtaining and considering the consumer's bank statements and make reasonable inquiries and take reasonable steps to verify the consumer's financial situation. • Nimble recommends that if costs cannot be passed on to consumers, the permitted establishment fee should be capped at 25%. • Nimble supports the temporary exemptions provided by Class Order 13/818 to be made into regulation.
9	**Protection for Centrelink Customers**	The Credit Act caps the amount of repayment for consumers who receive 50 per cent or more of their gross income from Centrelink payments to 20 per cent of the consumer's gross income. • Is the protection for consumers who receive 50 per cent or more of their income under the Social Security Act 1991 working effectively? • Do any additional groups of consumers need to be subject to specific protection in relation to SACCs? For example, should the provisions be extended on a similar basis to other persons whose income is less than a specified amount or recipients of payments under the Veterans' Entitlements Act 1986?	• Nimble does not lend to consumers whose primary source of income is from Centrelink benefits. • Nimble supports the protection provided in the regulations, to cap repayments to 20% of Centrelink dependents' income per pay cycle.	• Nimble recommends that the presumption of unsuitability should only apply to consumers who are dependent on Centrelink as their primary source of income. • Nimble supports the extension of the repayment caps to recipients of payments under the Veterans' Entitlements Act 1986.

PO BOX 3592 Australia Fair, Southport, QLD 4215 • Australian Credit Licence Number 386010 • Nimble Australia Pty Ltd (ACN 135 501 807)

(Continued) Appendix 1: Summary of Nimble's position and recommendations

	Key Focus Area	Scope of Focus Area	Nimble Position	Nimble Recommendation
10	**National Database**	The review is required to consider whether a SACC database would enhance the capacity of SACC providers to meet the responsible lending obligations by providing them with access to more comprehensive and accurate information. Is there sufficient information currently available for a SACC provider to meet the responsible lending obligations? • If not, would a database or alternatives such as comprehensive credit reporting be a more effective way to meet the responsible lending obligations? • If a SACC database is considered an effective method to meet the responsible lending obligations, please comment on the database. • Please provide recommendations to introduce a database.	• A SACC database is not necessary to enhance the capacity of SACC providers to meet the responsible lending obligations. • If a SACC database was imposed, reporting to the database by SACC lenders should be mandatory, and access limited to SACC lenders only. • Noting that the legislation is principles based, SACC providers should be given discretion on when to access the database, therefore use of the database should not be made mandatory. • Any reasonable and genuine costs associated with the provision of credit should be passed on to the consumer and excluded from the regulatory caps. • If comprehensive credit reporting is mandated, lenders can have a more holistic view of the consumer's financial situation in light of the additional information available in the consumer's credit file. • The cost of the database should be borne by Government.	• Nimble recommends that mandatory subscription by all SACC lenders to comprehensive credit reporting is a more effective way to assist lenders to meet their responsible lending obligations.
11	**Additional Provisions for SACCs**	The terms of reference require consideration of whether any additional provisions relating to SACCs should be included in the Credit Act. • Are there any additional provisions relating to SACCs that should be included in the Credit Act taking into account the objective of the legislation? For example, are there any provisions that have been effective in other jurisdictions that could be introduced?	• The SACC industry needs stability to secure its viability and encourage innovation.	• Use of third party account aggregation service providers needs to be validate as it is good use of innovative technology and allows for a more efficient process. • Broad anti-avoidance provisions should be incorporated in the legislation to protect the integrity of the industry. • Legislate to allow consumers to have the right to nominate the day of their SACC repayments to give consumers more flexibility and insure consumers are not in hardship on their pay day.
12	**Anti-avoidance provisions**	Are stakeholders aware of any avoidance practices in relation to the Credit Act? • Should any additional anti-avoidance provisions be included in the Credit Act? • If so, should there be any distinction between business model avoidance and internal avoidance?	• Nimble is not aware of any avoidance practices in relation to the Credit Act. • No additional anti-avoidance provisions is required to be included in the Credit Act.	• No recommendations.
13	**Documentation for suitability assessments**	• How do SACC providers currently meet the requirement to make a suitability assessment and what records of the decision-making process are maintained? • What is the most efficient and effective way to document suitability assessments? Is it possible to use the same steps for actual compliance and demonstrable compliance? • Should SACC providers be required to document the assessment? Please consider whether such a requirement could lead to greater transparency.	• SACC providers should be required to document the assessment as it will lead to greater transparency, not only to evidence compliance with the legislation, but also assist in mitigating risks. • Record keeping obligations already exist as part of the obligations as a credit licensee.	• Nimble proposes that additional regulatory guidance is needed to clarify the regulator's expectations to document the assessment.

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Appendix 2: Full description of Nimble's response to the submission

Question 1: How is the need to protect consumers balanced with the need to ensure that the industry remains viable and consumers can still access credit?

KEY POINTS

- The premise that all SACC customers are vulnerable is incorrect. The typical Nimble consumer is financially literate and has a higher income demographic than typical storefront SACC borrowers.
- When the Consumer Credit Legislation Amendment (Enhancements) Act 2012 commenced in July 2013 the regulations did provide a good balance between the need to protect the consumer and reasonable compliance costs.
- Following The Cash Store decision, the costs of compliance have significantly increased, and has led to credible players existing the SACC market.
- If additional regulation is imposed on the SACC industry, further credible providers will exit the market. This will adversely affect competition and may limit short term credit options for many consumers.
- Nimble believes the need to protect consumers can be better achieved by updating and simplifying the regulations to provide clearer guidelines on how the industry can meet its responsible lending obligations, and impose stricter rules on lending to clearly vulnerable consumers such as those who are dependent on Centrelink income.

We have broken this question into its constituent parts to provide an adequate response:

1. Protecting Consumers

A prevailing assumption among industry commentators has been that SACC borrowers are vulnerable; this is a claim that merits further attention. Independent research has shown that the online lending sector has moved into the middle-income customer base.[3] Furthermore, research conducted both in Australia and the United Kingdom suggests that the most vulnerable consumers are those who use SACCs to meet basic living expenses.[4] The vast majority of Nimble's customer base does not fit into this category. Internal data has shown that many loans were not used to live "day to day"; rather, 70% of members used their loan as a safety net to cover significant, one-off and unexpected costs such as medical bills or auto repairs.

Nimble automatically excludes applicants who are unemployed, dependent on Centrelink benefits or who are seeking a loan to repay another SACC loan. Nimble also automatically excludes applicants who have bad credit files with certain defaults, bankruptcy, and Part 9 Debt agreements or Part 10 Personal Insolvency Agreements.[5]

As a result, Nimble approves only 1 in 6 new applications with 81% of customers having a completely clean credit history. Nimble therefore incurs a loss as a resulting of rejecting 5 out of 6 applications as it does not engage in any lead generation activities to recover the costs in assessing the rejected SACC loan.

It is simply incorrect to assume that all people who use SACC products are vulnerable or financially illiterate. In 2014, Nimble engaged Roy Morgan and their customer segmentation, research tool, Helix Persona, to better understand Australian communities who use financial services products including SACCs.

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[3] Ali, J. & Banks, M. 'Into the Mainstream: The Australian Payday Loans Industry on the Move' in JASSA The Finsia Journal of Applied Finance, No. 3, p. 35 –42.
[4] Ali, P., McRae, C. and Ramsay, I., (2015) 'Payday Lending Regulation and Borrower Vulnerability in the United Kingdom and Australia' in the Journal of Business Law No. 3 p.223 -255
[5] Current as at the time of submission.
[6] Current as at the time of submission

The research tool splits the Australian population into seven communities. A brief description of each community together with their combined household income is provided in Table 1 below:

Table 1: Helix Persona Community Segmentation

Helix Persona Community	Description of Helix Persona Community	Combined Household Income Range
Leading Lifestyles	High income families typically own their own house in the suburbs.	**90 - 148K+**
Metrotechs	Young, single, well educated, inner city professionals with high incomes, typically renting apartments.	**86 - 136K**
Today's Families	Young families in the outer suburbs. Full time workers earning above average incomes.	**88 - 134K**
Aussie Achievers	Closest to the average Australian, these young, educated, outer suburban families are working full time to pay off their expensive separate house.	**93 - 112K**
Getting By	Young parents or older families with children still at home, outer suburbs, bargain hunters. Often migrants from the Middle East, India, South-East Asia and Africa in the process of building up, from scratch, their local skills, assets & cross-cultural networks.	**59 - 98K**
Golden Years	Older married household/ retirees who are family proud. Confident as they have paid off their suburbs/ rural homes.	**51 - 80K**
Battlers	Mostly Aussie-born, families and couples living in cities and towns earning low incomes from their skilled jobs, secondary school educations. Battlers are focussed on making ends meet.	**50 - 76K**

Table 1 shows that the demographic shape of the Australian community is much more complex than a simple black and white line or loan limits to define whether Australians are financially vulnerable.

30% of Nimble's customers fall within the Leading Lifestyles and Metrotech communities. The full breakdown of the Nimble customer base across these seven communities can be found in the commercially sensitive information outlined in Appendix 4.

2. Evolving regulatory compliance

The responsible lending obligations are principles based, and require lenders to fulfill their obligations based on what is reasonable. That is, the legislative requirements are scalable. ASIC's updates to *Regulatory Guide 209: Responsible Lending Conduct* (RG209) in November 2014 appears to have incorporated the Cash Store[7] decision, which while Nimble recognises as a precedent, key factual distinguishing factors, as outlined above, have been ignored. This has resulted in industry being expected to do more than what is 'reasonable' as required by the current Credit Act.

[7] ASIC v The Cash Store Pty Ltd (in liq) [2014] FCA 92

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The Cash Store ruling has resulted in increased regulatory compliance for all SACC providers. The ruling should not be strictly applied, especially for an online lender such as Nimble, due to the following reasons:

- The Cash Store was a shop-front based business with paper-based manual processes. Nimble on the other hand has been able to automate processes in an online environment to reduce the risk of human error and unnecessary subjectivity in the loan assessment process.
- The model used by Cash Store was prior to the introduction of the enhancements to the Credit Act. The Cash Store was therefore not subject to the same scrutiny of regulation that SACC providers are now subject to, such as the cap on costs, loan terms, restrictions on refinancing, obtaining and considering bank statements, stricter rules around responsible lending and rebutting the presumption of unsuitability, if triggered.
- The Cash Store and Nimble have different customer profiles. It appears that The Cash Store's customers appear to be primarily Centrelink dependents or consumers with very low income. As stated above, Nimble does not lend to Centrelink dependents and it is a requirement for consumers to be in paid employment.
- The loans reviewed by ASIC in The Cash Store case were entered into between 1 July 2010 and September 2012. Therefore, what was considered by the Court as an appropriate objective or need for the loan some 2-4 years ago is arguably not as relevant for the current day. For example, ASIC found, and the Court agreed that a "bill" should never exceed $500. However, there are many regular bills that exceed $500 such as water, rates and electricity.
- The Cash Store case was undefended. The outcome of the decision may have been substantially different if the case was defended.

The Cash Store confirms ASIC's approach for lenders to consider the consumer's fixed and variable expenses and other debts in addition to income, as part of the overall inquiries and verification of the consumer's financial situation. The responsible lending obligations require a lender to make 'reasonable' inquiries and take 'reasonable' steps to verify the consumer's financial situation. However, RG209 is silent on the extent of verification required to enable a lender to fulfill its responsible lending obligations. Instead, lenders are being expected to do a full audit on the consumer's financial situation which is impractical for loans under $2,000 given that fees and charges are capped, and small in dollar amount.

Furthermore, proposals to prohibit or cap the number of loans a consumer may take over a period of time will adversely affect competition in the market. This would limit the credit choice available for consumers as Nimble suspects that many lenders would exit the SACC market should such prohibition be imposed. Consumers will be pushed into getting larger loans, over a longer term, which is not necessarily a good outcome.

Nimble has provided the Panel with a commercial-in-confidence analysis of the current costs of providing a new loan in Appendix 4.

3. Access to Credit

Consumer choice about a SACC loan should be limited where they can afford it.

However, the Panel should consider restricting SACC loans for those who are clearly vulnerable such as consumers whose primary source of income is from Centrelink benefits.

Over 50% of Australians have a bank account but do not have access to a credit card. Of these 55%, almost 44% (or 4.4 million Australians) are employed.[8]

[8] Centre for Social Impact for National Australian Bank(2014)'Measuring Financial Exclusion in Australia'

Many borrowers today are choosing to use SACCs over other forms of credit for a range of reasons, including convenience of online access (more than 75% of Nimble's applications are from a mobile phone or tablet device) and wanting to avoid long-term lines of credit for one-off or short term expenses. Other reasons include remittance in cash into their bank accounts or debit cards, and also because of an easily comprehensible and simple repayment cycle.[9]

Nimble conducted an internal survey of over 8,000 of its members this year to which 63% of respondents actively chose a SACC loan as their first credit choice. 90% of members identified credit cards as the product posing the greatest risk of unmanageable debt. Statistics released by the Reserve Bank of Australia show an estimated 16 million credit cards currently holding outstanding balances of $51.2 billion in debt, which represents a 47.3% increase in balances accruing interest over the past 10 years.[10] Nimble provides Australian consumers with a responsible alternative to this long-term debt risk.

Nimble believes that there is a real opportunity for automated online lending systems to continue to improve efficient access and consumer service as well as better protect vulnerable consumers.

Conclusion

When the *Consumer Credit Legislation Amendment (Enhancements) Act* 2012 commenced in July 2013 the regulations did provide a good balance between the need to protect the consumer and reasonable compliance costs.

However, following The Cash Store decision, the cost of compliance has been increasing significantly and has led to credible lenders exiting the SACC market, which limits availability of credit to consumers and limits innovation. If additional regulation is imposed on the SACC industry, further providers will exit the market. This will adversely affect competition and may limit short term credit options for some consumers.

Nimble believes the need to protect consumers can be better achieved not through further regulating the SACC industry, but rather for regulations to be updated and simplified to provide clearer guidelines on how the industry can meet its responsible lending obligations. Nimble does support imposing stricter rules on lending to consumers whose primary source of income is from Centrelink.

[9] Banks, M, De Silva, A & Russell, R (2015) 'Trends in the Australian Small Loan Market', RMIT University, School of Economics, Finance and Marketing, Australian Centre for Financial Studies, p 27

[10] Reserve Bank of Australia, 'Statistical Tables – Credit and Charge Card Statistics C1'. 2015

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Question 2: Could the current regulatory regime be simplified in a way that provides consumers with the same, or a higher level of, protection while reducing the regulatory burden on industry?

KEY POINTS:

- The current regulatory regime can be simplified with the same or higher level of protection to consumers while reducing the regulatory burden.
- In the interest of fairness in competition and efficiency, Nimble proposes that regulations are updated to allow for safe harbour measures for SACCs lenders to comply with the responsible lending obligation to reasonably understand the consumer's requirements and objectives where the consumer provides sufficient information for their short-term cash shortfall needs. A list of acceptable purposes and value can be incorporated in the regulations.
- The presumption of unsuitability trigger and rebuttal requirements are removed from the Credit Act, and replaced with clearer guidelines on assessing the suitability of a loan based on affordability measures.
- Statutory disclosures for SACCs outlined in the Credit Act are updated to give clarity that a consumer can contact the lender in the event of a dispute.
- Regulations should be updated to mandate a dispute to go through the IDR process before EDR, and EDR schemes should not be able to charge services fees if the dispute has not been through the lender's IDR process.

We have researched the regulatory requirements for credit licensees for the following products:

- a SACC
- a credit card
- a medium amount credit contract
- an unsecured personal loan
- a mortgage

The results of the research are provided in Table 2.

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Table 2: Matrix of financial product compliance requirements

	Short-term debt		Medium-term debt (up to 2 yrs)	Long-term debt	
	SACCs (Unsecured)	Credit Cards (Unsecured)	MACCs (Secured and unsecured)	Personal Loans (Unsecured)	Mortgages (Secured)
Amount of loan	**Legislative limit** (capped $2,000 principal)	**Agreed limit** (uncapped)	**Legislated limits ($2,001 to $5,000)**	**Agreed limit (uncapped)**	**Agreed limit (uncapped)**
Responsible lending obligations					
Make reasonable inquiries about the consumer's requirements & objectives in relation to the credit contract	✓	✓	✓	✓	✓
Make reasonable inquiries about the consumer's financial situation	✓	✓	✓	✓	✓
Take reasonable steps to verify the consumer's financial situation	✓	✓	✓	✓	✓
Other obligations					
90 day bank statements	✓	✗	✗	✗	✗
Presumption of unsuitability	✓	✗ Note: consumers may be in a debt spiral as there are no limits on the number of credit cards a consumer may have. There are no obligations for a consumer to close off other credit cards in the event that they transfer the balance of credit to another credit card provider.	✗	✗	✗
Fee prohibitions for refinancing	✓	✗	✗	✗	✗
Restrictions on fees and charges	✓	✗	✗	✗	✗
Protected Earnings Provision	✓	✗	✗	✗	✗
Suitability Assessment	✓	✓	✓	✓	✓
Requirements for warning on licensee's website	✓	✗	✗	✗	✗
Credit limit increases	Prohibited as each loan is assessed on its own merits.	Permitted provided the consumer consented to the credit limit increase. Note, no express requirement for each credit limit increase to be assessed on its own merits.	An asset can be "pledged" as collateral for certain loans.	Permitted subject to lender's lending criteria. Note, no express requirement for each credit increase to be assessed on its own merits.	Permitted but refinance assessed on its own merits.
Fee Cap	✓ 20% Est. Fee 4% Monthly Fee	✗	✓ $400 Est. Fee 48% APR	✗	✗

It is apparent from Table 2 that the regulation for the SACC product is unduly and unfairly onerous and not consistent with other forms of larger and potentially more dangerous credit. Nimble also submits that there are no fee caps for credit card, personal loans or mortgages, despite having significantly less compliance burdens than the SACC products in particular. It is highly unfair and not competitively neutral.

Nimble recommends the following changes to simplify the current legislation:

Requirements & Objectives

Section 130(1)(a) of the Credit Act require lenders to:

"make reasonable inquiries about the consumer's requirements and objectives in relation to the credit contract"

As outlined in The Cash Store case, the level of rigour required for SACC lenders to understand the consumer's requirements and objectives for a SACC is generally more onerous than the level of inquiries expected from a continuing credit contract, which can be for a significantly higher amount than the capped SACC amount of $2,000.

In the interest of competitive neutrality, Nimble proposes that regulations are updated to allow for safe harbour provisions for SACC lenders to comply with the responsible lending obligation to reasonably understand the consumer's requirements and objectives where the consumer provides sufficient information for their short-term cash shortfall needs. For example, where the consumer provides reasonable responses for the purpose of the loan, and provided that the loan is not intended to be used to repay other short-term loans, then the SACC lender can satisfy its obligation to understand the consumer's requirements and objectives.

A list of acceptable purposes and value can be incorporated in the regulations.

ASIC's RG209.36 provides a list of inquiries a lender should make to satisfy the responsible lending obligations to make reasonable inquiries about a consumer's requirements and objectives. The regulatory guide specifies that such inquires could include:

- the amount of credit needed or the maximum amount of credit sought (e.g. the desired limit for a credit card);
- the timeframe for which the credit is required;
- the purpose for which the credit is sought and the benefit to the consumer;
- whether the consumer seeks particular product features or flexibility, the relative importance of different features to the consumer, and whether the consumer is prepared to accept any additional costs or risks associated with these features; and
- whether the consumer requires any additional expenses, such as premiums for insurance related to the credit, to be included in the amount of finance, and whether the consumer is aware of the additional costs of these expenses being financed.[11]

While Nimble acknowledges that the examples provided in RG209.36 are not exhaustive, it is evident that understanding the consumer's requirements and objectives for a relatively small amount[12] and for a short period of time, with regulated permitted fees, are quite clear. Nimble submits that unlike other credit products such as credit cards or home loans, the maximum amount, benefits, loan term, and product features for a SACC are limited due to strict regulations governing the product. Accordingly, it is appropriate for regulations to be updated to allow for safe harbour provisions for SACCs to comply with section 130(1)(a) of the Credit Act.

[11] Note Nimble does not offer any insurance products for its SACCs.

[12] Refer to Appendix 4 for details of Nimble's average loan amount and average loan term

Presumption of Unsuitability

Nimble understands the underlying purpose of this provision is to protect vulnerable customers.

Section 130 of the Credit Act requires lenders to:

- make reasonable inquiries about the consumer's requirements and objectives in relation to the credit contract;
- make reasonable inquiries about the consumer's financial situation; and
- take reasonable steps to verify the consumer's financial situation.

Lenders are then required to assess whether the contract is 'not unsuitable' as required by section 131 of the Credit Act.

Further, for SACC lenders, section 131(3A) of the Credit Act stipulates that a contract is unsuitable, if:

- at the time of the loan assessment, the consumer is a debtor under another SACC and in default in payment of an amount under that other contract; or

- in the 90 day period before the time of the assessment, the consumer has been a debtor under 2 or more other SACCs.

(Presumption of Unsuitability)

The Presumption of Unsuitability assumes that the proposed SACC is unsuitable as it is presumed that the consumer could only comply with the financial obligations under the proposed SACC with substantial hardship. The SACC lender has an obligation to rebut the presumption by proving to the contrary that the consumer can comply with their financial obligations without experiencing substantial hardship.

The Presumption of Unsuitability imposes a higher threshold before the consumer can obtain a third SACC in the last 90 days. Effectively, if the lender is unable to rebut the presumption, the consumer is unable to access finance through the SACC product.

Nimble does not believe that consumers should be limited to a certain number of consecutive SACC loans so long as the consumer has the financial capacity to meet their obligations under these contracts and not be in hardship.

It is therefore Nimble's position that the presumption of unsuitability trigger and rebuttal requirements are removed from the Credit Act, and replaced with clearer guidelines on assessing the suitability of a loan based on affordability measures. Nimble's recommended guidelines are outlined in the response to Question 5 of this Submission.

Whilst it may be envisaged that the above proposed changes do not provide the consumer 'with the same or more protection', it is the licensee's obligation to ensure that the consumer is able to afford the repayments of the loans, having considered the consumer's financial situation as part of the general responsible lending obligations.

There are no presumption of unsuitability criteria for credit cards or personal loans, where the debts are significantly higher and for longer terms. Affordability and capacity to repay the loans without hardship should be the key principles of the regulations for this type of lending.

Other Changes

Section 47 of the Credit Act outlines a licensee's general conduct obligations, and requires licensees to, amongst other things, comply with the conditions on the licence, have an internal dispute resolution (IDR) process, and be a member of an approved external dispute resolution (EDR) scheme.

The Credit Act recognises that in the event of issues between the lender and the consumer, due process is to be followed and at first instance, the issue should be dealt with through the IDR process, and thereafter if the matter needs to be escalated, the EDR process can then be initiated.

Nimble recognises the need for an EDR scheme to escalate disputes, and maintain independence in the carriage of a dispute in the interest of the borrower and lender. While Nimble has a low volume of EDRs, as outlined above, the cost of membership and management of disputes by EDRs are increasing. Further, service fees are charged by the EDR scheme for each complaint received by the EDR scheme notwithstanding that the IDR process has been surpassed.

Nimble submits that while the Credit Act recognises due process in the event of a dispute between the lender and the consumer, in practice, lenders are disadvantaged as consumers are encouraged to escalate their issues to the EDR scheme prior to the IDR.[13] As outlined below, the margins available for SACC lenders are already limited due to legislated caps on fees and charges. The charges imposed by EDR schemes are therefore unnecessary and cause detriment to lenders.

Nimble recommends that statutory disclosures for SACCs outlined in the Credit Act are updated to give clarity that a consumer can contact the lender in the event of a dispute. Further, regulations should be updated to mandate that a dispute to go through the IDR process before EDR, and EDR schemes should not be able to charge service fees if the dispute has not been through the lender's IDR process.

[13] This is evidenced in the prominence given to EDR schemes in pro-forma statutory disclosures provided to consumers under the Credit Act (e.g. Form 5 Information Statement and Form 11A Direct Debit Default Notice).

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Question 3: The Credit Act imposes three types of sanctions - civil penalty breaches, criminal breaches and infringement notices.

KEY POINTS:

- The legislation should be clarified to cap the total number of infringement notices that can be issued to lenders as the intent of such sanctions is an alternative to civil proceedings.
- Sanctions should be significantly higher when the credit activity is performed by an unlicensed credit provider.
- Lenders should be encouraged to self-report material breaches, and provide the regulator evidence of appropriate breach rectifications, and if satisfactory, sanctions should not be imposed to lenders.

Is the current sanctions regime working?
Are there any enhancements that could be made to the sanctions regime to make it more effective?

Nimble recommends that the number of infringement notices should be capped so a contravener should not be punished for the same conduct twice. Noting that the threshold for issuing infringement notices is based on a lower threshold of the regulator having "reasonable grounds to believe" that a person has breached a strict or civil liability of the Credit Act, it would be appropriate for the total number of infringement notices issued to be capped as the intent of such notices is an alternative to civil proceedings.

Whilst Nimble do not believe that The Cash Store case should be strictly applied, Nimble notes that its position is consistent with the methodology applied in the judgement.

Further, Nimble recommends that the sanctions be significantly higher when the credit activity is performed by an unlicensed credit provider. This recommendation is also consistent with the Report from the Parliamentary Joint Committee on Law Enforcement's Inquiry into Financial Related Crime, released 7 September 2015, where Recommendation 6 outlined:

> *"4.16 The committee recommends that the government review the penalties prescribed under financial services legislation administered by ASIC, with a view to achieving a better balance between non-compliance by licensed operators and unlicenced operators."*

Nimble also believes that sanctions should not be imposed where the lender self-reports material breaches. As part of this proposal, the lender would be required to evidence to the regulator that breaches have been fixed, and appropriate measures implemented to prevent the breach from re-occurring. Provided the lender has taken adequate steps to confirm the issues have been fixed, the process becomes a statutory reporting issue. This will encourage a positive compliance culture within the industry, and provide a cost-effective solution for both the regulator and the lender without compromising consumer's interests.

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Question 4: The law currently requires SACC providers to consider a consumer's bank account statements for at least the preceding 90 days.

KEY POINTS:

- The requirement to obtain and consider bank statements is useful for lenders to discharge their responsible lending obligation to make reasonable inquiries about a consumer's financial situation and take reasonable steps to verify the consumer's financial situation.
- The requirement should be extended to all lenders, and not just SACC providers, to allow for a level playing field across the credit industry.
- To balance industry needs with consumer protection, mandatory industry guides should be implemented to validate and support the use of third party account aggregation service providers.
- It is appropriate for SACC lenders to use bank statement data for marketing purposes, provided the lender has complied with the Privacy Act.
- Nimble does not use bank statement data for marketing purposes.

Is the requirement to obtain and consider bank account statements necessary given the broader responsible lending obligations?

Are there more effective ways to obtain information about the financial situation of a SACC customer? If so, specify the alternative ways for obtaining information and whether the alternative is simpler, cheaper, or provides more useful information.

SACC lenders are required to meet the responsible lending obligations to make reasonable inquiries and verify the consumer's financial situation, which are principles based obligations. Nimble recognises that bank account statements are a good source of information to understand a consumer's financial situation. Requiring consumers to provide bank statements also mitigates the risk of fraud. However, it is Nimble's position that the requirement in section 130(1A) should be clarified so the requirement is extended to all lenders, and not just SACC providers. It is unfair that SACC consumers require additional protection to obtain a loan of up to $2,000 (who on average only obtain $400 per SACC), compared to a credit card or unsecured personal loan, where the consumer is potentially taking on significantly more debt, over a longer period of time, with no cap on total repayments.

To ensure effective regulatory compliance, more lenders, including Nimble, rely on third party account aggregation service providers to enable it to obtain and consider consumer's transaction history electronically. Nimble recommends that the use of such services is acknowledged formally and validated by the legislation.

In an increasingly digitally-dependent industry, it is important to carefully protect sensitive consumer financial data and ensure that borrowers are both informed and protected of their rights when using such services. Privacy protection must therefore be an important part of the legislative regime.

The balance between consumer protection and technology acceptance in complying with the legal obligations can be achieved through regulations or mandatory industry guides lenders must comply with before they can use such services. The guides can outline:

- The minimum checks, security measures and standards required from 'approved' account aggregate service providers, before they are able to provide services in Australia. For example, similar to the account aggregation service provider that Nimble uses, service providers should be expected to comply with industry best practice guidelines in the design and implementation of its Information Security Program.
- Ensuring that access to consumer's accounts are read-only.

- Mandatory disclosure requirements to consumers to enable them to make an informed decision as to the use of third party providers, including information about the type of information to be obtained, the fact that the access to the consumer's bank account will be read-only, and information about internal and external dispute resolutions.

Nimble recommends that compliance with the regulations or mandated regulatory guides by the lender, as outlined above, should not disadvantage the consumer's rights under the e-Payments Code (if applicable) noting that adequate consumer protections are in place.

Is it appropriate for SACC providers to use bank account statements for purposes other than complying with the responsible lending obligations, such as for marketing?

Bank account statements provide useful information on a consumer's financial situation and financial profile. Lenders and any other entity who intend to use consumer's bank account statements for another purpose other than the primary purpose the information was given for, are subject to the use and disclosure provisions outlined in the Australian Privacy Principles in the *Privacy Act* 1988 (Cth) (Privacy Act). In particular, it is the consumer's choice as to whether they are willing to provide the consent for their bank account information to be used for marketing purposes. Adequate protections are already in place in the APPs for consumers to opt-in or out.

It is appropriate for SACC lenders to use consumer's bank account statements for marketing purposes where the consumer has provided consent to such use, and provided that the lender complies with the obligations outlined in the APPs. SACC lenders should not be singled out from other lenders such as banks, and be prohibited from using information available to them for other purposes, provided the consumer has consented to such use, and the lender complies with the Privacy Act.

Nimble does not use consumer's bank account statement, for marketing purposes.

Question 5: There is a presumption that a SACC is unsuitable if either the consumer is in default under another SACC or in the 90-day period before the assessment the consumer had two or more other SACCs.

KEY POINTS:

- Imposing additional measures such as a restriction on repeat borrowing would place an unnecessary restriction on consumer's choice of finance.
- Nimble uses information from the consumer and its internally developed algorithms to determine whether the presumption of unsuitability has been triggered.
- The presumption of unsuitability trigger is arbitrary and artificial and does not take into consideration the consumer's ability to service the loan.
- The key principle that should guide the lending decision should be around the consumer's capacity to repay without hardship.
- Government policy should continue to focus on increasing financial literacy of consumers.
- Mandate SACC lenders to subscribe to comprehensive credit reporting to assist lenders to make better lending decisions.
- Restricting repeat borrowing will make the industry unviable and not commercial.

How do SACC providers determine whether a prospective customer has a SACC with another SACC provider or is in default under another SACC?

To identify whether a prospective customer triggers the presumption of unsuitability, Nimble uses a combination of information declared by the consumer as part of the application process, and the information analysed from the consumer's bank account.

Nimble has developed an algorithm that scans the consumer's bank statement and searches for keywords and transactions used by all the SACC providers in Australia.

If there are any further concerns or discrepancies between what is declared and found on the bank statements, it is current practice for the consumer to be contacted by Nimble's contact centre to seek further information.

Is a restriction on repeat borrowing necessary to protect consumers?

It is Nimble's view that the legislation offers consumers sufficient protection by ensuring credit providers make assessments into loan suitability, serviceability and affordability.

Imposing additional measures such as a restriction on repeat borrowing would place an unnecessary restriction on consumer's choice of finance.

Lender's assessment of a consumer's affordability to repay the loan is the important principle to satisfy as restricting repeat borrowing is unnecessary.

A UK study has found that the first two or three small loans are 'loss-leaders' and are part of the business's customer acquisition costs. That is, a lender's start-up costs,[14] such as checking a customer's credit history, the administration required to comply with regulations, sourcing underwriters to finance the business, establishing a clear risk profile for each customer (and adopting strategies to lower these risks), are higher than the relatively small amount of extra money that the borrower initially repays.[15] Placing a restriction on repeat borrowing through a regulatory prohibition will make the industry unviable.

[14] Beddows, S & McAteer, M. (2014), 'Payday lending: fixing a broker market', The Association of Chartered Certified Accountants, London p. 17

[15] Banks, M, De Silva, A & Russell, R (2015) 'Trends in the Australian Small Loan Market', RMIT University, School of Economics, Finance and Marketing, Australian Centre for Financial Studies, p 3

Is a rebuttable presumption or a bright-line test (e.g., an outright ban or a limitation on the number of SACCs that a consumer can take out in a certain period of time) more effective? When responding, please consider:

- ***the degree of protection afforded to consumers;***
- ***the complexity for SACC providers who are making a decision to grant a loan;***
- ***the cost of complying with the requirement; and***
- ***the flexibility afforded to SACC providers and whether this flexibility is desirable.***

Nimble acknowledges the danger of consumer debt spirals. Government policy should protect consumers where possible. However, under the current legislative regime, there are already significant safeguards in place to determine the appropriateness of the loan as part of the responsible lending obligations.

There are currently no presumptions that exist for other forms of continuing or longer-term credit, such as a credit card, which potentially exposes the consumer to significantly higher debt risk. Continuing to impose a presumption of unsuitability to SACC consumers limits consumer's choice to access different finance options available in the market.

The presumption of unsuitability trigger and the requirement to rebut such presumption in the Credit Act does not provide any value in protecting consumers, as originally intended under the legislation. The provision regarding the presumption of unsuitability is not an outright ban, rather it is rebuttable. Notwithstanding this, there are no prescribed circumstances where it can be found that the 'contrary is proved'. Ultimately, lenders must make a subjective judgement as to whether or not to offer the SACC on the basis that the loan is 'not unsuitable for the customer. For example, a consumer may have 2 or more SACC loans in the last 90 days but has otherwise proven excellent repayment behaviour as they are able to service the loan due to their income. Similarly, there may be a valid reason for being in default of another SACC loan – for example, the customer may be experiencing a temporary cash shortfall due to an unexpected expense arising such as a family illness. As you can see, there are valid grounds to rebut the presumption.

A more practical and viable safeguard is for lenders to satisfy themselves that the consumer is not in substantial hardship, after taking into consideration key factors to ascertain their ability to service the loan, without substantial hardship.

As outlined in Nimble's response to Question 3, Nimble recommends that the presumption of unsuitability be removed from the legislation. Nimble holds the view that the fundamental concept of counting a single loan type to trigger a presumption of unsuitability is totally misguided. A customer can have only one SACC loan of $1,600 and be deemed acceptable, but four loans of $400 over a 90 day period is presumed to be 'unsuitable'.

Table 3 below provides a comparison between the fees charged for a single $1,600 loan, with a loan term of 2 months, and the fees charged for four loans of $400 each, also with a loan term of one month per loan.

Table 3: Single and Multiple SACCs Analysis

Single SACC $1,600					Four $400 SACCs				
Loan Number	**Loan Amount**	**Establishment Fee 20%**	**Monthly Fee 4%**	**Total Fees**	**Loan Number**	**Loan Amount**	**Establishment Fee 20%**	**Monthly Fee 4%**	**Total Fees**
1	$1,600	$320	$64	$384	**1**	$400	$80	$16	$96
2					**2**	$400	$80	$16	$96
3					**3**	$400	$80	$16	$96
4					**4**	$400	$80	$16	$96
Total	**$1,600**	**$320**	**$64**	**$384**	**Total**	**$1,600**	**$320**	**$64**	**$384**

It is evident in Table 3 above, that the fees for both loans totaling $1,600, are the same. Yet, a consumer who takes the third $400 loan would be presumed unsuitable for such loan, when in fact the consumer would be borrowing a smaller amount, and would be taking less risk compared to the consumer borrowing a larger once-off amount of $1,600. The presumption of unsuitability trigger is arbitrary and artificial and does not take into consideration the consumer's financial needs.

SACCs are often a last resort as the consumer manages their finances by obtaining smaller lines of credit, as opposed to a continuing credit contract, where fees and charges may be higher, and the temptation to borrow beyond what the consumer requires is actually apparent. The SACC fee structure caters for short term borrowing. It should benefit consumers who only require small amounts over short period of time, and should not disadvantage consumers by discouraging repeat borrowing.

Nimble also notes that section 31A(1A) of Schedule 1 of the Credit Act (Credit Code) restricts a SACC to charge an establishment fee if any of the amount of credit to be provided under the SACC is to refinance any of the amount of credit provided to the debtor under the SACC. RG209.57 outlines the regulator's interpretation of section 31A(1A) of the Credit Code, and requires SACC lenders to make inquiries about whether the credit obtained will be used to repay another SACC. RG209.135 – 136 also outlines that the level of inquiries is likely to be greater where the consumer is refinancing, as in circumstances where the consumer is in arrears on a SACC and is seeking to borrow money or refinance, the presumption of substantial hardship may be triggered.

Nimble acknowledges that if a consumer requests to refinance a loan, a consumer may be in a hardship situation. However, for a small amount loan, and noting that consumer's purpose for borrowing a SACC is to cover short term cash shortfalls (as outlined in the response to Question 2 above) Nimble submits that the assumptions provided in RG209.135-136 are not necessarily reflective of the consumer's financial situation. Practically, it is impossible for a lender to assume that a consumer is refinancing a SACC, unless a consumer requests the lender to pay funds directly to another SACC.

Nimble submits that that the key principle that should guide the lending decision should be around the consumer's capacity to repay without hardship.

In the alternative, if the Panel considers that the presumption of unsuitability should remain in the legislation, Nimble recommends that rather than placing a restriction or limitation on the number of SACC loans a consumer can have over a period of time, a codified set of guidelines should be made available for lenders to assess suitability based on guidelines on whether the consumer can afford and service the loan.

The legislation currently provides no guidance on how to rebut the presumption of unsuitability. This has led to wide disparity in practices by different lenders on how to rebut the presumption, leaving room for confusion and potentially deliberate avoidance. RG209 and the recently published *Report 426: Payday Lenders and the New Small Amount Lending Provisions* (REP426), discusses some factors for lenders to consider to rebut the presumption, but do not provide adequate guidelines to industry to enhance borrower protection.

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Nimble proposes that the key factors to consider to determine a consumer's ability to afford the loan should build on the factors outlined in RG209 and REP426, and also include mandatory consideration of positive and negative indicators relating to the consumer's financial situation such as:

- income and expenses, and discretionary spending after expenses and repayments are considered;
- consideration of the consumer's credit file including defaults, repayment history, and other data relevant to comprehensive credit reporting;
- gambling related transactions;
- proportion of the consumer's income sourced from Social Security Act payments;
- proportion of the consumer's income committed to other debts; and
- negative indicators in the consumer's bank account such as reversals, overdraws or dishonour fees charged.

It is Nimble's view that a codified approach to ascertain affordability will facilitate better compliance with the intended protections in the legislation, and better protect consumers.

Would the objective of limiting a debt spiral through repeat borrowing be assisted by requiring SACC providers to rely on a recognised prescribed benchmark, such as the Household Expenditure Measure or Henderson Poverty Index (with or without an added margin)?

- ***If so, do stakeholders have any views on which benchmark should be used?***
- ***How should a benchmark be used? For example, should the use of a benchmark replace the need to make inquiries about a consumer's expenses or the rebuttable presumption?***
- ***What is the likely cost or saving of requiring SACC providers to use benchmarks?***

The use of the Household Expenditure Measure and Henderson Poverty Index are useful tools to assist lenders to fulfil their responsible lending obligations. However, Nimble notes that the regulator's view, as outlined in RG209, that benchmarks should not be solely relied on to verify the consumer's financial situation.

Further, in ASIC's *Report 445: Review of interest-only home loans (REP445)* released in August 2015, ASIC found that:

> *"In general, lenders did not demonstrate that they had made sufficient inquiries into a consumer's expenses and relied heavily on expense benchmarks to estimate living expenses.*
>
> *Expense benchmarks are not a replacement for proper inquiries into a consumer's actual expenses."*

Nimble agrees that such benchmarks broadly cover the different profiles of consumers, and are useful tools to support the verification of a consumer's financial situation. However, benchmarks should not be solely relied on and used to limit repeat borrowing by consumers. This is consistent with ASIC's view in light of its concerns published in May 2015 stating that relying solely on benchmark figures such as the Henderson Poverty Index to estimate the living expenses of consumers is inconsistent with the responsible lending obligations outlined in the Credit Act.[16]

The SACC credit product is already subject to some of the strictest compliance obligations under Australian financial services laws. The use of benchmarks should be accepted in the regulations to assist lenders to satisfy the requirement to verify the consumer's financial situation and be used as a factor to determine a consumer's ability to service the loan. Nimble agrees with the regulator's view that benchmarks are tools to assist in understanding a range of consumer's income and expenses, but do not necessarily provide an indication of a specific consumer's actual income and living expenses.

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[16] Australian Securities and Investments Commission Media Release (2015) '15-125MR ASIC concerns prompt Bank of Queensland to improve lending practices". Viewed online at: <http://asic.gov.au/about-asic/media-centre/find-a-media-release/2015-releases/15-125mr-asic-concerns-prompt-bank-of-queensland-to-improve-lending-practices/>

Nimble accepts and embraces the need for a more robust process to identify situations in which further inquiries about a consumer's ability to repay need to be made especially where there is evidence that the consumer is reliant on debt. It is Nimble's position that relying on benchmarks to limit debt spiral is not the policy solution. Rather, the solution is to take into consideration the consumer's capacity to repay without hardship, which includes consideration of a range of factors such as the consumer's existing debt and the repayment amounts that the consumer is committed to.

- Nimble also submits that the following should be implemented:
- Government policy should continue to focus on increasing the financial literacy of consumers, and industry to fund the Financial Literacy Strategy;
- as outlined above, a codified checklist is mandated for SACC providers to rebut the presumption of unsuitability; and
- mandate subscription to comprehensive credit reporting for all SACC providers to improve data-sharing about the existing financial position of consumers in order for the lender to make better lending decisions.

Question 6: Has the prohibition on short-term lending been effective in preventing lenders from offering loans with a term of 15 days or less? Has the prohibition on short-term lending had any unintended consequences that mean it should be changed? If so, please provide examples of these consequences.

KEY POINT:

- The prohibition on short-term lending has been effective, and it has not had any unintended consequences.

The prohibition on short-term lending has been effective in preventing lenders from offering loans with a term of 15 days or less.

The prohibition on short-term lending has **not** had any unintended consequences that mean it should be changed, and provide adequate protection measures for consumers.

Question 7: The Credit Act requires SACC providers to provide a specific warning statement to consumers. Are the warning statements effective? Could the statements be improved?

When responding, please consider:

- ***the content of the warning; and***
- ***the manner in which it is displayed.***

KEY POINTS:

- The Warning Statements are effective, and appropriate to achieve its objective.
- Nimble supports the requirement for SACC providers to be mandated to include a hyperlink to the MoneySmart website when warnings are displayed on webpages.

Nimble supports the regulatory requirement for lenders to inform consumers on alternatives to credit, and enable them to make more informed financial decisions. The fact that the 'Warning About Borrowing' statement is required to be visible each time the lender markets the features and benefits of a SACC, and prior to consumers being able to apply for a SACC is effective.

The timing and location of the warning is appropriate to achieve its objective.

Should SACC providers be required to include a hyperlink to the MoneySmart website when warnings are displayed on webpages?

Nimble supports the requirement for SACC providers to be mandated to include a hyperlink to the MoneySmart website when warnings are displayed on webpages. The inclusion of a hyperlink will allow better transparency and accessibility for consumers to obtain more information prior to continuing with a SACC.

Question 8: The Credit Act currently caps establishment fees at 20 per cent of the credit amount, monthly fees at 4 per cent of the credit amount and the total fees payable in default to twice the credit amount.

KEY POINTS:

- The current regulatory framework does not allow for lenders to recover the costs of assessing a loan (rejected or approved), and does not take into consideration the increase in financial risk undertaken by the lender.
- Nimble recommends that the definition of permitted fees in the Credit Code is updated to enable the lenders to charge, at cost, fees incurred in discharging the responsible lending obligation such as obtaining and considering the consumer's bank statements and make reasonable inquiries and take reasonable steps to verify the consumer's financial situation.
- The fee structure does not take into account the burgeoning compliance costs associated with ASIC's higher comiance expectations as a result of The Cash Store decision.
- Nimble does not support the decrease of the current permitted fees under the Credit Act.
- Nimble recommends that if costs cannot be passed on to consumers, the permitted establishment fee should be capped at 25%.
- Nimble supports the temporary exemptions provided by Class Order 13/818 to be made into regulation.

The policy intention in respect of the rate at which the cap on cost was set was to provide adequate protection to consumers and continue to allow the SACCs industry to operate. Do stakeholders think the cap has broadly met this objective?

When providing a submission, please provide data, such as evidence that it is not viable for businesses to operate or evidence as to how the amount of the cap is causing financial hardship to consumers.

Section 31A of the Credit Code restricts fees and charges for SACCs, and limits SACC lenders to only charge:

- A 20% establishment fee;
- A 4% monthly fee, payable per calendar month;
- A fee or charge payable in the event of a default in payment under the SACC;
- A government fee, charge or duty payable in relation to the contract.

Section 39B of the Credit Code also limits the amount that may be recovered by a SACC lender, to twice the amount of the adjusted credit amount, if there is a default under a SACC.

Section 31A(1A) of the Credit Code restricts a SACC to charge an establishment fee if any of the amount of credit to be provided under the SACC is to refinance any of the amount of credit provided to the debtor under the SACC.

Nimble has provided the Panel with a commercial-in-confidence analysis of the current costs of providing a new loan in Appendix 4. The information supports that the current costs cap is not viable for the industry. This is also evidenced in the decrease in earnings before interest and tax (EBIT) for lenders in the last year.[17] The intent of the caps to balance consumer protection with industry viability has failed, as the regulation due to high compliance costs required for a small amount loan and ASIC's increasing expectations as a result of The Cash Store ruling.

[17] Nimble has provided the Panel in Appendix 4 with a commercial-in-confidence extract of the Core Date Consumer Consumer Credit Industry Survey (2015) Report to further support this claim.

Nimble does not support the decrease of the current permitted fees under the Credit Act. A recent study published by Australian Centre for Financial Studies recognises that lower fee caps may have the unintended consequence of encouraging illegal lending activity, and so other policy initiatives should be trialled.[18]

Nimble recommends that the definition of permitted fees in the Credit Code is updated to enable the lenders to charge, at cost, the following fees:

- fees for obtaining a credit file;
- fees relating to compliance with the AML-CTF Act; and
- fees to obtain and consider the consumer's bank statement through electronic means.

Further, any fees in relation to any mandatory compliance obligations should also be excluded from the calculation of the cap. The fees are reasonable and genuine out of pocket expenses paid to third parties that may be related to the provision of a credit product. Exclusion of the fees from the calculation of the cost caps will assist in the viability of the industry as at present, SACC lenders are already disadvantaged by the restrictive rate cap and restrictive business practices placed on SACCs.

If the above cost cannot be passed to the consumer, it is Nimble's position that the fee caps should be increased so SACC lenders can charge up to 25% as the permitted establishment fee, with the permitted monthly fee remaining at 4% per calendar month.

Although Nimble does not lend for the purpose of repaying another SACC credit, Nimble supports the existing ban on charging establishment fees where the loan purpose is to repay another SACC loans. The Consultation Paper rightly recognises that the caps were designed to balance the need to protect consumers and ensure the industry remains viable. The industry and ASIC's interpretation of the law has changed substantially since The Cash Store decision. Nimble therefore assert, that whilst the fee structure was viable at the time the legislation came into effect, it is now not viable.

As outlined in the response to Question 5, the first two or three small loans issued are 'loss-leaders, and are part of the customer acquisition costs of the business.[19] That is, start-up costs, credit history checks, compliance costs, sourcing underwriters to finance the business and establishing a clear risk profile for each customer are higher than the than the relatively small amount of extra money that the borrower initially repays.[20]

The fee structure currently imposed on SACCs do not take into consideration the fact that tighter lending rules apply to SACCs, and therefore, the cost of compliance for a $100 loan is the same as the cost of compliance for a $2,000 loan. It is unfair to impose a cap on costs for SACCs who are subject to stricter regulations resulting in higher compliance costs, when the maximum amount it is able to lend to consumers is $2,000, compared to lenders who are able to offer over $500,000.

As outlined above, Nimble has also self-imposed tighter lending criteria, which means that it only approves 1 in 6 applications. Nimble therefore absorbs the costs involved in assessing 5 out of 6 loans that are rejected. Additionally, as a credit provider, Nimble is also required to comply with the *Anti-Money Laundering and Counter-Terrorism Financing Act* 2006 (Cth) (AML-CTF Act), the costs of which are included in the cap calculations. Further, Nimble is one of the few lenders that incurs costs in obtaining a credit check, and as a subscriber to mandatory comprehensive credit reporting, incurs costs in reporting information relevant to the consumer's credit file. The current regulatory framework does not allow for lenders to recover the costs of assessing a loan (rejected or approved), and does not take into consideration the increase in financial risk undertaken by the lender.

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[18] Banks, M, De Silva, A & Russell, R (2015) 'Trends in the Australian Small Loan Market', RMIT University, School of Economics, Finance and Marketing, Australian Centre for Financial Studies, p 41

[19] Beddows, S & McAteer, M. (2014), 'Payday lending: fixing a broker market', The Association of Chartered Certified Accountants, London p. 17

[20] Banks, M, De Silva, A & Russell, R (2015) 'Trends in the Australian Small Loan Market', RMIT University, School of Economics, Finance and Marketing, Australian Centre for Financial Studies, p 36

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ASIC Class Order 13/818 granted temporary exemption from the cap for certain medium amount credit contracts (MACCs) and allowed small amount credit contracts (SACCs) providers to exclude fees charged for direct debit processing from the caps. Should the temporary exemptions provided by Class Order 13/818 be made into regulation?

Nimble supports the temporary exemptions provided by Class Order 13/818 to be made into regulation.
Nimble also supports adding the additional fees associated with discharging its responsible lending obligations to be excluded as part of the fee caps.

Question 9: The Credit Act caps the amount of repayment for consumers who receive 50 per cent or more of their gross income from Centrelink payments to 20 per cent of the consumer's gross income.

KEY POINTS:

- Nimble does not lend to consumers whose primary source of income is from Centrelink benefits.
- Nimble supports the protection provided in the regulations, to cap repayments to 20% of Centrelink dependents' income per pay cycle.
- Nimble recommends that the presumption of unsuitability should only apply to consumers who are dependent on Centrelink as their primary source of income.
- Nimble supports the extension of the repayment caps to recipients of payments under the Veterans' Entitlements Act 1986.

Is the protection for consumers who receive 50 per cent or more of their income under the Social Security Act 1991 working effectively?

Nimble does not lend to consumers whose primary source of income is from Centrelink benefits. However, Nimble supports the protections available to Government welfare dependents to cap their repayments to 20% of their income per pay cycle (Protected Earnings Provision).

Nimble believes that these customers are vulnerable and require further protections. To enable SACC lenders to better identify consumers who are welfare dependents, it is recommended that Government allow industry access to its database listing Centrelink recipients, at no additional cost. Nimble proposes that the access is limited to an inquiries basis only, and where the consumer consents for the lender to access data from the Government. Allowing access to such data, which is already available and funded by taxpayers, will also assist industry to comply with its responsible lending obligation of verifying the consumer's financial situation. Further, this will confirm to licensees those consumers who are the most vulnerable.

Nimble also believes that the presumption of unsuitability should only apply to consumers who are dependent on Centrelink as their primary source of income.

Do any additional groups of consumers need to be subject to specific protection in relation to SACCs? For example, should the provisions be extended on a similar basis to other persons whose income is less than a specified amount or recipients of payments under the Veterans' Entitlements Act 1986?

Nimble only lends to consumers who are employed, and meet its strict lending criteria.

Nimble supports the extension of the Protected Earnings Provisions to recipients of payments under the *Veterans' Entitlements Act* 1986. However, similar to the commentary above, Nimble proposes for SACC lenders to be given access to available Government databases, at no additional cost, to assist industry to comply.

Question 10: The review is required to consider whether a SACC database would enhance the capacity of SACC providers to meet the responsible lending obligations by providing them with access to more comprehensive and accurate information.

KEY POINTS

- A SACC database is not necessary to enhance the capacity of SACC providers to meet the responsible lending obligations.
- Nimble recommends that mandatory subscription by all SACC lenders to comprehensive credit reporting is a more effective way to assist lenders to meet their responsible lending obligations. The infrastructure is already available.
- If a SACC database was imposed, reporting to the database by SACC lenders should be mandatory, and access limited to SACC lenders only.
- Noting that the legislation is principles based, SACC providers should be given discretion on when to access the database, therefore use of the database should not be made mandatory.
- Any reasonable and genuine costs associated with the provision of credit should be passed on to the consumer and excluded from the regulatory caps.
- If comprehensive credit reporting is mandated, lenders can have a more holistic view of the consumer's financial situation in light of the additional information available in the consumer's credit file.
- The cost of the database should be borne by Government.

Is there sufficient information currently available for a SACC provider to meet the responsible lending obligations?

If not, would a database or alternatives such as comprehensive credit reporting be a more effective way to meet the responsible lending obligations?

Nimble uses the consumer's application information, bank statement data, the consumer's credit file, and over 4,500 data points using its proprietary systems to assess a loan application to discharge its responsible lending obligations, and make a good credit decision. In the event of any discrepancies in the data, Nimble currently makes further inquiries with the consumer to address such discrepancies.

Further, as stated above, to ascertain whether a consumer has triggered the presumption of unsuitability, Nimble has developed an algorithm that scans the consumer's bank statement to search for SACC keywords and transaction behaviour.

Nimble therefore has sufficient information available to it to meet its responsible lending obligations.

A consumer's credit file can be a reliable source of information to better understand a consumer's credit history. The introduction of comprehensive credit reporting, as part of the changes to the Privacy Act, allowed lenders to report on positive credit information. Up-to-date and more detailed information about the consumer's credit history is very useful for lenders to make better lending decisions and discharge responsible lending obligations.

Nimble was the first lender in Australia to subscribe and upload to comprehensive credit reporting (CCR) as soon as the regime commenced in March 2014. The current issue is that the regulatory framework does not mandate all lenders to subscribe to comprehensive credit reporting, which means that the information available in a consumer's credit file does not necessarily give a full picture of the consumer's positive and negative credit profile. Nimble believes that a SACC database is not necessary to enhance the capacity of SACC providers to meet the responsible lending obligations. Considerable resources will be required to set up the database, ensuring that the database is maintained accurately, in addition to the user-end where there will be additional time and costs

incurred by the lender in reporting data to, and obtaining data from, the database. When weighed up against the end product and the fact that the SACC database aids in compliance and does not achieve compliance, it could be argued that costs involved in the database outweigh any benefit.

As a solution, Nimble recommends that mandatory subscription by all SACC lenders to comprehensive credit reporting is a more effective way to assist lenders to meet their responsible lending obligations. The recommendation to mandate SACC lenders to subscribe to CCR is more viable and less costly for taxpayers because:

- It uses an existing regulatory framework which has been tried and tested in other jurisdictions.
- It mitigates the need to set up another database which can be complicated and expensive to maintain, the cost of which will inevitably be passed on to consumers.
- Information on SACC consumers would add significant value for the consumer's credit file, as opposed to the current situation where some SACC consumers are being disadvantaged due to a SACC inquiry recorded on their credit file. Through comprehensive credit reporting, a consumer's good repayment history are able to be reflected in their credit file, which will assist in the consumer's future ability to access larger forms of credit such as a mortgage. By understanding the repayment behaviour (both positive and negative) of all credit products, including SACCs with other providers, will provide excellent additional information to a licensee to make a better assessment of a consumer's likelihood and ability to repay a future loan.
- Some SACCs already subscribe to comprehensive credit reporting, which means that historical information is already available in consumer's credit files.
- Comprehensive credit reporting will provide a much broader source of information on SACC consumers, not only for lenders to use the information to rebut the presumption of unsuitability but also to discharge their responsible lending obligation to reasonably understand and verify the consumer's financial situation by having transparency on the utility and telecommunications providers the consumer have accounts with, and whether the consumer is a home owner.
- It aligns with Government efforts to improve the use of comprehensive credit reporting within the financial services sector more broadly, as highlighted in the Financial Systems Inquiry Recommendations.

Implementation of a separate SACC database would not only impose an additional regulatory burden for the Government and industry, but also confuse consumers on where their privacy information regarding their SACC use is stored.

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If a SACC database is considered an effective method to meet the responsible lending obligations, please comment on:

- ***the cost of a database:***
- ***any privacy concerns;***
- ***the advantages and disadvantages of having multiple databases operating in parallel;***
- ***whether a database would assist SACC providers to discharge the responsible lending obligations;***
- ***and the effect of the comprehensive credit reporting (CCR) regime, including whether or not additional information could be obtained through a SACC database that would not be available through CCR.***

If a recommendation was made to introduce a database:

- ***What information should be included in the database?***
- ***Who should manage the database (a third party or government agency)?***
- ***How should the database be funded?***
- ***Should reporting of key information be mandatory or voluntary?***
- ***Should SACC providers be required to check the database and, if so, when should this obligation be triggered?***
- ***Should SACC providers be charged a fee for accessing the database and, if so, should the fee be included in the cap?***
- ***Who should be permitted to access and amend information on the database?***
- ***What mechanism should be available to ensure that the database was accurate?***

As stated above, Nimble does not support the introduction of a SACC database as it results in unnecessary costs to be incurred by Government and industry, which will inevitably be passed on to consumers or use taxpayer's funds.

Nimble can only speculate that the cost of creating and maintaining the database will be similar to the costs for subscription to, and obtaining credit reports from a credit bureau. Nimble submits that any costs associated to the use of a SACC database should be excluded from the cost caps, and Nimble should be able to charge any fee, at cost, to the consumer. Regulations will therefore need to be updated to allow for this. It is important to also note that the costs of the database inquiry will need to be absorbed by the lender for the 5 out of 6 applications that Nimble rejects, which further supports the need to either increase price caps or exclude costs incurred relating to compliance with the responsible lending laws from the price caps.

It is Nimble's view that the database should be managed by third parties, such as credit reporting bureau, instead of the Government. This will allow for independence on the accuracy of the data. Government's access to the database should also be restricted and clearly defined. If a database is deemed necessary, Nimble proposes the following information be made available for SACC lenders to access:

- the consumer's personal information for identification purposes such as their name, date of birth, gender and address;
- whether the consumer, at the time of the loan application, has any open SACCs;
- the purpose of the open SACC;
- if the consumer has any outstanding SACCs, the amount outstanding and dates repayments are due; and
- any information where repayment schedule are updated.

To address privacy concerns, Nimble proposes that the database should be limited to information on current/ open SACCs relating to the consumer in the last 90 days (consistent with the requirement to obtain and consider the consumer's bank account and verify their financial situation), and accessible only at the time the SACC lender is assessing the consumer's loan. Lender's access to more information than outlined above opens the risk for commercially sensitive data to be made available. Nimble does not view that any other information is required in a SACC database to enable lenders to comply with its responsible lending obligations, as comprehensive credit reporting already has the mechanisms and data in place to assist lenders to fulfil its responsible lending obligations. However, the only issue at present is that the data is not necessarily reliable as CCR subscription is not mandatory.

SACC lenders should only be required to access the database with the consumer's consent, and specific disclosures should be made to consumers on the type of information that will be obtained about them through the database and how it will be used for the loan assessment process.

If a separate SACC database was to be imposed on the industry, it is recommended that only SACC lenders have access to use the information in the database as it should only be used for the sole purpose of the SACC industry to comply with the Credit Act. Non-SACC lenders and third parties should not be able to rely on the information on the SACC database as they would on a credit file. This is on the basis that the SACC database will only be used to assist lenders to trigger and rebut the presumption of unsuitability, which as Nimble highlighted above, should be omitted (save for non-Centrelink dependents) as it does not add value in determining the consumer's ability to service the loan.

In order to be functional, it must be mandatory for SACC providers to record information on the database. Further, reporting should be 'live' information, otherwise, consumers and industry will not be able to rely on the information as intended. This raises practical issues on the timing of reporting, and associated compliance burden and costs.

Noting that the legislation is principles based, SACC providers should be given discretion on when to access the database to assess whether a loan is suitable for a consumer. It is Nimble's position therefore that use of the database should not be made mandatory.

Inevitably, if a SACC database is created, consumers should have rights to raise any use, access and disclosure concerns that they may have relating to their SACC use recorded in such database. The Privacy Act already has the framework in place for consumers to escalate such concerns to in relation to their credit file, and creating a separate database would only duplicate such framework. The Privacy Act is relatively new and efficient, and will not add unnecessary confusion for consumers if SACCs are mandated to subscribe to CCR.

How should the database interact with the other responsible lending obligations?

Information on the database may be used to verify the consumer's financial situation, but only to the extent of their SACC use. It is Nimble's view that if comprehensive credit reporting is mandated, lenders can have a more holistic view of the consumer's financial situation in light of the additional information available in the consumer's credit file.

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Question 11: The terms of reference require consideration of whether any additional provisions relating to SACCs should be included in the Credit Act.

KEY POINTS

- Use of third party account aggregation service providers needs to be validated as it is good use of innovative technology and allows for a more efficient process.
- The SACC industry needs stability to secure its viability and encourage innovation and competition.
- Broad anti-avoidance provisions should be incorporated in the legislation to protect the integrity of the industry.
- Legislation to allow consumers the right to nominate the day of their SACC repayments to give consumers more flexibility and ensure that consumer do not fall into hardship when they receive their pay.

Are there any additional provisions relating to SACCs that should be included in the Credit Act taking into account the objective of the legislation? For example, are there any provisions that have been effective in other jurisdictions that could be introduced?

There has been significant legislative reforms and regulatory changes impacting the SACC industry over the last 3 years, which has caused uncertainty in the industry. Whilst Nimble acknowledges that a robust and effective legislative framework is needed to protect consumers, the SACC industry needs stability. Nimble submits that in order for the industry to remain viable, regulatory reforms should be limited to the following to benefit and empower consumers:

- Broad anti-avoidance provisions, such as those proposed in 2012, to ensure lenders do not circumvent the regulations, and protect the integrity of the industry.
- Legislating that consumers have the right to nominate what day direct debit repayments of loans are drawn from their account, thereby removing the lender's discretion on choice of repayment date, which commonly is the consumer's pay day.
- Recognition of the use of third party account aggregation services provider to foster efficient processes.

Stability within the industry will allow the industry to provide better services to consumers as it will encourage innovation in an increasingly growing market. Industry will also attract investment dollars: something that has been historically difficult in an environment of widescale and fast changing regulatory expectations and reform.

Nimble notes that other products and services such as consumer leases, pawnbrokers and even credit cards, which arguably cater to more vulnerable individuals, are far less regulated, as outlined in Table 2 above. There currently does not exist an environment of competitive neutrality.

Nimble recommends that Government policy should focus on such industries to protect consumers from unscrupulous operators. Nimble is pleased to see consumer leases are being considered as part of the current review, and the recent Senate Inquiry relating to credit card interest rates.

Question 12:

KEY POINTS:

- Nimble is not aware of any avoidance practices in relation to the Credit Act.
- No additional anti-avoidance provisions should be included in the Credit Act.

- ***Are stakeholders aware of any avoidance practices in relation to the Credit Act? If so, provide details of these practices and the scope (if known).***
- ***Should any additional anti-avoidance provisions be included in the Credit Act?***
- ***If so, should there be any distinction between business model avoidance and internal avoidance?***

Nimble is not aware of any avoidance practices in relation to the Credit Act.

Nimble acknowledges the changes made in the National Consumer Credit Protection Amendment (Small Amount Credit Contracts) Regulation 2014 to clarify the uncertainty in the regulations regarding the boundaries between a small amount credit contract and a medium amount credit contract. The amendments in 2014 closed the gap on avoidance activities that previously allowed unlicensed credit providers to provide credit to consumers more quickly by circumventing the responsible lending obligations, while charging more than the allowable cap on costs.

Nimble welcomes the clarity provided in the amendments to the regulation, as it limited the barriers to entry for unlicensed credit providers to operate, and allow licensed credit providers such as Nimble to continue to operate within the intended parameters of the legislation.

Question 13: The Credit Act requires lenders to make an assessment that the proposed SACC is not unsuitable.

KEY POINTS:

- SACC providers should be required to document the assessment as it will lead to greater transparency, not only to evidence compliance with the legislation, but also assist in mitigating risks.
- Record keeping obligations already exist as part of the obligations as a credit licensee. Nimble proposes that additional regulatory guidance is needed to clarify the regulator's expectations to document the assessment.

How do SACC providers currently meet the requirement to make a suitability assessment and what records of the decision-making process are maintained?

What is the most efficient and effective way to document suitability assessments? Is it possible to use the same steps for actual compliance and demonstrable compliance?

Should SACC providers be required to document the assessment? Please consider whether such a requirement could lead to greater transparency.

Section 131 of the Credit Act requires lenders to make an assessment that the proposed credit contract is unsuitable. Sections 131(2) and (3) of the Credit Act provides particular circumstances when the contract will be unsuitable, if any of the following are applicable at the time of the loan assessment:

- the consumer will be unable to comply with their financial obligations under the contract, or could only comply with substantial hardship, if the contract is entered into (with substantial hardship triggered if the consumer could only make repayments under the contract by selling their principal place of residence, unless proved otherwise); or
- the contract will not meet the consumer's requirements or objectives.

Further, section 131(3A) of the Credit Act also outlines the Presumption of Unsuitability provisions, which are outlined in the response to question 5 above.

As a fintech company, Nimble prides itself on its ability to achieve its compliance obligations under the Credit Act in an efficient manner through the use of technology. All records of the loan application and assessment process are recorded in Nimble's lending platform. Nimble invested significant time and resources to enable its platform to generate reports to record the loan application and decision process. The reports are updated as part of ongoing system updates, to enable Nimble to evidence the information relied on as part of its decision process.

Nimble recognises however that understanding outputs generated by a computer, especially where there are thousands of data points considered as part of an application process, can be difficult. Nimble proposes that RG209 is updated to provide industry with more specific guidelines on ASIC's expectations to document suitability assessments.

It is Nimble's view that while it can provide outputs from its proprietary lending platform on the loan assessment process to evidence that it has complied with its responsible lending obligations, there is a lack of understanding by industry on the expectations by the regulators to demonstrate compliance. Accordingly, this results in a disparity between the expectations between industry and the regulator.

SACC providers should be required to document the assessment as it will lead to greater transparency, not only to evidence compliance with the legislation, but also assist in mitigating risks. Record keeping obligations already exist as part of the obligations as a credit licensee. Nimble proposes that additional regulatory guidance is needed to clarify the regulator's expectations to document the assessment.

Appendix 3: Nimble's comments on the status of the industry

Small Amount Credit Contracts – a valid choice for many consumers

In recent years, the SACC industry has moved from the fringe to the mainstream of consumer finance in Australia during which time the regulation has also evolved substantially. The short-term lending market is estimated to be worth $700 million per year and has expanded significantly in recent years both in Australia as well as abroad.

Small amount credit contracts (SACCs) have become an important credit choice for many informed and financially stable Australians, who choose the product because of its convenience and as an alternative to longer-term debt. Unfortunately, some consumers are excluded from mainstream finance and turn to this product to meet their short-term financial needs.

Nimble supports the retention of the current definition of SACCs as:

- Loans of up to $2,000
- Loan length of between 16 days and year
- Regulated establishment, monthly and default fees
- Provided by a licensed credit provider

The emerging 'dual market' for SACC loans

The evidence shows that there is a demand for such a market and that the online SACC market is used increasingly by employed Australians who make a rational decision to choose a SACC product over other forms of unsecured debt such as credit cards.

It is important to recognise, however, that a "dual market" has emerged in the SACC industry between online and brick and mortar lenders.[21]

This difference is important to recognise because the processes of obtaining a shopfront loan and online loan are different. Nimble's online loan application process is more objective, robust and evidence-based than shopfront lending. For example, Nimble has built on traditional credit checks used by other lenders by adding up to 80% more data sources in order to make the best possible assessment of a person's ability to repay.

Online innovation and automation is part of a worldwide trend that is looking to new technology to provide more accurate and efficient customer services[22] [23] [24] and Nimble is proud to have been recognised for its unique and innovative technology platform that has provided people with an "alternative to more traditional sources of short term borrowing."[25]

The emergence of online lenders like Nimble has expanded the demographic profile of SACC borrrowers[26] as well as several prevailing assumptions about the characteristics of people who use SACCs. As explained below, there is clear evidence that many SACC borrowers are rationally choosing the product, and are not vulnerable or financially illiterate.

Nimble fully supports the regulatory requirement for the provision of information to consumers about alternatives on an SACC provider's website and of efforts to improve compliance with these requirements. Nimble's customers are well informed when making their borrowing decision. Internal data shows that 82% of Nimble customers found the fees and conditions to be transparent in comparison to those of banks and credit cards. Less than 1% felt they

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[21] Core Data Consulting (2015) 'Consumer Credit Industry Survey'

[22] Worthington, S. (2015) 'Making Hay from Payday Loans' in ANZ BlueNotes. Viewed online at: <https://bluenotes.anz.com/posts/2015/01/making-hay-from-pay-day-loans/>

[23] 'Automation Trend Turns up Heat on US Traditional Banks' in the South China Morning Post

[24] 'NMB and Dunn & Bradstreet Partner on Credit Referencing' in Commtex, Tanzania

[25] 'IT Robotic Automation Market – Global Industry Analysis, Size, Share, Growth, Trends and Forecast 2014-2020' in PR Newswire, accessed at: < http://www.prnewswire.com/news-releases/it-robotic-automation-market---global-industry-analysis-size-share-growth-trends-and-forecast-2014---2020-300113061.html>

[26] KPMG, The 50 Best Fintech Innovators Report 2014

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were unable to understand them whilst a CHOICE survey conducted in 2013 found that 48% of credit card users did not even know or were unsure of the interest rate applying to new purchases.[27]

The disparity between Nimble's and CHOICE's findings here are also a reflection on the value of online financial platforms. A Colonial First State Global Asset Management study[28] has shown that financial literacy has increased in Australia through the use of technology, particularly smartphones. This finding is corroborated by ANZ studies on financial literacy showing that increasing numbers of people are moving to digital financial platforms and educating themselves online in the process.[29]

Findings such as these further strengthen the notion that large numbers of financially literate borrowers are entering the SACC market as a result of online technology and ease of access.

When analysing SACC regulation and lending, it is therefore vital to draw a distinction between both sides of the market. Whilst it may appear that the product being offered is the same, the lending practices are not. Online lenders such as Nimble, which has adopted stringent filters to exclude vulnerable customers, are found to deal mostly with "sophisticated customers"[30] who have made their own inquiries into the details of obtaining a loan as opposed to offline lenders who engage in the subjective process of meeting a lender face-to-face. It is near impossible to consistently apply an ever changing and complex regulatory framework through a distributed network of shopfronts.

Since the Council of Australian Governments agreed to a national credit framework in 2008, there have been a number of reviews and two sets of legislative amendments. Additionally ASIC has significantly evolved its interpretation of the current legislation following The Cash Store decision in 2015.[31] In these circumstances, we strongly believe that a centralised credit reporting system is imperative to ensure consistent, fair and compliant lending decisions.

[27] Ali, J. & Banks, M. 'Into the Mainstream: The Australian Payday Loans Industry on the Move' in JASSA The Finsia Journal of Applied Finance, No. 3, p. 35 – 42.
[28] CHOICE, Almost half of Australians do not know their credit card rate, media release, 28 June 2013.
[29] 'Investor Insights', Colonial First State Asset Management in Collaboration with the University of Western Australia Business School (2015)
[30] ANZ Survey of Financial Literacy in Australia (2015) in collaboration with The Social Research Centre
[31] Ali, J. & Banks, M. 'Into the Mainstream: The Australian Payday Loans Industry on the Move' in JASSA The Finsia Journal of Applied Finance, No. 3, p. 35 – 42.
[32] ASIC v The Cash Store Pty Ltd (in liq) [2014] FCA 926

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