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Nimble Australia Pty Ltd (ACN 135 501 807)

22 January 2016

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

Via email: consumercredit@treasury.gov.au

Dear Ms Press

Nimble Response to the SACC Review Interim Report

Nimble Australia Pty Ltd (**Nimble**) appreciates the opportunity to comment on the Interim Report of the Review of Small Amount Credit Contracts (**SACCs**) released on 22 December 2015 (**Interim Report**).

Nimble notes the Ministerial statement of 7 August 2015 that small amount lenders can play an important role in the economy by providing credit to consumers who are excluded from mainstream finance.

The Ministerial statement also said that Government wants to ensure that the regulatory framework strikes the right balance by protecting vulnerable consumers without imposing an undue regulatory burden on industry.

The current regulatory regime was developed when the majority of SACC providers were bricks and mortar businesses involving face to face customer contact. Since then, there has been a need to shift to a new, simpler regulatory regime that balances innovation, consumer protection and fairness with the cost of compliance to facilitate financial inclusion.

As the Interim Report notes, a recent demographic trend in the SACC sector, particularly for online lenders, are for younger financially literate consumers with higher incomes to make deliberate and informed choices to access short term credit via SACC loans, rather than uncapped and longer term forms of finance such as credit cards and personal loans.

As such, Nimble strongly believes that the Government's objectives are best served in the changing SACC market by replacing the current regulatory tests, including the high cost

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and vague presumption of unsuitability test, with a simple capacity to pay test, supported by mandatory credit reporting.

Nimble agrees that the current regulatory restrictions that are designed to protect vulnerable consumers such as Centrelink beneficiaries should continue to apply. Indeed, Nimble has already voluntarily adopted underwriting criteria that excludes consumers whose predominant source of income is from Centrelink or welfare benefits. Furthermore, Nimble's practice is that a customer cannot have concurrent Nimble loans. Customers can only apply for a new Nimble loan after fully repaying an existing Nimble loan.

We will now outline a summary of our responses to each topic outlined in the Interim Report, which is supported by commercial-in-confidence and competitively sensitive data outlined in the Appendices to this letter. The responses should be read in conjunction with Nimble's submission to the Panel on the Review dated 15 October 2015 (**Nimble Submission**).

Responsible lending

Nimble agrees that SACC regulation should facilitate financial inclusion. However, Nimble is concerned that the overriding assumption in the Interim Report is that ALL consumers who choose to apply for SACCs are "vulnerable" and that regulation should be designed with this in mind.

The simple fact is that SACC loans are being made to a wide range of consumers including financially literate Australians with above average income. These types of consumers are making deliberate choices to take unsecured small amount credit in preference to credit cards or personal loans that are for larger amounts and are repayable over a longer term.

Nimble's position, therefore, is that the guiding principle of SACC regulation and the loan suitability assessment should be the consumer's capacity to repay the loan, and that the unscrupulous lending practices of certain lenders should not unfairly disadvantage licensed operators who intend to operate within the parameters of the legislation.

Repeat borrowing

Nimble is concerned that the Interim Report assumes that repeat borrowing leads to a debt spiral and requires additional regulation, particularly given evidence that not all SACC borrowers are vulnerable consumers. In many cases such as ours, prudent underwriting criteria is capable of ensuring that potentially vulnerable consumers are excluded from borrowing.

Nimble agrees with ASIC that the presumption of unsuitability test is not effective – it is too vague and compliance costs are too high. However, Nimble believes that additional regulation is not the answer. Instead, this ineffective test should be replaced with a simple test that addresses the capacity of the customer to repay the loan. This should be supported by mandatory credit reporting to enable lenders to better understand a customer's financial position.

Nimble believes that additional regulatory tests that are not focused on the customer's ability to repay the loan, or mandatory subscription to a SACC database, will only add complexity and cost and potentially reduce financial inclusion.

Nimble does not support the proposal for a bright line test to restrict repeat borrowing. Nimble believes the focus should be on a consumer's capacity to repay, and agrees with the Interim Report that such a test may have unintended consequences with consumers taking out larger initial loans than necessary. Further, Nimble submits that the concept behind a responsible lending assessment is to assess the situation and circumstances of each individual customer. Accordingly, a bright line test would ignore that some borrowers prefer the control of small loans, as and when they need money, rather than having to take out a larger and longer term loan or a credit card. Larger, unnecessary loans may increase a consumer's risk of default and decrease that consumer's control over their credit behaviours.

Nimble also believes that proposals to reduce the 20 per cent establishment fee to 10 per cent for repeat loans will only result in financially literate consumers 'gaming' the system and taking out a small initial loan to minimise the establishment fee and then higher repeat loans with a lower establishment fee. The proposal could also potentially reduce financial inclusion by incentivising lenders to apply more restrictive assessment criteria to subsequent loans.

Nimble believes that the proposal to extend the repayments limit from Centrelink beneficiaries to all consumers and reduce the limit from 20 per cent to 10 per cent of net income is unnecessary as not all consumers are vulnerable. Instead, it will create the unintended consequences of limiting consumer choice and reducing financial inclusion.

Default Fees

Nimble agrees that limits on the amount SACC providers can recover in default fees are important in protecting consumers. It is also important that there are clearly defined and universally understood rules on what and how default fees apply.

Nimble is also comfortable with a brief and reasonable default window that reflects the repayment profile of each SACC consumer.

Early and Equal Repayments

Nimble agrees with the Interim Report that consumers should receive an incentive to repay loans early in order to incentivise good credit management.

Nimble agrees with the Interim Report that repayments should be made in equal amounts as it allows for the consumer to repay the loan comfortably without risking potential affordability issues.

Regulated Consumer Lease

Nimble does not operate in the consumer lease market. Nimble however wishes to re-iterate that the consumer demographic and risk profile of SACCs and consumer leases are significantly different. Accordingly, regulation should continue to address SACCs and consumer leases separately.

Format of Response

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 has been provided in the Appendices. The Appendices are commercially sensitive, and are provided on a *commercial-in-confidence* basis. Accordingly, Nimble respectfully requests for the content in the Appendices to be excluded from public view, and the information should be maintained confidential, and is provided on the basis that it 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 the Appendices as exempt from release in respect of any application under the *Freedom of Information Act 1982* (Cth).

Summary

Nimble is proud to provide consumers with an alternative to mainstream sources of finance. It is our view that SACCs provide consumers with a fair and flexible way to deal with short term financial requirements in a regulated environment. We acknowledge the importance of protecting the consumer and we submit that there is a need for Government to balance regulatory compliance with practical and commercial considerations to support a viable SACC industry.

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Some of the options provided in the Interim Report would jeopardise the commerciality of the SACC business model, even for an online lender like Nimble that does not have the overhead costs associated with a bricks and mortar lender. We request that the Review Panel consider the unintended consequences of well-intended recommendations.

Nimble is not a member of any industry body and would therefore welcome the opportunity to provide additional information to assist the Panel in drafting its final report and recommendations.

Yours sincerely

Signed

Sami Malia

Chief Executive Officer