

7 June 2016

Mr James Kelly
Consumer Credit
The Treasury
Langton Crescent
PARKES ACT 2600

Via email: consumercredit@treasury.gov.au

Dear Mr Kelly

Nimble Submission to the SACC Review Final Report

Nimble Australia Pty Ltd (**Nimble**) appreciates the opportunity to comment on the Final Report of the Review of Small Amount Credit Contract (**SACC**) laws provided to the Government on 3 March 2016 (**Final Report**).

Any changes to the laws relating to SACCs should balance the need for innovation, consumer protection and fairness with the cost of regulatory compliance and the need to facilitate financial inclusion. The review presents an opportunity for regulation to be modernised and for this to be done in a way that is technologically neutral. It is Nimble's strong view that the use of its technology is a superior model to the traditional storefront model, where the credit decision is more subjective, and difficult to be consistently applied to a distributed network.

Consistent with the Review Panel's Terms of Reference, there is also a need to balance regulatory compliance with practical and commercial considerations to support a viable industry. Any further changes to regulation should continue to support the intent of the *National Consumer Credit Protection Act 2009* (Cth) (**NCCP Act**) to facilitate a competitive market for SACCs and enable the industry to continue to provide a legitimate and valuable commercial service to millions of underserved Australians.

As Nimble is not in the business of providing consumer leases, we have limited our comments in this submission to the recommendations that apply to SACCs.

Nimble welcomes and supports the implementation of recommendations 2, 3, 5, 6, 7, 9, 20 and 21 made by the Review Panel in the Final Report.

In particular, Nimble welcomes the recommendation to remove the presumption of unsuitability trigger and rebuttal provisions outlined in the NCCP Act. 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 and vague presumption of unsuitability test with a simple capacity to repay test, supported by mandatory comprehensive credit reporting.

Nimble does not however support the linkage between this recommendation and protected earnings cap, and if these recommendations are required to be considered together as a package, then Nimble's preference is to retain the current presumption of unsuitability test and protected earnings cap, rather than introduce the new protected earnings cap proposed in recommendation 1.



Nimble supports the protection of financially vulnerable Australians. However, the assumption that all SACC borrowers are vulnerable and therefore should have similar protections as customers whose predominant source of income is from Centrelink is inconsistent with Nimble's experience as a SACC lender. In particular, Nimble's borrowers are predominantly financially literate employed Australians with above average income. Nimble consumers are making deliberate choices to take unsecured small amount credit in preference to other credit products 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 regulation should not limit consumer choice or impose constraints on SACC borrowing that do not apply to other forms of consumer credit.

We support the recommendations to mandate equal repayments for SACCs and prohibit charging a further 4% monthly fee after a SACC is discharged by its early repayment. Nimble already pro-actively implements these initiatives and is pleased that the Review Panel recommends that these initiatives be formalised through regulation. These initiatives promote fairness and competitive neutrality by ensuring lenders adhere to set standards to maintain the integrity of the industry.

Nimble does not however support the implementation of recommendations 1, 4, 8, 10, 19, 22 and 23 made by the Review Panel in the Final Report.

In relation to recommendation 1, it is Nimble's view that capping repayments under SACCs to 10% of a consumer's net income per pay cycle may have the unintended consequence of:

- financially excluding certain underserved Australian consumers from having access to what may be one of the only types of finance that they can readily access at that time; and
- arbitrarily removing SACCs as a valid credit choice for people who can afford to pay;
- where a small amount loan is still able to be made to a consumer, increasing the total cost of finance to consumers, and the length of time they will remain in debt, due to the longer repayment schedules that will in many instances be required to ensure that repayment amounts fall within the repayment cap (or alternatively, if the loan term is not extended it will result in a reduction of the amount of credit that is available to a consumer).

Further, the proposal in recommendation 10 to cap default fees to \$10 per week fails to take into consideration the type and extent of costs that SACC lenders incur in the event of a default. Capping the amount charged in the event of a default in this way may also have an unintended consequence of disincentivising a consumer to properly manage their finances to pay their debts as and when they fall due.

Lastly, Nimble considers that the recommendation to prohibit lenders from making unsolicited SACC offers to current or previous consumers and the prohibition to use bank statement data for other purposes is not competitively neutral. It is Nimble's position that adequate measures are already in place in the NCCP Act and the legislation dealing with privacy and spam to protect consumers in relation to the use of personal information and receiving direct marketing correspondences.

Format of response

To ensure the Panel has complete transparency about Nimble's business model, 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).

Concluding remarks

In conclusion, we would like to reiterate that regulated SACC lenders such as Nimble offer an alternative to mainstream sources of finance, and regulatory changes should therefore balance consumer protection and regulatory compliance with practical and commercial considerations to support a viable industry.

Nimble is not a member of any industry body and would therefore welcome the opportunity to provide additional information to assist the Government in considering the recommendations.

Thank you again for the opportunity to comment. If you have any questions regarding this submission, please do not hesitate to contact us.

Yours sincerely

Signed

Sami Malia
Chief Executive Officer