



6 October 2022

Senate Standing Committees on Economics  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Dear Committee members,

## Submission on the Financial Sector Reform Bill 2022

We thank you for the opportunity to provide feedback on the *Financial Sector Reform Bill 2022 (Bill)*.

### Background to Nimble

As you may be aware, Nimble has invested significant resources since its establishment in 2005 into understanding and managing the credit and regulatory risks associated with responsibly offering short to medium term financial solutions to customers underserved by traditional lenders. The customers most impacted by the mainstream banks tightening their lending standards are those already experiencing, or at risk of experiencing, financial exclusion. It is also important to note that many of these customers are also ineligible for the No Interest Loans Scheme (**NILS**) and other Government assistance.

Since 2005, Nimble has provided over 1.7 million loans to over 400,000 customers, and has helped transform the way ordinary Australians are able to borrow money. Nimble customers express a high degree of satisfaction with the level of service they receive.

While Nimble has in recent years commenced offering new credit products which fall outside the application of the Bill, small amount credit contracts (**SACC**) remain an important part of our business.

### Background to proposed legislative change

In the recent history of proposed changes to the industry, it is important to recognise:

- the amendments proposed to the National Credit Act by the *National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2019* first released on 23 October 2017, and again on 2 December 2019 (**Former Bills**);
- the announcements made by the Australian Government in September 2020 with respect to consumer credit reforms, and in particular the consequences of those reforms on SACCs and consumer leases (**September Reforms**); and
- the amendments now proposed by the Bill, which largely reflect those introduced by the Former Bills.

The changes proposed by the Bill are to be effected through changes to the National Credit Act, and to take effect 6 months following the passage of legislation.

### Feedback on the Bill

The Bill is clear in its objective to limit consumer harm. It is also noted from the Minister's second reading speech that the government understands and appreciates that any reforms would take some time for industry to implement.

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As an initial observation, Nimble is broadly supportive of regulatory changes which suitably balance consumer protection and regulatory compliance with practical and commercial considerations designed to support a viable industry. Much of the Bill achieves that objective.

However, there are some elements of the Bill which do not appropriately balance those needs, specifically the proposals relating to the protected earnings amount, the making of certain unsolicited communications in relation to SACCs, and the introduction of criminal penalties for certain contraventions of the Act. We have detailed our reasons below.

### **Protected earnings amount**

Perhaps the most significant change is the increase in the '*protected earnings amount*'. Specifically, the Bill proposes that a licensee must not enter into a SACC where the repayments would exceed 10% of the consumer's likely net income.

Nimble takes its responsible lending obligations very seriously. Equally, Nimble is in support of both reasonable and targeted measures aimed at protecting consumers at large. It is our view that the current section 133CC of the *National Consumer Credit Protection Act 2009* (Cth) (and the corresponding regulation) is adequate in achieving the objective of limiting consumer harm.

In circumstances where the prevalence of unregulated products such as buy-now-pay-later and earned wage advance providers (**Unregulated Products**) is ever increasing, the introduction of the Bill is focusing on the wrong target. Compliant credit providers who offer SACCs as part of their product mix are not the problem.

Our recent experience is that those customers who frequently use Unregulated Products are far more vulnerable, far less creditworthy, and far more susceptible to harm, than those who exclusively use regulated products, including SACCs. In fact, our experience in that regard has been so instructive that:

- the repayment behaviour of customers with frequent usage of Unregulated Products who successfully apply for SACC products with Nimble is poor, relative to the repayment behaviour of those customers without, and accordingly, we have adjusted our lending criteria such that customers with a high usage of Unregulated Products are being approved at a much lower rate than the balance of the population;
- utilising publicly available information from audited financial statements released to the ASX, it is clear that the loss rates suffered by the providers of Unregulated Products are many times higher than that of Nimble. By way of example, Appendix A shows that credit losses over FY21 and FY22 as a percentage of revenue for Beforepay, Openpay and Payright are 66%, 36% and 28% respectively. Nimble's credit losses for SACC and MACC products over a comparable period were just 13%;
- as a result of making those adjustments and not lending to those customers who are quite clearly at risk of harm as a result of the usage of the Unregulated Products, our loss rates have in fact decreased (compared to the growing loss rates of the Unregulated Products), as is demonstrated in the table in Appendix B. That, coupled with the fact that our number of customer complaints have remained less than 1% of total funded loans for FY21 and FY22 supports the proposition that the harm to consumers (at least from Nimble products) is in fact decreasing; and
- the application information of those customers who frequently use the Unregulated Products typically demonstrates a pattern of behaviour that they are using those products in a repetitive manner and in circumstances where any sensible assessment as to affordability would not permit such behaviour to continue to occur.

With the above in mind, our submission is that the current regulatory regime for SACC products is adequate, is working as intended, and is not demonstrating a need for further strengthening.

## Unsolicited SACC invitations

Another key feature of the Bill is the prohibition on unsolicited SACC invitations.

Ultimately, adequate protections already exist in the National Credit Act, the Privacy Act and the Spam Act in relation to the use of personal information and receiving direct marketing correspondence. Additionally, the National Credit Act already imposes strict obligations on licensees to ensure that consumer loans are not unsuitable for a consumer before a loan offer is made.

Furthermore, the introduction of a prohibition on direct marketing of this nature will serve to unduly increase the marketing and acquisition costs of compliant credit providers, by needing to invest further into indirect, above the line marketing channels. That is inconsistent with a commercial approach to regulation that is designed to support a viable industry.

For that reason, the proposed changes to section 133CF of Schedule 4 of the Bill is unnecessary and ought to be omitted.

## Final remarks

It is vitally important that any regulatory changes suitably balance consumer protection and regulatory compliance with practical and commercial considerations designed to support a viable industry.

As a starting point, our submission is that any further regulation of SACCs prior to further regulation of the Unregulated Products, is misconceived. Indeed, if the Bill were to pass into legislation in its current form:

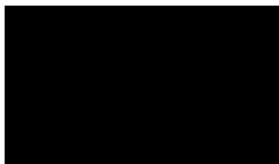
1. customers may be driven to apply for unregulated products (such as the Unregulated Products) which do not offer protection under the National Credit Act, and which is an industry many times larger than the SACC industry;
2. ultimately, it would exacerbate the financial exclusion of the customer base Nimble (and other credit licensees) service on a daily basis;
3. to remain compliant with the protected earnings amount obligation, credit providers would likely be left to devise novel solutions in their product offerings, which would in turn warrant greater regulatory oversight; and
4. by restricting the ability for a licensee to suitably market its products, competition between SACC lenders would be reduced.

Accordingly, Nimble opposes the Bill in its current form, and submits that changes ought to be made to the protected earnings amount, and the prohibition on unsolicited communications. Furthermore, the introduction of criminal penalties throughout the Bill are in our view an overstep, and ought to be removed.

The Bill ought to also consider amendments which look to properly regulate the Unregulated Products.

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

Yours sincerely



Grant Mackenzie  
Chief Executive Office

**Appendix A - Comparison between Nimble and certain Unregulated Products**

<b>Provider</b>	<b>Beforepay</b>	<b>Openpay</b>	<b>Payright</b>	<b>Nimble</b>
<b>Product type</b>	<b>Unregulated salary advance</b>	<b>Buy now pay later</b>	<b>Buy now pay later</b>	<b>Regulated small and medium term loans</b>
<b>FY21 &amp; FY22 Revenue (\$m)</b>	20.1	60.6	28.5	51.3
<b>Credit losses (\$m)</b>	13.2	21.6	8.0	6.7
<b>Credit losses as a % of revenue</b>	66%	36%	28%	13%

**Appendix B - Nimble key statistics in respect of SACCs**

<b>Nimble key statistics - SACC loans</b>	<b>FY18</b>	<b>FY19</b>	<b>FY20</b>	<b>FY21</b>	<b>FY22</b>
<b>Applications</b>	424,585	323,058	318,598	258,573	231,467
<b>Loans approved</b>	162,418	131,080	100,358	53,542	48,309
<b>Approval rates</b>	38%	41%	31%	21%	21%
<b>Loss rates % loan amount</b>	7.9%	10.1%	9.9%	7.3%	6.0%