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Cc: <apfboard@privacy.org.au>  
Subject: Privacy Amendment Bill - URGENT  
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## Senators

We understand the Privacy Amendment Bill has been brought on for debate this afternoon, taking us by surprise as we had been led to believe it would be on Thursday.

Can we please ask you to consider moving amendments in three critical areas:

### Credit reporting default threshold

The government has accepted 'in principle' the Senate Committee recommendation (#12) to increase the threshold for a default listing to \$300. But by referring this off for further consultation about a future change by regulation, the government has effectively killed this important change – industry groups will never agree to it. You have already accepted the need for a higher threshold to protect consumers, particularly in telecommunications and utilities contexts – please ensure that it is delivered in the Bill.

### Right to a Determination

The Senate Committee considered our concerns about the lack of a complainant's right to a Determination (paragraphs 5.9-5.16 of its Report). It made no recommendation, appearing to accept Privacy Commissioner and AGD arguments which we contend were disingenuous. We repeat our submission that without such a right, the new appeal right is largely worthless, and we are likely to continue to see the Commissioners go out of their way to avoid making Determinations that would commit them to particular interpretations of the law, and could be challenged in the tribunal or court – the only way to build up a jurisprudence that would be respected by entities subject to the Act.

We do not claim to be expert in legislative drafting, but suggest an amendment along the following lines:

'A complainant may, upon receiving notice that the Commissioner has decided not to further investigate their complaint, require the Commissioner to issue a determination under section 52 by requesting the Commissioner to do so within 28 days of receipt of such a request. Such a request shall not impose upon the Commissioner any requirement to further investigate the complaint. Such notice given by the Commissioner will include notice of the rights of the complainant under this section.'

### APP8 – Cross Border Disclosure

Both recent Committees acknowledged the complexity of the cross-border disclosure provisions. We were disappointed that neither Committee recommended any change, we suspect partly because of the complexity and partly because of submissions, in our view misinformed, that APP8 will be more restrictive than the existing NPP9. We contend that the opposite is true.

The Senate Committee did make two useful recommendations in respect of APP8, (## 4 &5) but the government has effectively dismissed the need for any amendment.

APP8 is of critical importance to the privacy protection regime, particularly in the context of growing use of cloud computing services involving offshore processing.

Drafting of a more effective APP8 would take some time. We submit that the Bill should be amended to require a review within two years of the effectiveness of APP8 and associated provisions.

We thank you for your urgent consideration of this submission, in the context of this afternoon's debate.

Please let us know if we can assist with further briefing.

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