ABA Member Feedback on OAIC Consultation. Automated Decision-Making Transparency Obligation (APP1)

15 June 2026

1. General Comments	• By referencing other jurisdictions (e.g. EU Guidelines) and the fictional edge cases provided, the Consultation Issues Paper (the **Issues Paper**) suggests a more expansive approach on the interpretation and scope of key terms, particularly, '*significantly affect rights and interests.*' • In practice this would capture most of the computer-based processes used in the banking sector that contribute to an outcome related to an individual, including those considered low risk or low impact. • While these concepts are intended to focus compliance obligations on higher-risk use cases, they may create significant practical and interpretive challenges for APP entities. For example, the term "substantially" is inherently subjective and lacks a precise legal definition in the Privacy Act. • Further, the ABA highlighted in its October 2024 submission to the Privacy and Other Legislation Amendment Bill that disclosing all (including low risk) instances where a computer program is used by an entity or supplier to *'to make, or do a thing that is substantially and directly related to making, a decision'* could ultimately detract from the benefits of the reforms by overwhelming customers with excessive and unnecessary disclosures[1]. • Accordingly, we support the OAIC's proposed principles for ensuring that disclosures are clear, accessible, and appropriately tailored, and that the Guidance operates as an evolution of existing disclosure practices rather than introducing additional or standalone disclosure requirements referenced in the Issues Paper.[2] • Finally, with the compliance date of 10 December 2026, the ABA requests that the OAIC's guidance also consider communicating its approach to regulatory action while APP entities integrate the finalised guidance into their compliance operations and privacy policies.
2. Meaning of 'substantially and directly related' test	• In principle we do not have any material concerns with the proposed factors that may be relevant to assessing whether a computer program is *'substantially and directly related to making a decision'*.

[1] Issues Paper. Page 21. Extent of Disclosure.
[2] Issues Paper. Page 23. UK ICO guidance.

	• However, further clarity is required in respect of the *'transparency and explainability of outputs'* factor. While we understand this to be referring to a human decision-maker's ability to understand and interrogate how a computer program has arrived at a particular output, this factor could be construed several ways. • An important factor is the role and function of a computer program in making a decision. That is, any guidance should clearly distinguish a computer program that simply synthesises, summarises or organises information, from those that provide recommendations or scores which materially affect a decision-making process. We consider the former scenario would likely not meet the 'substantially' threshold, while the latter likely would. • More broadly, it is common for computer programs to serve multiple functions such as account management, facilitating workflows, processes, decisions, account origination, regulatory compliance, and fraud and scams prevention. This creates additional complexity when assessing the extent to which an output is 'substantially and directly related to making a decision'. • An example may include where the output of a computer program produces a flag, signal or risk score that prompts human review, however does not act as the primary factor in the outcome itself. While it may be used to guide the decision-maker's thinking and administratively escalate a decision, it is difficult to assess how 'substantially' related it is to the final decision. • Challenges also arise when applying the 'directly related' element of the test. Where an output sits far down the decision-tree chain, it can be difficult to assess how direct its connection is to the final decision itself, particularly where the decision is subject to human oversight. • The ABA considers that an output should only be regarded as 'substantially and directly related' to a decision where it is the sole or predominant factor in determining the outcome, rather than where it merely informs, supports, or triggers further human review. • We also consider that any interpretation in the Guidance should be confined to Privacy Act requirements, such as APP1.7(a), rather than introducing other legal framework definitions.[3]

[3] Issues Paper. Page 13. Meaning of 'substantially and directly related' across other legal frameworks.

3. Meaning of significantly affecting rights or interests	• The likelihood that a decision 'significantly' affects rights or interests is more likely to increase where the outcome has material, non-trivial and potentially lasting consequences, particularly in areas involving financial position, access to essential services, and where vulnerable individuals may experience more severe or disproportionate impacts. • We note that these factors are inherently context-dependent, and that many decisions within large organisations may relate to financial outcomes or service access. However, not all such decisions will meet the threshold of a "significant effect." • Accordingly, while the factors listed in the Issues Paper [4] could increase the likelihood that a decision affects an individual's rights or interests, any guidance on such factors must consider them holistically in the context of the decision, rather than in isolation. • In regulated sectors, decisions about access to products or services may be made within detailed legislative, prudential and conduct frameworks, and subject to structured risk assessment, oversight and legal obligations. While these frameworks are rarely prescriptive in dictating specific outcomes, they commonly require entities to implement reasonable measures and to have regard to certain specified criteria. • In those circumstances, an individual's access to a service may be materially shaped by such constraints, with the entity's role being to apply those requirements through its operational and risk management frameworks rather than to exercise a broad discretionary choice. In that sense, the legal framework may be the primary source of the relevant limitation or consequence. Guidance should recognise this context when assessing the nature of the decision-making involved and whether, and in what way, a decision significantly affects an individual's rights or interests for the purposes of APP 1.7. • Relevantly, the focus must remain on decisions that may *'**significantly** affect an individual's rights or interests*' to ensure the scope of the obligation is not inadvertently expanded to all decisions which may affect an individual, albeit not in a material way.

[4] Issues Paper. Page 17. Questions.

	• For example, in a banking context, an ADM process may use information about a customer's personal circumstances (including indicators of vulnerability or health conditions) to automatically refer that customer to a dedicated support team, such as hardship specialists or accessibility services. While this may involve the use of sensitive personal information, the outcome of the process is to **enhance service delivery or provide additional support**, rather than to determine an outcome that alters the customer's rights, obligations, or access to financial products. In these circumstances, we consider the process would be unlikely to constitute a decision that significantly affects the individual's rights or interests. • In contrast, an ADM process that uses similar information (for example, indicators of financial stress or health-related vulnerability) to generate a recommendation to a human decision-maker regarding whether a customer is eligible for financial hardship assistance, whether their repayment obligations should be varied, or whether enforcement action should proceed, is materially different. In that case, the outcome of the process directly informs a decision that may **alter the customer's financial obligations, access to support, or overall financial position**, and is therefore more likely to meet the "significantly affects" threshold. • These examples illustrate that, even where the same categories of (including sensitive) personal information are used, it is the **nature and consequence of the decision**—in particular, whether it determines or materially alters an individual's circumstances—that is the key factor in assessing whether the threshold is met. • Therefore, in our view, significance should instead be assessed based on the magnitude and real-world impact of the decision, including whether it: - results in a meaningful disadvantage or detriment to the individual; - materially affects their circumstances or available choices in a substantive way; - limits or restricts access to important services or opportunities; and - has a lasting impact or is difficult to reverse in practice. • This approach ensures that the assessment focuses on decisions with practical and substantive effects, rather than capturing all decisions that are connected to financial outcomes or service access.

	• The ABA supports this approach as opposed to consideration of other legal frameworks which further expand meaning by introducing new concepts / interpretations.[5] • The ABA also considers that assessments of "significant effect" should be undertaken at a class-of-individual or decision-type level, rather than requiring entities to assess impacts at an individual level in every case, which would not be practical or operable at scale. • In this regard, factors such as vulnerability or sensitivity may be relevant where a decision type is likely to disproportionately impact particular groups (e.g. children or individuals in health-related contexts) but should not require case-by-case individualised assessment. • Further, we consider that with reference to the Issues Paper, the term *'significantly affect an individual's rights and interests'* is at risk of being broadly interpreted, which would capture most computer-based processes used in the banking sector that contribute to an outcome related to an individual (including those with low impacts). We are concerned that if such an approach is taken, this would increase the compliance burden, require extensive disclosures that overwhelm customers and result in notification fatigue due to the need for ongoing updates to privacy policies for new use cases. Ultimately, this will dilute meaningful transparency and undermine the stated intention of the reforms. • Finally, any inclusion of examples in the Guidance should clearly address direct Privacy Act obligations. The Differential Pricing example appears instead to raise issues primarily related to Australian Consumer Law (e.g. misleading and deceptive conduct) rather than Privacy Act requirements.
4. Making a decision	• Our view is that 'segmenting' or 'targeting' customers should not be considered a 'decision' for the purpose of in-scope ADM processes[6], as this expands the scope beyond what would generally be understood to be a decision under existing Administrative and / or Corporations Laws. • In most cases, these activities may inform subsequent action, but do not themselves constitute a final or operative determination in relation to an individual. This is consistent with the ordinary understanding of a "decision" as

[5] Issues Paper. Page 16. EU Guidelines references.

[6] Issues Paper. Page 20. Fictional Edge case: Discriminatory targeted job ad.

	involving a determination that has legal, practical or substantive consequences. • The ABA therefore considers that a "decision" should be understood as an outcome that determines, alters, or directly leads to a substantive result affecting an individual, rather than encompassing all upstream analytical or preparatory activities. In this regard, activities such as: o customer segmentation, profiling or targeting; o internal analytics used to inform business strategy; or o the generation of insights or predictions that do not, in themselves, determine an outcome should not be considered a "decision" as they do not result in a final or operative outcome affecting the individual. • The ABA notes that these types of activities are often used to support or inform subsequent decision-making and treating them as decisions would significantly expand the scope of APP 1.7 beyond its intended application. • A "decision" should instead be limited to circumstances where an output: o directly determines the outcome for an individual; or o forms part of a process where the outcome is operationalised or applied to the individual (for example, approving or declining an application, or determining eligibility for a product or service). • In addition, the Fictional Edge case: Differential Pricing appears to conflate decisions about pricing, with decisions to restrict access to financial products. While pricing may influence an individual's choices, we do not consider that, in and of itself, this constitutes a decision that 'significantly affects an individual's rights or interests' independently of other actions. • In our view, the OAIC should have regard to established legal frameworks in interpreting the meaning of "rights" and "interests", including administrative law principles, existing financial services regulation, and anti-discrimination law. Across these frameworks, there is a consistent focus on decisions that result in **material consequences for an individual's legal, financial or practical position**, rather than processes that merely influence behaviour or preferences.

	• Further, the Fictional Edge case: Discriminatory targeted job ad suggests the OAIC may consider controller entities (e.g. banks) being responsible for ADM processes or decisions made by processors (e.g. third-party suppliers), even when the third party has not been instructed to deploy the ADM process. • The ABA considers that the Guidance should clearly distinguish between decisions made by an entity, and processing or outputs generated by third-party providers or suppliers. • In particular, where a third-party system generates an output that has not been adopted, relied upon, or operationalised by the entity in making a decision, this should not be treated as a decision made by the entity for the purposes of APP 1.7. • Clear guidance on where responsibility arises, and who has responsibility to meet its requirements (such as disclosures) is critical, particularly in circumstances where entities may have limited visibility of algorithms or processing deployed by third-party providers.

5. Meaning of extent of disclosure	• With reference to 'Considering best practice' in the Issues Paper, we note that current legislative requirements do not require an entity to detail explanations on how decisions are made, including the rules, the evidence used, and how it led to a decision.
	
	• The ABA supports this position. The obligation should remain directed to the types of decisions made and their practical implications, rather than requiring disclosure of the underlying decision-making processes or methodologies. Requiring more detailed disclosures would introduce several risks, including:
	  ○ undermining fraud, financial crime and consumer protection controls by enabling systems to be tested or circumvented;
	  ○ create disproportionate and potentially unworkable obligations;
	  ○ reduce readability of disclosures particularly given the complexity of processes; and
	  ○ require disclosure of commercial-in-confidence information, which is outside the scope of APP 1.7.
	
	• In many situations, such information will be considered commercial-in-confidence which has been confirmed as excluded from the requirement of APP 1.7.[7] We request that the Guidance explicitly address this exclusion.

[7] Addendum to the Explanatory Memorandum, Privacy and Other Legislation Amendment Bill 2024 (Cth) 38.

	• Further, expecting entities to apply additional 'best-practice' standards from other legislative regimes / jurisdictions, particularly those where the legal test is different to that established by APP 1.7, introduces additional complexity for APP entity's, and which were unlikely to have been anticipated when preparing for the new ADM requirements (also noting the short timeframe between when OAIC guidance is expected to be published in September 2026 per the Issues Paper, and the effective date of the APP 1 amendment in December 2026). • The same principle also applies in expecting privacy policies to include dispute pathways, or information related to how individual decisions can be challenged. • In this respect and regarding the extent to which entities should "strike an appropriate balance to ensure that disclosures are framed in a way that allows the information and the decision to be challenged or contested", we note that the Privacy Act already establishes a comprehensive framework for transparency, access, and complaint handling in relation to personal information (including under APP 1.4). • To the extent that additional disclosures are considered necessary in the context of ADM systems, these should operate as a targeted extension of existing transparency obligations, rather than introducing a parallel or expanded complaints framework. • In particular, any new expectations should remain focused on privacy-related matters. It would not be appropriate, for example, for privacy policies to be required to address general complaints in relation to the substantive outcomes of organisational decisions (even where ADM systems are involved), as this would extend beyond the scope of the Privacy Act. • Complaints regarding decision outcomes, products, or services are already governed by established regimes under other legislative and regulatory frameworks (e.g. consumer protection and financial services laws) and duplicating or conflating these obligations within privacy disclosures risks creating confusion and overlap.