Automated Decision-Making Transparency Obligation (APP 1) Issues Paper Submission

Your views and submissions

Your views and submissions on the following areas will assist us with developing guidance on the ADM obligation. Questions and **fictional** Edge Cases are provided to guide your responses.

To make this consultation more accessible to you we have included different response options throughout the questions, including, free text, yes/no, agree/disagree. We have also included a 5-point ranking scale as follows:

1. Strongly disagree; 2. Disagree; 3. Neutral; 4. Agree; and 5. Strongly agree

Question 1

Substantially and directly related to making a decision

In your view, what are the relevant factors to enable an entity to assess whether a computer program substantially facilitates and is directly connected to a human decision-maker's decision? For example:

- Degree of reliance on the ADM system output
- Ability and likelihood of human override over an ADM decision
- Nature of the output (advisory vs determinative)
- Transparency and explainability of outputs
- Integration of ADM into decision-making workflow
- Other

Please rank the factors using the above mentioned (1-5) ranking system and include any additional factors.	1: Transparency and Explainability 2: Nature of the output 3: Ability to override 4: Degree of reliance 5: Integration
Free text comments	Transparency and Explainability is most important, and more so where the output is a decision that can cause harm/cannot be reversed easily. Human override ability is not relevant if the human cannot easily determine whether or not they *should* override. Even when the outcome is not high-risk, unexplainable systems take too long to validate, making them less efficient overall.

OAIC

Question 2

Substantially and directly related to making a decision

Fictional Edge Case: Generative AI with human oversight

The National Aged-Care Insurance Agency (NACIA) makes decisions about eligibility for elderly people trying to access life-changing aged-care support. To make eligibility assessments quicker, NACIA staff use a generative AI chatbot, GPTea, to summarise candidate profiles and receive recommendations about eligibility. NACIA's human staff always have oversight and make the final decision about eligibility based on the recommendation provided by the chatbot.

Would you consider NACIA's described uses of GPTea to be substantially and directly related to making decisions? **(Please provide yes/no)**	Yes
Can you provide your reasons for your response?	Yes, the outcome and the output of this process is a decision (and would be considered a higher risk decision, as getting it wrong could cause harm (by a gap in care) which could not easily be rectified (as these are older patients).

Question 3

Meaning of significantly affect rights or interests

What factors do you consider increase the likelihood that a decision could affect an individual's rights or interests? For example:

- Sensitive information
- Vulnerable persons
- Intrusive practices
- Financial outcomes
- Other

Please rank the examples using the above mentioned (1-5) ranking system and include any additional examples.	1: Other -- inappropriate decisions 2: Sensitive information 3: Vulnerable persons 4: Financial outcomes 5: Intrusive practices
Free text comments	The greatest risk of ADM/AI harm comes from bad decisions for which the subject has little recourse. ADM must be contestable. This risk is magnified with vulnerable cohorts, who can be further harmed by privacy compromise, and have less resources to self-advocate.

Question 4

Meaning of significantly affect rights or interests

What classes of person do you consider to be vulnerable for the purposes of considering a decision's expected effect on a person's rights or interests, and why?

Can you provide your reasons for your response?	The most vulnerable classes are citizens who can be most seriously affected by adverse outcomes and who have the least resources to respond and self-advocate. This includes disadvantaged people and persons with lower literacy or fluency, who disproportionately rely on government support.

Question 5

Meaning of significantly affect rights or interests

What do you consider to be a significant service or support, for the purposes of considering whether a decision affects access to a significant service or support?[1] For example:

- physical assistance/support
- financial assistance
- access to educational services
- 'in home services'
- access to essential banking and credit services
- access to telecommunications
- access to essential utilities
- other

Please rank the services/support using the above mentioned (1-5) ranking system and include any additional examples.	1: Financial assistance 2: Physical assistance and support 3: In Home Services 4: Access to essential utilities 5: Access to telecommunciations 6: Access to essential banking and credit services 7: Other -- legal aid
Free text comments	Services for the most vulnerable in the community must be the most hardened against AI/ADM errors and omissions. Safety and dignity are essential requirements for all persons, and this can only be achieved with government support. These government services are the most essential to protect from inappropriate AI outcomes.

[1] For example, paragraph 343 of the Explanatory Memorandum states that this may include access to healthcare services.

Question 6

Meaning of significantly affect rights or interests

Are there any other legal frameworks or policies that the OAIC should have regard to in considering the meaning of 'rights' and 'interest'?

Free text comments	I have included legal aid as an essential category above, as people have legal rights and entitlements under many frameworks (and these change constantly). AI/ADM that is adjacently related to any regulation or legislation must be hardened against errors.

Question 7

Meaning of significantly affect rights or interests

Fictional Edge Case: Differential pricing

E-commerce company, Daintree, allows subscribers to order books to their home. To make an account, Marco was required to disclose his address, being the luxurious Capital Crescent in Sydney CBD. Marco is surprised that his desired book, The Art of Inheritance, was priced at $100 when his book-club buddy, Charles, from a country town, paid only $35.

Marco is shocked to read an article reporting that Daintree uses differential pricing to inflate prices for individuals from wealthy postcodes. Marco is a freelance artist, so he does not have enough disposable income to purchase the book.

Restricting access to financial products or healthcare would clearly be a decision which significantly affects the interests of an individual. **In the above Edge Case, would you consider the inflation of prices for a consumer product to have significantly affected the interests of Marco?**	This is potentially an unethical use of personal information, but not currently illegal, and it does not deny Marco access to legal rights or entitlements. It is a discretionary purchase that does not have a bearing on his safety or security. He bought the book because he could afford it -- he could have not bought the book, or he could now return it and buy from a more ethical supplier. As such, while regulation of this use of AI/ADM should be considered, this is not a 'high-risk' use case. High risk use cases can cause significant harm to an individual, and cannot be easily reversed. This does not meet those criteria. High risk use cases are also more likely not to be 'opt-out', exposing people to the risk with no way to avoid or mitigate it.
If yes, at what amount would differential pricing be considered to have significantly affected the interests of an individual? **5% price difference, 20% price difference, or other (please specify amount)**	

In judging whether differential pricing significantly affects rights or interests, how important would you consider the following factors on a scale from 1 to 5 (with 1 being not important and 5 being very important):	
The dollar amount of differential pricing	
The significance of the product or service being purchased	If the purchase related to essential goods, food, or medical items, for example, differential pricing would be higher-risk. Consumers may not be able to opt out.

Question 8

Meaning of making a decision

Fictional Edge Case: Discriminatory targeted job ad

Engineering firm, Manscon, is hiring for graduate engineers. To try to target the best candidates, Manscon advertises open roles on job site, Opaque Window. Opaque Window algorithmically promotes this job posting to candidates it thinks are best suited. One metric it uses is gender of account holders. Since most engineers at Manscon are male, Opaque Window prioritises promoting the job to male engineering graduates.

Rafqa is a female engineering graduate searching for a job on Opaque Window. She does not receive the Manscon job ad, which limits her employment options.

Should it be considered a 'decision' that Rafqa did not receive the Manscon job ad? **Please provide a Yes/No response**	Yes
Can you provide your reasons for your response?	This is an outcome of an AI/ADM process, and as such is a 'decision'. The outcome is unfair, and has denied Rafqa access to an employment opportunity. Rafqa does not have the ability to source that same job opportunity from a more ethical company, so she cannot 'opt out' of this unethical practice. The impact of the lost opportunity is financial -- income is an essential need. Rafqas human rights are also undermined by this indirect discrimination, which is unlawful: this is a high risk use case.

Question 9

Meaning of ‘arranged for’

Are there any scenarios relevant to the meaning of ‘arranged for’ that you consider require guidance? If so, why?

Can you provide your reasons for your response?	

Question 10

Extent of disclosure

When making disclosures about ADM, the OAIC’s view is that entities must ensure that meaningful and accessible information is provided to consumers. In doing so, the OAIC considers that entities should strike an appropriate balance to ensure that disclosures are:

- clearly articulated in plain language and easy to understand;
- structured to enable consumers to request further information, where required;
- appropriately tailored – sufficiently specific to be meaningful, while avoiding overwhelming levels of detail;
- organised so that similar information is grouped in a logical manner; and
- framed in a way that allows the information and the decision to be challenged or contested.

Having regard to the above considerations, is there anything additional that entities should disclose to provide effective and meaningful disclosures about ADM?	The disclosures must explain the source data and the source rules. It is not sufficient to report that 'based on your records, our policy denies you this claim, and this was determined by our AI'. It is essential to specify which records were considered, and against what specific policy statements. A challenge here is that government often does not provide this traceability even in cases where decision making is pre-AI. Opaque reasoning and inconsistent application of rules have been raised in various Ombudsman and ANAO reports for Departments and the discipline of transparent, explainable, contestable decision making is not mature in many agencies. It must be introduced now.