15 June 2026

The Office of the Australian Information Commissioner
Email: privacyreformtranche1@oaic.gov.au

RE: **Consultation on Guidance for Transparency in Automated Decision Making – Issues Paper**

Thank you for the opportunity to provide input on the development of Guidance for Transparency in Automated Decision Making.

CHOICE welcomes the introduction of more transparency in privacy policies on when automated decision making (ADM) is used. Requiring businesses to include their use of automated decision making in their privacy policies will modernise our Privacy Principles in light of major advancements in Artificial Intelligence.

However, disclosure alone is not a complete solution. While we understand that reform is out of the scope of this consultation, we wish to reiterate that CHOICE strongly supports stronger privacy protections with a greater focus on consumer outcomes, greater resourcing of regulators to address the emerging harms of Artificial Intelligence (AI) and ADM, and the passage of tranche 2 of privacy reforms.

Substantially and directly related to making a decision

Regardless of whether ADM is autonomously making the final decision or is guiding or otherwise likely to substantially influence the decision that a human makes, it should be clearly disclosed.

In the fictional edge case given in the issues paper **(Question 2)**, by summarising the application and making a recommendation, the program is doing a thing that is substantially

57 Carrington Road Marrickville NSW 2204
Phone 02 9577 3333 | Fax 02 9577 3377 | Email campaigns@choice.com.au | www.choice.com.au
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and directly related to making a decision. This is equivalent to the Microsoft Excel example given in the explanatory memorandum, where the summary and recommendation are key factors in the human decision making process and may be largely or wholly relied upon by a human.[1] In our view, excluding cases such as this one risks creating a loophole for 'human oversight' that is extremely minimal.

Meaning of significantly affect rights or interests

CHOICE investigations into Airbnb[2] and Tinder[3] found possible uses of algorithms to, respectively, exclude or differentiate pricing for customers. Detailing whether cases like this are considered 'legal or similarly significant effects' will give consumers more assurance that ADM and AI will not be used to unjustifiably affect their access to goods and services.

It is our view that the dollar amount or percentage difference of differential pricing should not matter – any and all instances should be disclosed due to the risk of bias and negative impacts, including in the fictional edge case provided **(Question 7)**. Factors such as the personal circumstances and potential vulnerability of a consumer, the essentiality or significance of the product or service and availability of alternatives all play a role in determining the significance of a decision on an individual consumer level. Even a small price increase could be extremely detrimental to a person earning a low income. We believe that any form of differential pricing has the impact to significantly affect the rights or interests of a consumer and should be disclosed.

Meaning of making a decision

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[1] Explanatory memorandum, Privacy and Other Legislation Amendment Bill 2024

[2] CHOICE, *Op-ed: Just how much does Airbnb need to know?*, 21 March 2022, https://www.choice.com.au/airbnb

[3] CHOICE, *Tinder charges older people more*, 11 August 2020, https://www.choice.com.au/consumers-and-data/data-collection-and-use/how-your-data-is-used/articles/tinder-plus-costs-more-if-youre-older

80% of people are concerned about businesses not disclosing how they use AI to analyse their personal data to influence their purchase decisions, according to nationally representative data collected by CHOICE in March 2026.[4]

Advertising, or not advertising, a significant good or service to an individual should be seen as doing a thing that may have a significant effect, including in the discriminatory targeted job ad fictional edge case provided **(Question 8).** This is supported by the explanatory memorandum, which states 'the use of computer programs to target individuals with content and advertisements may have a significant effect on an individual if, for example, it results in differential pricing for provision of, or access to, significant goods or services, or limits access to employment opportunities.' [5]

Extent of disclosure

For a consumer to genuinely understand the kinds of decisions that are made by or as a result of ADM, **it must be made clear the practical impact or outcome the decision might have on a consumer.**

For example, in the instance of differential pricing, it should not be considered enough to simply vaguely state that *'ADM may be used to determine the price a consumer is offered for a product or service based on their personal information'*. This provides very little additional information or transparency to a consumer, as they still have no way of knowing how much more or less they may pay than other consumers. To make this more meaningful, a business should include relevant information to clarify the potential cost or benefit for a consumer, like a range or upper limit for how much individualised prices may differ.

[4] CHOICE Consumer Pulse March 2026 is based on an online survey designed and analysed by CHOICE. 1,096 Australian households responded to the survey with quotas applied to ensure coverage across all age groups, genders and locations in each state and territory across metropolitan and regional areas. The data was weighted to ensure it is representative of the Australian population based on the 2021 ABS Census data. Fieldwork was conducted in March, 2026.

[5] Explanatory memorandum, Privacy and Other Legislation Amendment Bill 2024

Additionally, **the guidance should consider how the sharing of personal information between parties could significantly affect rights or interests of an individual.** We have provided a fictional example below to illustrate how this may play out in practice.

Fictional example:
Christa joins the loyalty program of a liquor store, which uses an automated system to make inferences about Christa. These inferences are used by the liquor store to tailor and target its advertising to Christa, which is disclosed in its privacy policy. It is also disclosed that information about Christa, including these inferences, 'may be shared with third-party partners' – but the specific partners are not identified.

Several years later, Christa is comparing car insurance. One car insurer states that it may use ADM to determine her premium, and that it exchanges information with 'third party partners' which may be used to calculate the premium. Unbeknownst to Christa, one of those partners is the liquor store loyalty program. As result of the inferences shared with the insurer, Christa is offered a higher premium.

In this example, it is not made explicitly clear to Christa when signing up for the liquor store loyalty program that it could significantly impact her premiums with the insurer. Christa might be ok with targeted advertising from the liquor store, as explicitly disclosed, but not the impact of the inferences made by ADM on the calculation of her car insurance premium.

If you wish to discuss this submission further, please contact [redacted] at [redacted] to arrange a meeting, or for further information.

Yours sincerely,

[redacted]

57 Carrington Road Marrickville NSW 2204

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[redacted]
Director of Campaigns and Communications

57 Carrington Road Marrickville NSW 2204

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