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Office of the Australian Information Commissioner

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Consultation on Guidance for Transparency in Automated Decision Making

EnergyAustralia is one of Australia's largest energy companies with around 2.2 million electricity and gas accounts across eastern Australia. We also own, operate and contract a diversified energy generation portfolio across Australia, including coal, gas, battery storage, demand response, wind and solar assets, with control of over 5,000MW of generation capacity.

EnergyAustralia welcomes the opportunity to comment on the development of guidance in relation to Automated Decision Making (ADM) following the *Privacy and Other Legislation Amendment Act 2024* (POLA).

Our business supplies essential energy services to customers across eastern Australia and is the subject of extensive regulatory controls and oversight across multiple jurisdictional regulators. We use technology to service our customers, business operations and employees and acknowledge the importance of privacy protections and the importance of trust and confidence in the way we manage and use personal information. Therefore, EnergyAustralia broadly supports the ADM obligation and further supports the Office of the Australian Information Commissioner's (OAIC) mandate to provide further guidance, which is critical for its effective and efficient implementation and operation.

While we understand the Australian Energy Council is making a broader submission on behalf of energy industry participants, the purpose of this submission is to raise the concern that in the absence of clear guidance from the OAIC, the breadth and ambiguity of the ADM obligations poses risks to regulatory uncertainty, which invariably impacts on EnergyAustralia's ability to focus on reducing the delivered cost of energy to customers.

EnergyAustralia advocates for guidance that supports the right disclosures of ADM for individuals that is appropriately targeted, proportionate to the outcomes being sought and designed in a way that is feasible to implement and maintain.

The core challenge that we believe that can be resolved with the OAIC's guidance is to assist with establishing a principled distinction between two materially different categories of automated processing. As it stands, APP 1.7 does not distinguish between simple

operational automation that operates within defined and deterministic constraints, versus ADM that produces outcomes.

The first is significant decisional ADM: processes that exercise genuine discretion about a specific individual, producing an outcome that varies based on their circumstances and materially affects their rights or access to a service. Examples from EnergyAustralia's operations include payment plan compliance monitoring, hardship identification, and credit assessment. These are the evident target of the reform and warrant meaningful disclosure.

The second is deterministic operational automation: rules-based systems that execute a predetermined, externally-mandated, or mathematically fixed step where no judgment about the individual is exercised and the output is the direct consequence of data supplied or a rule EnergyAustralia does not author. Examples include bill calculation from meter reads and published tariff rates, network tariff code assignment set entirely by the relevant DNSP and approved by the AER. These are not "decisions" in any meaningful sense — they are the digital execution of obligations EnergyAustralia does not set.

Without this distinction, APP 1.7 becomes an obligation to monitor and publish a technical inventory instead of providing individuals with an informed and transparent understanding of what personal information is being used for.

Question 3 and 5 — Significant effect on rights or interests; significant service or support

EnergyAustralia strongly agrees that access to energy is likely to have a significant impact to individuals and should be disclosed for the purposes of APP 1.7. From a harms and consequence-based perspective, the consequences of decisions on disconnection, hardship access, payment arrangements, and concession entitlement are material and in some cases life-affecting. For this reason, EnergyAustralia fully supports robust disclosure of ADM in those contexts — and has structured its own internal register on that basis, treating disconnection scheduling, life support flag management, hardship identification, concession validation, payment plan cancellation, and credit default listing as the highest-priority use cases for disclosure.

EnergyAustralia asks the OAIC to confirm in its guidance that, for essential service providers, the significance threshold is met wherever a decision could affect: the customer's continued access to the service; the financial terms on which the service is provided; the customer's access to a government concession or emergency assistance; or the customer's access to a hardship or support program. This confirmation would give retailers a clear, harm-anchored test that is both stringent where it matters and bounded where it does not.

Question 9 — "Arranged for"

The "arranged for" concept is the most practically significant area of uncertainty for EnergyAustralia and, we expect, for the retail energy sector more broadly. EnergyAustralia arranges for third-party programs to operate across multiple points of the customer lifecycle, including credit bureaus, identity verification providers, the Services Australia data matching portal for concession validation, the Centrepay deduction platform, and AEMO's market systems. Each involves a computer program using personal information in a way that influences decisions about individual customers.

EnergyAustralia's proposed approach is that "arranged for" should be interpreted to cover arrangements where the APP entity: has a direct contractual or operational relationship with the third party under which the program is used; exercises meaningful control over the inputs supplied to the program or the rules applied to the output; and where the program's output is a key factor in a decision the APP entity makes about the individual. This formulation captures the cases that matter — credit scoring, IDV, concession matching — while excluding processing chains that are too remote or too constrained by external rule-makers for meaningful disclosure to be possible.

Specifically, EnergyAustralia asks the OAIC to confirm that the following are outside scope: processing conducted by infrastructure operators (DNSPs, AEMO) under regulatory obligations that EA has no role in setting or operating; and processing conducted by government agencies under their own statutory functions (e.g. Services Australia's assessment of a customer's concession eligibility against Centrelink records), where EA's role is limited to supplying data and receiving a result.

Question 10 — Extent of disclosure

EnergyAustralia's strong preference is for disclosure organised by type of decision and its significance to the individual, rather than by system or process. A privacy policy that tells a customer "we use automated systems to make decisions about whether your energy supply may be disconnected, what payment arrangement options are available to you, and whether you are eligible for government concession discounts" is more meaningful than one that lists technical process steps. The OAIC's own criteria — plain language, structured, appropriately tailored, allowing contestation — all point in this direction.

EnergyAustralia asks the OAIC to confirm that: disclosure grouped by decision type (rather than process or system) satisfies APP 1.8; that category-level descriptions of PII (e.g. "payment history and account balance") rather than field-level descriptions are sufficient; and that where a use case involves a third-party program whose internal workings are not visible to the APP entity (such as a credit bureau scoring model), a description of the entity's own use of the output, cross-referenced to any existing regime governing that third party, constitutes adequate disclosure.

We have attached, in Appendix 1, some examples that illustrate the need for clear and pragmatic guidance from the OAIC in relation to application of the obligations in scenarios where existing regulation exists and where there is consideration of potential harm to customers or individuals. EnergyAustralia has examined business processes and believe there are many use cases that fit into categories where disclosures would not be practically meaningful for individuals and consumers.

We are happy to engage further with the OAIC or provide additional information on our submission. If you have any questions in relation to this submission, please contact me directly at [redacted].

Yours sincerely,

[redacted]

Appendix 1: Examples of cases illustrating need for pragmatic guidance

The automated decision	EnergyAustralia's position
Offer and plan eligibility based on connection attributes. A fully-automated determination of which energy offers and plans a customer is eligible for, derived from the technical characteristics of their connection – supply address, meter type, network (distribution) zone, solar/embedded-generation status, and the network tariffs that apply at the premises.	This use case concerns the fully-automated determination of which energy offers and plans a customer is eligible for, based on the technical characteristics of their connection – such as their supply address, meter type, network area, solar status, and the network tariffs that apply at the premises. EnergyAustralia offers this example as one where disclosure would carry little practical value for customers. The decision is driven entirely by objective, technical facts about the connection itself rather than by any inference or judgement about the individual and it carries little or no potential for harm – it simply identifies the products that can lawfully and technically be made available at a given premises. Importantly, neither the customer nor EnergyAustralia can change this technical landscape: the meter type, network zone and applicable tariffs are determined by the network and the physical connection, so explaining the underlying logic would not give a customer anything they could act on or alter. For that reason we would suggest that technically-determined eligibility of this kind sits some distance from the opaque, judgement-based decisions the reforms are concerned with, and we would warmly welcome the OAIC's guidance confirming that it warrants only minimal disclosure, if any.
Better offer / VDO notification Existing regulatory obligations require electricity retailers to compare a customer's current plan to other available plans in the market. A fully-automated batch process compares each customer's current plan against the Victorian Default Offer (VDO) or EA's best offer and identifies who must receive a 'better offer' notification under NECF and state codes; notifications are generated and sent without individual review.	This example concerns the automated process that identifies which customers should receive a 'better offer' notification – something energy retailers are required to do under the National Energy Customer Framework and state pricing rules, including the Victorian Default Offer. The process is automated to deliver a regulator-mandated benefit using the customer's own plan and usage data – it identifies people who could be better off and prompts a helpful notification, rather than producing any adverse outcome. EA submits that a general disclosure about using ADM for the purposes of pricing and to meet regulatory requirements sufficiently meets the APP 1.7 – 1.9 threshold as opposed to notices that are provided at a granular level which provide no incremental benefit to an individual's rights and interests.

The automated decision	EnergyAustralia's position
Customer transfer out objection logic A substantially-automated validation that, when a customer switches retailer, checks the request against AEMO MSATS and NECF objection grounds (life-support, active dispute, meter-data timing) and processes or objects to the transfer; market operations can review and withdraw an objection.	In this example, automated checks are applied when a customer asks to transfer to another retailer, which may raise an objection to that transfer in the narrow circumstances allowed under the national energy market procedures. EnergyAustralia recognises how important the right to switch retailers is and we are committed to customers understanding the checks that sit around it. We would respectfully observe, though, that the objection grounds applied here are tightly and publicly defined by those market procedures rather than set by us – we are applying externally-mandated rules rather than exercising our own discretion, and our team can review and withdraw an objection. Because the criteria are already transparent and outside our control, we believe a clear, category-level description – pointing customers to the relevant market procedures and noting the human review step – offers more meaningful transparency than reproducing rules we do not author. We would be grateful for the OAIC's guidance confirming that the automated application of mandatory, publicly-documented industry rules can be disclosed at this level.
Automated pricing decisioning Based on network tariff assignment and cost pass-through. A fully-automated, rules-based mapping of the premises to the applicable DNSP network tariff code using NMI, network zone, meter type and load profile; this determines the network-cost component passed through in customer's bill.	This use case concerns the automated assignment of the network tariff that determines the network-charge component of a customer's bill which represent changes that are outside of EA's control. The assignment is automated, but it is essentially an arithmetic pass-through: the tariff itself is set by the local network distributor and approved by the Australian Energy Regulator, and our system simply maps a premises to the correct published code based on its meter and network area. Because there is no inference or judgement about the individual – and the rates are public and externally mandated – we believe customers are better served by a plain, category-level billing explanation than by treating this as a significant automated decision, which could risk over-disclosure and notification fatigue to consumers